

concerned officers may be saddled with exemplary costs and expenses if the Court finds that the order has been passed ignoring the law laid down by the Supreme Court and by this Court.

(76) For the reasons mentioned above, the writ petition is allowed. Order Annexure P3 is quashed. The Government of Punjab in the Labour Department is directed to refer the dispute relating to the dismissal of the workman-Kuldeep Singh to an appropriate Court/Tribunal within a period of one month of the receipt of a certified copy of this order. We also direct that in all future cases, the officers of the Labour Departments of the Governments of Punjab and Haryana should strictly act in accordance with the law laid down by the Supreme Court and by this Court, which has been reiterated in this case. Copies of this order be sent to the Chief Secretaries of the Government of Punjab and Haryana and to the Secretaries, Labour Departments of the Governments of Punjab and Haryana, for issuing necessary guidelines to the officers of the Labour Departments, who are entrusted with the tasks of passing orders under Section 10 of the Act. The parties at present are left to bear their own costs.

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R.N.R.

*Before Hon'ble G. S. Singhvi & T. H. B. Chalapathi, JJ.*

DHARAM SINGH & OTHERS,—*Petitioners.*

*versus*

STATE OF PUNJAB & OTHERS.—*Respondents.*

C.W.P. No. 17813 of 1995

15th December, 1995

*Punjab Police Rules, 1934—Rls. 13.8 & 13.9—Punjab Government circulars/memoes dated 16th October, 1987 and dated 19th November, 1991—Fortuitous en masse out of turn promotions of Head Constables effected by DIG to the post of ASI—DIG making such promotions after issuance of his own transfer orders but before handing over charge—New DIG on recommendations of DGP on reviewing promotions passing orders of reversion on the basis of inquiry report submitted by the IGP—Such promotions made in utter disregard of the rules and guidelines and based on extraneous reasons—Non-hearing*

*of promotees before effecting reversion in such a case does not violate the principles of natural justice—Retention of one promotee would not entitle seeking of mandamus on the plea of discrimination—Direction issued to Government to nullify all the promotions made by the DIG—Judicial Magistrate 1st Class, Ludhiana writing D.O. letter to DIG Ludhiana recommending promotion of a candidate—This action prima facie unbecoming of a Judicial Magistrate demeaning his office—Chief Justice requested to initiate action against the Judicial Magistrate.*

*Held*, that if the then Deputy Inspector General of Police had made promotions by a judicious exercise of power under Rule 13.8(2) and Rule 13.9(2) no exception could have possibly been taken regarding the promotions made by him. But the extra-ordinary haste and the unusual manner in which the Deputy Inspector General of Police made mass promotions of 249 persons certainly gave rise to a strong suspicion in the mind of higher authorities of something inherently wrong in the exercise of power by the then Deputy Inspector General of Police and, therefore, the Director General of Police was fully justified in instructing an officer of the rank of Inspector General of Police to conduct an inquiry into the promotions made by the Deputy Inspectors General of Police after the issue of orders of transfer and before they handed over the charge of their office.

(Para 12)

*Further held*, in most of such recommendations no details have been given of the performance of the Constables who were recommended to be promoted. Only in a few cases recommendations have been made by the Senior Superintendent of Police. It is, therefore, clear that on the basis of recommendations by the persons who have no power to make recommendations and without there being any record to show exceptional merit of individuals, the Deputy Inspector General of Police ordered mass promotions on 27th/28th July, 1995.

(Para 13)

*Further held*, what is most striking is that the then Deputy Inspector General of Police not only acted on the incomplete and unauthorised recommendations made by the Officers of the Police Department but he acted on some recommendations made by the persons who have nothing to do with the Police Department.

(Para 15)

*Further held*, that while according mass promotions after his transfer and on the event of his handing over the charge, the then Deputy Inspector General of Police, Ludhiana, Range, Ludhiana, gave a complete go-bye to the provisions of Rules 13.8 (2) and 13.9(2) as well as the instructions issued by the Police Department on 16th October, 1987 and 19th November, 1991. Instead of applying his mind to the records of the individual for out of turn and fortuitous promotion, the Deputy Inspector General of Police relied on the

recommendations made by the Sub Inspector of Police, Station House Officers, Deputy Superintendents of Police and Superintendents of Police, none of whom was authorised to make recommendations. He even acted on the recommendation made by the private individuals, including a Judicial Magistrate and a retired Judge of the Supreme Court, who did not have anything to do with the working of the Police Department and the records of the recommendees. In a large number of cases there were no recommendations, at all and there is nothing on record to show any exceptional merit or exemplary performance by the employees in relation to anti-terrorist activities.

(Para 18)

*Further held,* that we would have accepted the arguments regarding violation of the principles of natural justice, but in a case like the present one, where out of turn and fortuitous promotions have been given to 249 persons in utter disregard of the rules and the guidelines and most of such promotions are based on extraneous reasons, we do not find any reason or justification to nullify the order dated 28th November, 1995.

(Para 19)

*Further held,* that in the instant case each case has been thoroughly examined by the Inspector General of Police (Headquarters) and on the basis of the detailed report submitted by him, which is duly supported by specific particulars, the Director General of Police accepted the recommendations made by the Inspector General of Police for cancellation of the orders passed by the then Deputy Inspector General of Police.

(Para 19)

*Further held,* that retention of one or more than one persons, who too have been promoted without application of mind, cannot furnish a cause to the petitioner's case to seek *mandamus* on the ground of discrimination. If at all the Government committed illegality by retaining some persons, the High Court, cannot direct that the same illegality be committed by the Government in the case of the petitioners. Jurisdiction under Article 226 cannot be exercised for perpetuation of the illegality and fraud. Rather we would direct the Government to nullify all the promotions made by the then Deputy Inspector General of Police, Ludhiana Range, and officers of co-ordinate ranks so that nobody may have grievance of retaining the benefit of illegal promotions.

(Para 20)

*Further held,* that in a case like the present one, where gross misuse of power by the then Deputy Inspector General of Police has been palpably demonstrated, respondent No. 1 was left with no option but to set aside the unlawful orders and, therefore, the beneficiaries of such unlawful orders cannot complain that the impugned

order has not been passed in accordance with the conditions incorporated in the earlier orders.

(Para 21)

*Further held*, that the Department would independently review all the cases, including the cases of the petitioners Nos. 1 & 2 and if they or others are found entitled to promotions under Rule 13.8 (2) and Rule 13.9 (2) of the Punjab Police Rules, 1934, necessary orders will be passed by the competent authority. Such action would be taken by the respondents within a period of one month and those who are legally entitled to get promotions under Rules 13.8 (2) & 13.9 (2) and policy instructions issued by the Director General of Police on 19th November, 1991 will be given such promotions.

(Para 22)

*Further held*, that by writing D.O. letter directly to the Deputy Inspector General of Police and to the Senior Superintendent of Police, making recommendation for promotion of an employee of that department, Shri M. S. Randhawa has demeaned the office held by him and, therefore, we consider it appropriate that this matter be placed before Hon'ble the Chief Justice for initiation of appropriate action against Shri M. S. Randhawa.

(Para 24)

H. S. Mann, Advocate, *for the Petitioners.*

M. L. Sarin, A.G. Punjab and Mrs. Charu Tuli, A.A.G. Punjab,  
*for the Respondents.*

#### ORDER

G. S. Singhvi, J.

(1) The petitioners have questioned the legality of the order dated 25th November, 1995 issued by the Deputy Inspector General of Police, Ludhiana Range, Ludhiana, in the compliance of the order dated 23rd November, 1995 of the Director General of Police, Punjab, whereby the orders of promotions of the petitioners issued on 27th July, 1995 by the then Deputy Inspector General of Police, Ludhiana Range, Ludhiana, have been quashed.

(2) Petitioner Dharam Singh joined service as a Constable on 5th January, 1976. He was promoted as Head Constable on 1st September, 1989 after passing the lower school course. He was confirmed as Head Constable with effect from 1st January, 1993 and was promoted as Assistant Sub Inspector of Police by way of out of turn promotion.—*vide* order (Annexure P2) dated 27th July, 1995 issued by the then Deputy Inspector General of Police. Petitioner

Jaswinder Singh joined service as Constable on 26th September, 1979. He was promoted as Head Constable with effect from 1st July, 1988 after passing the Lower School Course. He was confirmed as Head Constable on 1st July, 1992 and he was given out of turn promotion to the rank of Assistant Sub Inspector,—*vide* order dated 27th July, 1995. Petitioner Shiv Ram joined service as Constable on 27th May, 1975. He was promoted as Head Constable on 24th April, 1987 after passing the Lower School Course. He was confirmed as Head Constable with effect from 1st July, 1992 and lastly promoted as Assistant Sub Inspector on the basis of out of turn promotion,—*vide* order dated 27th July, 1995. The petitioners have pleaded that they have exceedingly good service record and neither any adverse entry has been communicated to them nor any department inquiry is pending against them. According to the petitioners they were given out of turn promotion on the basis of their excellent record and for their participation in the anti terrorist activities. These promotion were accorded to them by the Deputy Inspector General of Police, Ludhiana Range, Ludhiana and one of the conditions of the orders of promotion was that they could be reverted without show-cause notice in case of deterioration in the work. The petitioners have pleaded that there has been no deterioration in their work and yet they have been reverted without any reason or rhyme.

(3) The petitioners have questioned the legality of the order (Annexure P1) dated 25th November, 1995 on the ground of arbitrariness, non-application of mind and violation of the principles of natural justice. An additional ground of challenge to the impugned order is that while the petitioners have been reverted, the persons having comparatively inferior record of service have been retained on the posts of Assistant Sub Inspectors, although all such persons, who have been retained, were promoted in the same manner in which the petitioners had been promoted by the then Deputy Inspector General of Police, Ludhiana Range, Ludhiana.

(4) In response to the notice of motion issued by the Court, the respondents have filed their reply through Shri P. Lal, Inspector General of Police (Headquarters), Punjab, Chandigarh. In the reply it has been stated that the then Deputy Inspector General of Police, Ludhiana Range, Shri Rajan Gupta was transferred,—*vide* letter No. 1/222/95-3H(1)/1138 to 1140 dated 27th July, 1995 along with some other Officers. Shri Rajan Gupta handed over the charge in the afternoon of 28th July, 1995 but between the issue of transfer

order and handing over the charge he passed orders giving promotions (ORP/Fortuitous) upto the rank of Sub Inspector and bringing names of Constables on promotion list (C-II) out of turn in respect of as many as 249 police personnel. According to the respondents there were no peculiar circumstances and no element of public interest was involved in the passing of such large number of promotion orders after the issue of transfer order of the Deputy Inspector General of Police himself. The respondents have further pleaded that when the Director General of Police received information regarding promotions by the Deputy Inspector General of Police, Ludhiana Range, Ludhiana and other Deputy Inspector Generals, a discreet inquiry was got made through the Inspector General of Police. This inquiry disclosed that the Deputy Inspector General of Police of three Ranges had not followed the standing instructions and had committed grave irregularities in passing the orders in large number of cases. Some of the irregularities pointed out by the respondents are that in 94 cases the Deputy Inspector General of Police of Ludhiana passed orders without any recommendations from the competent subordinate authorities and without evaluation of the record of the beneficiaries and in 17 cases the recommendations are of a date subsequent to the order of promotion and in some cases recommendations have been made by private individuals who have no concern with the Police Department. This report of the Inspector General of Police was considered by the Department and then it was decided to cancel all the promotion orders issued by the then Deputy Inspector General of Police of three Ranges. It has also been stated by the respondents that a decision has been taken on 20th November, 1995 to initiate action against the defaulting Deputy Inspector General of Police and his explanation has been called for.—*vide* D.O. letter No. 317/PS/DGP-95 dated 9th December, 1995 of the Director General of Police.

(5) During the course of arguments, Shri M. L. Sarin, learned Advocate General, Punjab, produced before us copies of Memo No. 32503-530/B-6 dated 19th November, 1991 issued by the Director General of Police, Punjab, on the subject of 'out of turn fortuitous promotion on the basis of good work done on the anti terrorist front'; and Memo No. 19158-88/B-3 dated 16th October, 1987 on the subject of 'admission of constables to promotion List C-II and promotion to the rank of Head Constables.' He also produced a photo copy of the report dated 14th November, 1995 submitted by the Inspector General of Police (Headquarters) in pursuance of the order dated 17th October, 1995 passed by the Director General of Police. The learned

Advocate General of Punjab also placed before us a list of Constables of District Ludhiana, whose names have been brought on list C-II by the then Deputy Inspector General of Police, Ludhiana Range, Ludhiana, on the eve of his handing over the charge. He also produced before us list of persons, who have been given promotion as Head Constables (ORP), Assistant Sub Inspector (ORP) and list of Sub Inspectors (ORP), who have been promoted as Sub Inspectors (Fortuitous) and on *ad hoc* basis. List showing the details of the various irregularities committed in the out of turn/fortuitous promotions made in the Police Districts of Ludhiana, Khanna, Jagraon and Ropar, has also been produced before the Court.

(6) Shri H. S. Mann, appearing for the petitioners, argued that the petitioners had been promoted to the posts of Assistant Sub Inspectors after due consideration of the record of service and after taking note of the performance of the petitioners in anti-terrorist activities and, therefore, the Director General of Police has no authority to cancel the order of promotion of the petitioners. Second contention of Shri Mann is that by an omnibus order issued on 23rd November, 1995 the Director General of Police could not cancel all the promotions made by the then Deputy Inspector General of Police, Ludhiana Range, Ludhiana. Learned counsel argued that the Director General was not entitled to interfere with the promotions made by a competent authority by exercise of his discretionary powers under Rule 13.8 of the Punjab Police Rules, 1934 (for short 'the Rules'). He placed reliance on the decision of the Supreme Court in *Kumari Shrilekha Vidyarthi etc. v. State of U.P. and others* (1). Another contention advanced by Shri Mann is that promotions of the petitioners could not have been rescinded with retrospective effect because the same would adversely affect the rights which have accrued to the petitioners. Further contention of Shri Mann is that the Director General of Police has discriminated against the petitioners *vis-a-vis* similarly situated persons and even those whose record of service is inferior to that of the petitioners. Shri Mann invited the Court's attention to the fact that against Harbans Singh a case under Section 382, I.P.C., has been registered at Police Station, Samrala, and even during the pendency of the criminal case, he has been promoted and retained on the post of Assistant Sub Inspector, proving patent arbitrariness in the exercise of power by the Director

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(1) A.I.R. 1991 S.C. 537.

General of Police. Shri Mann further argued that no action oriented notice was given to the petitioners and they were not heard before being removed from the posts of Assistant Sub Inspectors and thus the action of the Director General of Police is vitiated due to the violation of the principles of natural justice. Lastly Shri Mann argued that the petitioners could be reverted without notice only in case their work deteriorated but there was no material with the Director General of Police on the basis of which he could form an opinion that the work of the petitioners has deteriorated.

(7) Shri M. L. Sarin, learned Advocate General, Punjab, argued that mass promotions effected by the then Deputy Inspector General of Police, Ludhiana Range, Ludhiana, after his transfer and on the eve of his relinquishing the charge of the post, shows rank favouritism and misuse of authority by him and, therefore, interference by the Director General of Police was necessitated. Shri Sarin argued that in large number of cases promotions were ordered by the then Deputy Inspector General of Police without there being any recommendation by the competent authority and without there being any material on record to show that cases of the promotees fell within the parametres paid down by the Government for giving out of turn promotions. Shri Sarin pointed out that in some of the cases recommendations made by the persons, who have no concern with the Police Department, have been acted upon for the purpose of giving promotions, which by itself is a proof of favouritism and nepotism committed by the then Deputy Inspector General of Police. Shri Sarin submitted that such flagrant disregard of the Rules and the policies of the Government, if not corrected by the Director General of Police, would have led to demoralisation of the services and frustration amongst those who deserved due consideration for promotions. Learned Advocate General submitted that in a peculiar case like the present one, non-compliance of the principles of natural justice does not have the effect of vitiating the action taken by the competent authority and when the orders of promotion have been found to be vitiated by fraud and misuse of authority, the action taken by the Director General of Police cannot be termed as arbitrary or unreasonable. Shri Sarin also argued that if any person has been allowed to continue on the promoted post despite bad record, such case will be reviewed by the Government, but it should not be made basis for issue of a writ of mandamus so as to nullify the order dated 28th November, 1995. Learned Advocate General submitted that the Director General of Police did not pass the order without considering the record. He directed the Inspector



General of Police to make an inquiry into the entire matter and on the basis of detailed report submitted by the Inspector General of Police, the Director General of Police (respondent No. 1) passed the impugned order. Lastly Shri Sarin made a statement that if there is any genuine case for out of turn promotion, the respondents would consider the same on its merit and such consideration would also be made in the case of petitioners Nos. 1 and 2.

(8) Chapter-XII of the Punjab Police Rules relates to appointments and enrolments. Rule 12.1 of Chapter XII enumerates the authorities which are empowered to make appointments to different categories of posts. Rule 12.2 relates to seniority and probation of Assistant Superintendents of Police, Deputy Superintendents of Police, upper subordinates and lower subordinates. Rule 12.3 relates to direct appointments of Inspectors and Assistant Sub Inspectors. Rule 12.4 relates to appointments of Sergeants. Rule 12.6 specifies the qualifications for direct appointment as Inspector or Assistant Sub Inspectors. Rule 12.7 provides for list of accepted candidates for direct appointment to the rank of Assistant Sub Inspectors. Such list is required to be maintained in the office of the Deputy Inspector General of Police. Rule 12.10 relates to appointment of Head Constables by promotion from the selection grade constables in accordance with Rules 13.7 and 13.8. Rule 12.10A provides for direct appointment of selection grade constables. Rule 12.13 and Rule 12.14 speak for register of recruits and status of recruits. Rule 12.15 speaks for age and physical standards of recruits. Rule 12.16 relates to the medical examination of recruits. Rule 12.17 deals with enrolment of recruits while Rule 12.18 prescribes the mode of verification of character. Rule 12.19 speaks of the manner in which the recruitment is to be made. Rule 12.20 provides for date of enrolment. Rule 12.21 empowers the Superintendent to discharge a Constable who is unlikely to prove an efficient police officer. Rule 12.22 prescribes the form of certificate of appointment. Other rules deal with inter-district transfers, character rolls and service book etc. Rule 13 which finds mention in Chapter XIII deals with promotions. Rule 13.1(1) provides for promotion from one rank to other rank and from one grade to another in the same rank by selection tempered by seniority. While making promotions the competent authority is required to keep in view the efficiency and honesty, specific qualifications like training courses or practical experience etc.. For the purpose of regulating promotions amongst the enrolled police officers, six promotion lists i.e. A, B, C, D, E and F are required to be maintained and these lists constitute the basis for making promotions.

Rule 13.2A empowers the Inspector General of Police to grant next higher rank to an enrolled Police Officer as a local rank in non-gazetted posts. Rule 13.3 specifies the authorities competent to make appointments by promotions to various categories of posts. Substantive promotions to the rank of Inspectors and Assistant Sub Inspectors can be made by Superintendents of Police and the Assistant Superintendent, Government Railway Police, Deputy Inspector General of Ranges who maintain promotion lists D and E. For promotion to the rank of Head Constables, Superintendents of Police and the Assistant Superintendent of Police, Government Railway Police are competent. Rule 13.4 speaks of officiating promotions to the ranks of Sub Inspectors and Assistant Sub Inspectors. Rule 13.5 relates to promotion to the selection grade constables. Rule 13.6 refers to List-A which is required to be maintained by each Superintendent of Police for promotion to the selection grade of Constables. Rule 13.7 refers to List-B which is required to be maintained in form 13.7 by each Superintendent of Police. This list includes the names of all Constables selected for promotion to the Promotion Course for Constables at the Police Training College. Rule 13.8 refers to List C and it lays down that names of all Constables who pass Lower School Course should be included in a list maintained in each District in Card Index form. In terms of Rule 13.8 (2) promotion is required to be made according to the merit assigned to the candidates in the examinations and where the qualifications are equal, seniority in the police force is the relevant factor. Rule 13.8-A specifies disqualifications for admission to or retention in Lists A, B or C. Rule 13.9 refers to List D which is required to be maintained in card index form No. 13.9 in each district. This list shall be in two parts for Head Constables. Selection of Head Constables for promotion course are required to be entered in Part-I of List-D. The names are to be arranged in the order of their seniority *inter se*. The names of those Head Constables who are outstandings but who have not passed the promotion course due to over-age and who are otherwise considered to be of exceptional merit and are suitable can be entered in Part-II of List-D. This can be done with the approval of Inspector General of Police but the total number of persons whose names can be included in Part-II of List-D shall not exceed 10 per cent of the posts of Assistant Sub Inspector (permanent as well as temporary). Rule 13.10 relates to List-E for promotion course for A.S.Is. who can be considered for promotion as Sub Inspectors.

(9) For the purposes of this case Rules 13.8 and 13.9 are quite relevant and, therefore, the same are reproduced below :—

“13.8. List C. *Promotion to Head Constables.*—(1) In each district a list shall be maintained in card index form (form 13.8(1) of all constables who have passed the Lower School Course at Phillaur and are considered eligible for promotion to Head Constable. A card shall be prepared for each constable admitted to the list and shall contain his marking under sub-rule 13.5 (2) and notes by the Superintendent himself, or furnished by Gazetted Officers under whom the Constable has worked, on his qualifications and character. The list shall be kept confidentially by the Superintendent and shall be scrutinized and approved by the Deputy Inspector-General of Police at his annual inspection.

(2) Promotions to Head Constable shall be made in accordance with the principle described in sub-rules 13.1(1) and (2). The date of admission to List C shall not be material, but the order of merit in which examinations have been passed shall be taken into consideration in comprising qualifications. In cases where other qualifications are equal, seniority in the police force shall be the deciding factor. Selection grade constables who have not passed the Lower School Course at the Police Training School but are otherwise considered suitable may, with the approval of the Deputy Inspector-General, be promoted to Head Constable up to a maximum of ten per cent of vacancies.”

13.9. List D. *Selection of candidates for promotion course for Head Constables. Promotion to the rank of Assistant Sub-Inspector.*—(1) List ‘D’ shall be maintained in two parts for Head Constables in Card Index Form No. 13.9 in each District. Selection for admission to the promotion course for Head Constable at the Police Training College, will be made from amongst all the confirmed Head Constables. No Head Constable shall be eligible for admission to the promotion course for Head Constable at the Police Training College, unless :—

- (1) He has passed Middle Standard Examination.
- (2) He is below the age of forty years on the day of commencement of the next course.

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- (2) The names of Head Constables who qualify at the Police Training College in the Promotion Course for Head Constables will be entered in Part-I of List 'D' as soon as they qualify the same. While entering the names in this part they will maintain their seniority *inter se*. The names of the outstanding Head Constables who have not passed the Promotion Course for Head Constables at Police Training College due to being over-age but otherwise are of exceptional merit and are considered suitable may, with the approval of Inspector-General of Police, be entered in Part-II of List 'D'. No more than 10 per cent of the posts of Assistant Sub Inspectors both permanent and temporary will be filled from the names of Part-II of List 'D'. This part will not at any time contain names more than two per cent of the cadre strength of Assistant Sub Inspectors in a range, both temporary and permanent.
- (3) Annual Confidential Reports of all the Head Constables in Parts I and II of List 'D' shall be furnished by the Deputy Inspector General of Police by the 15th day of April, each year in Form No. 13.9 (3).
- (4) Promotion to the rank of Assistant Sub-Inspector shall be made in accordance with the seniority of the Head Constables on List 'D', which may be ignored by the Superintendent of Police in exceptional circumstances only for reasons to be recorded in writing with the approval of the Deputy Inspector General of Police."

(10) A reading of the above-quoted rules shows that promotions to the posts of Head Constables and Assistant Sub Inspectors are required to be made on the basis of Lists 'C' and 'D', respectively and such lists include the names of those who have passed lower school course or the promotion course for Head Constables. However, selection grade Constables can be promoted as Head Constables even without passing the Lower School Course provided they are otherwise considered suitable and the Deputy Inspector General of Police approves such promotions. Such promotions can be made upto 10 per cent of the total vacancies. Similarly, outstanding Head Constables of exceptional merit, who may be considered otherwise suitable can be promoted as Assistant Sub Inspectors upto 10 per cent of the total vacancies, but this is subject to the approval of the Inspector General of Police. At a given time the names of Head Constables cannot be included in Part-II of List-D beyond two per

cent of the cadre strength of the Assistant Sub Inspector in a range. It can thus be said that the competent authority is empowered to give promotions to the Selection Grade Constables on the posts of Head Constables and the Head Constables can be promoted as Assistant Sub Inspectors if they are otherwise found suitable for such promotions and are found to be of exceptional merit, even though they may not have passed the requisite training. On the face of it Rules 13.8 and 13.9 do not contain any guidelines to determine the outstanding performance or exceptional merit or suitability on the basis of which a Constable can be promoted as Head Constable and a Head Constable can be promoted as Assistant Sub Inspector without passing the requisite Course. However, this lacuna is supplemented by the administrative instructions issued by the Government from time to time. Memo. dated 16th October, 1987 issued by the Director General of Police contains guidelines for promotion of Constables to the rank of Head Constables. Paragraphs 2 and 3 of this memo. are reproduced below for the purpose of ready reference :—

“2. Rule 13.8(2) of the Punjab Police Rules 1934 envisages that Constables who have not passed the Lower School Course at Police Training College, but, are, otherwise, considered suitable may, with approval of the Deputy Inspector General of Police, be promoted to the rank of Head Constable upto a maximum of ten per cent of the vacancies.”

“3. It is felt that this power should be exercised most judiciously inspiring confidence and impartiality in the best traditions of the service. The two important norms in the relevant criteria may be seniority and good record of service should be given due weight and recognition while making recommendations or approving candidates for promotion under PPR 13.8(2).”

(11) Memo. dated 19th November, 1991 provides for guidelines on the issue of fortuitous promotions to the posts of Assistant Sub Inspectors. The relevant extracts of this circular are also quoted below :—

“You were requested through this office letter No. 4841-50/LA-3, dated 12th September, 1988 that cases for out of turn fortuitous promotion on the basis of good work done by

the Police employees be referred to this office. Keeping in view the step up in the activities of the terrorists and the need for giving immediate reward by way of fortuitous promotions, it has been decided that Inspector General of Police, P.A.P., Range Deputy Inspectors General of Police and Deputy Inspector General of Police, G.R.P. will be competent to give fortuitous promotion to the next higher rank to Constables, Head Constables and A.S.Is. who have done exceptionally good work in curbing the activities of terrorists/extremists. In other words, the Range Deputy Inspectors General of Police, Deputy Inspectors General of Police, G.R.P. and Inspector General of Police, P.A.P. will now be competent to give fortuitous promotion as under :—

- (i) Constable to Head Constable.
  - (ii) Head Constable to Asstt. Sub-Inspector.
  - (iii) Asstt. Sub-Inspector to Sub-Inspector.
2. The cases of Sub-Inspectors and Inspectors for the rank fortuitous promotion shall continue to be referred to this Office.
3. The Range Deputy Inspector General of Police while considering the cases referred to them by the District Senior Superintendent of Police shall keep in view instructions issued by this office from time to time. The main guidelines are reproduced below :—
- (1) An officer who is already on fortuitous promotion will not be given another fortuitous promotion.
  - (2) The official being recommended/promoted has done consistent and exceptional good work in curbing the activities of the extremists/terrorist.
  - (3) The name of the official should have figured in the F.I.R. and he has made special contribution in arresting/liquidating top terrorists and not ordinary terrorists.
  - (4) The record of the official is good or atleast satisfactory. No official should be promoted or recommended whose conduct is under enquiry or criminal case has been registered against him or his service record is bad.

- (5) A solid case should be made out that the official had done consistent good work in curbing the activities of the terrorists of eliminating them.
- (6) The S.S.Ps. should give full facts in the recommendations. In case, some facts are not to be mentioned in the citation, these should be given in a sealed envelop, which should be kept secret, but without specific instances, the case of promotion should not be processed.
- (7) The same official should not be given two rewards viz. out of turn promotion and Gallantry Medal and only one benefit be given."

(12) If the then Deputy Inspector General of Police had made promotions by a judicious exercise of power under Rule 13.8 (2) and Rule 13.9 (2) no exception could have possibly been taken regarding the promotions made by him. But the extraordinary haste and the unusual manner in which the Deputy Inspector General of Police made mass promotions of 249 persons certainly gave rise to a strong suspicion in the mind of higher authorities of something inherently wrong in the exercise of power by the then Deputy Inspector General of Police and, therefore, the Director General of Police was fully justified in instructing an officer of the rank of Inspector General of Police to conduct an inquiry into the promotions made by the Deputy Inspector General of Police after the issue of orders of transfer and before they handed over the charge of their office. The report highlighted the following striking features of the promotions accorded by the then Deputy Inspector General of Police, Ludhiana Range, Ludhiana :—

- (i) All the orders were made on the same date i.e. 27th July, 1995.
- (ii) In majority of the cases there were no decision for bringing the names on List C-II for giving promotions.
- (iii) In a large number of cases, the recommendations from the recommending authorities were brought on file but reference to those recommendations were not made in the office notings ; thereby giving rise to suspicion that these recommendations were procured later on.
- (iv) In some cases, no recommendations are there at all ; only copies of the orders of D.I.G./LR are there.

- (v) In large number of cases the recommendations are not from S.S.Ps. but the officers subordinate to the S.S.Ps., like S.P. (Operation), S.P. (City), S.P. (Headquarters), S.H.Os., S.I. Incharge Sports etc.
- (vi) In some cases recommendations are of later date than of the order dated 27th July, 1995.

The Inspector General of Police then remarked :

“Ludhiana Range has been the most glaring example of the confinement of such benefits without due justification.”

He also recommended that all the orders issued on 27th July, 1995 in Ludhiana, Jalandhar and Ferozpur Ranges be quashed irrespective of the fact that some of them have been justified as a result of review. He also recommended taking of suitable action against Shri Rajan Gupta, Shri Chander Shekhar and Shri Bakshi Ram, the then Deputy Inspectors General of Ludhiana, Jalandhar and Ferozpur ranges, respectively. Recommendation made by the Inspector General (Headquarter) have been approved by the Director General of Police and then the impugned order came to be issued.

(13) The detailed lists produced before us show that in about 45 cases all persons who were brought on List C-II, no recommendations have been made by any of the Police Officers. In other 21 cases recommendations have been made by the Deputy Superintendents of Police. In about a dozen cases recommendations have been made by the Station House Officers. In some cases recommendations have been made by the Sub Inspectors of Police. In some other cases the S.P. (City), S.P. (Operation) have made recommendations. In most of such recommendations no details have been given of the performance of the Constables who were recommended to be promoted. Only in a few cases recommendations have been made by the Senior Superintendents of Police. It is, therefore, clear that on the basis of recommendations by the persons who have no power to make recommendations and without there being any record to show exceptional merit of individuals, the Deputy Inspector General of Police ordered mass promotions on 27th/28th July, 1995.

(14) In the cases of A.S.Is. no recommendations have been made in 17 cases. In about six cases the applicants have themselves made claim for promotion on the basis of their alleged performance in connection with the terrorist activities, but their cases have also not been recommended by anybody. In one case, the recommendation



has been made by the Deputy Superintendent of Police, Ludhiana, and in another case recommendation has been made by the Assistant Superintendent of Police. In some other cases recommendations have been made by the Deputy Inspectors General of Police, Jalandhar. In one case the Deputy Inspector General recommended promotion of his driver as A.S.I. In another case the recommendation is by the S.P. City in favour of his stenotypist. In yet another case the recommendation is in favour of Reader of the S. P. Khanna. In yet another case the recommendation is in favour of the Head Clerk of the office of the S.S.P. Jagraon. The list of persons who have been promoted as S.Is. also shows similar types of recommendations without any specific indication of the performance by the officials recommended to be promoted.

(15) What is most striking is that the then Deputy Inspector General of Police not only acted on the incomplete and unauthorised recommendations made by the officers of the Police Department but he acted on some recommendations made by the persons who have nothing to do with the Police Department. One such recommendation has been made by D.A. (Legal) in favour of Shri Anil Kumar No. 341, who is working as Naib Reader with him. In favour of Charanjit Singh No. 1709 recommendation has been made by Master Dalip Chand, Ex-M.L.A. In case of one Prem Parkash No. 1823 recommendation has been made on a chit by Shri K. Rajpal, Press Correspondent. In favour of Didar Singh No. 1556 recommendation has been made by Shri Daljit Singh, S.D.M. Ludhiana on 29th July, 1995. Regarding it the Inspector General (Headquarters) observed that the office note dated 27th July, 1995 makes a reference to the S.D.Ms. report dated 29th July, 1995 and it could be possible only when it was made later on and pre-dated. In favour of one Hardev Singh No. 1285 recommendation has been made by Shri M. S. Randhawa, Judicial Magistrate, 1st Class, Ludhiana. One Simranpal Singh Gill *alias* Dicky Gill has made recommendation in favour of Jaswinder Singh No. 2780, Harijnder Singh No. 1222 and Baldev Raj No. 689. It is not clear as to what is the status of Shri Simranpal Singh Gill and what authority he possessed to make such recommendations. In favour of Shri Om Parkash No. 1275 recommendation has been made by one Shri T. R. Mohindra of a newspaper (Daily Samaj). In favour of Mewa Singh No. 725 recommendation has been made on 31st July, 1995 by a retired Judge of the Supreme Court Mr. Justice A. D. Koshal. In the list of A.S.Is. Shri Gurmit Singh, Head Constable No. 288 was promoted inspite of adverse report for the period between 1st December, 1990 to 31st March, 1991 and two

censures granted in the years 1988 and 1991. Similarly in case of Head Constable Narinder Singh of Ludhiana promotion has been accorded inspite of censure in the year 1984 and adverse entry from 1st April, 1984 to 31st March, 1985. In most of the cases of promotions of A.S.Is no good work is shown to have been done by the concerned officials on the basis of which they can be treated as officials covered by the instructions issued by the Director General of Police on 19th November, 1991.

(16) The Government counsel has also produced before us some of the original orders containing recommendations for promotions of the following Constables :—

1. Charanjit Singh  
No. 1709. In his favour recommendation has been made by Master Dalip Singh, Ex-M.L.A. Balachaur.
2. Prem Parkash  
No. 1823. In his favour one Shri K. Rajpal has made recommendation because Prem Parkash happened to be Gunman of Hind Samachar agent M/s.
3. Didar Singh  
No. 1556. In his favour recommendation has been made by the S.D.M. Ludhiana on 29th July, 1995.
4. Om Parkash  
No. 1275. In his favour recommendation has been made by Shri T. R. Mohindra, a journalist of Ludhiana.
5. Mewa Singh  
No. 724. In his favour recommendation has been made by Justice A. D. Koshal, a retired Judge of the Supreme Court on his own letter head. The letter bears the date July 31, 1995 and on the application made by Shri Mewa Singh recommendation has been made on 2nd August, 1995.
6. Devinder Singh  
No. 2714. In his favour recommendation has been made by Shri Surinder Aggarwal, Chairman, Ludhiana Improvement Trust.

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| Hardev Singh<br>No. 1285.       | In his favour recommendation has been made by Shri M. S. Randhawa, Judicial Magistrate 1st Class, Ludhiana— <i>vide</i> his D.O. letter No. 832 dated 10th May, 1995 addressed to Shri Rajan Gupta, D.I.G. Ludhiana, and Shri H. S. Dhillon, S.S.P. Ludhiana. |
| 8. Jaswinder Singh<br>No. 2780. | In their cases recommendation has been made by Shri Simranpal Singh Gill <i>alias</i> Dicky Gill.   |
| 9. Rajinder Singh<br>No. 1222.  |   |
| 10. Baldev Raj<br>No. 689.      |   |

(17) The list of Head Constables promoted as Assistant Sub Inspectors (ORP) shows that not in a single case recommendation has been made by Senior Superintendent of Police of any of the Districts, except in one case. Similarly in the cases of Sub Inspectors only in five cases recommendations have been made by Senior Superintendents of Police. Of them one is working as Head Constable in the office of Senior Superintendent of Police, Jagraon, but there is no record showing his outstanding performance. Another person is working as Accountant in Deputy Inspector 'General's office. In the third case the person is working as a Reader. Petitioner Dharam Singh has been promoted on the basis of his application without any recommendation and his case for fortuitous promotion was rejected,—*vide* letter No. 22562/E-6 dated 10th August, 1994. Petitioner Jaswinder Singh, who is working as Reader under Superintendent of Police, Khanna, has been recommended by the Superintendent of Police but his case is not forwarded by the Senior Superintendent of Police. Petitioner Shiv Ram has been promoted without any recommendation by anybody and no exceptional work has been shown to have been done by him.

(18) From the above extracted details of the records it is crystal clear that while according mass promotions after his transfer and on the even of his handing over the charge, the then Deputy Inspector General of Police, Ludhiana Range, Ludhiana, gave a complete go-bye to the provisions of Rules 13.8 (2) and 13.9(2) as well as the instructions issued by the Police Department on 16th October, 1987

and 19th November, 1991. Instead of applying his mind to the records of the individual for out of turn and fortuitous promotion, the Deputy Inspector General of Police relied on the recommendations made by the Sub Inspector of Police, Station House Officers, Deputy Superintendents of Police and Superintendents of Police, none of whom was authorised to make recommendations. He even acted on the recommendations made by the private individuals, including a Judicial Magistrate and a retired Judge of the Supreme Court, who did not have anything to do with the working of the Police Department and the records of the recommendees. In a large number of cases there were no recommendations at all and there is nothing on record to show any exceptional merit or exemplary performance by the employees in relation to anti-terrorist activities.

(19) In this background we have to decide whether the petitioners are justified in complaining of the violation of the principles of natural justice and can it be said that the respondents have acted arbitrarily or unreasonably in nullifying the orders of promotion issued on 27th/28th July, 1995. Ordinarily, we would have accepted the arguments regarding violation of the principles of natural justice, but in a case like the present one, where out of turn and fortuitous promotions have been given to 249 persons in utter disregard of the rules and the guidelines and most of such promotions are based on extraneous reasons, we do not find any reason or justification to nullify the order dated 28th November, 1995. It is not a case in which the orders of promotions have been cancelled due to political reasons like in the case of *Kumari Shrilekha Vidyarthi* (supra) where all the District Attorneys were removed from their offices with one stroke of pen with the change of political Government in the State. Their Lordships of the Supreme Court considered the record and found that there was utter non-application of mind by the competent authorities and all the promotions had been cancelled by one order without examining the merits of each case. In the instant case each case has been thoroughly examined by the Inspector General of Police (Headquarters) and on the basis of the detailed report submitted by him, which is duly supported by specific particulars, the Director General of Police accepted the recommendations made by the Inspector General of Police for cancellation of the orders passed by the then Deputy Inspector General of Police.

(20) Argument of Shri Mann about the discrimination is also without substance. Retention of one or more than one persons, who too have been promoted without application of mind, cannot furnish a cause to the petitioners' case to seek *mandamus* on the ground of

discrimination. If at all the Government committed illegality by retaining some persons, the High Court cannot direct that the same illegality be committed by the Government in the case of the petitioners. Jurisdiction under Article 226 cannot be exercised for perpetuation of the illegality and fraud. Rather we would direct the Government to nullify all the promotions made by the then Deputy Inspector General of Police, Ludhiana Range, and officers of coordinate ranks, so that nobody may have grievance of retaining the benefit of illegal promotions.

(21) We also do not find any substance in the contention of Shri Mann that the promotions of the petitioners could not have been nullified except where performance had shown to have been declined. In our opinion, in a case like the present one, where gross misuse of power by the then Deputy Inspector General of Police has been palpably demonstrated, respondent No. 1 was left with no option but to set aside the unlawful orders and, therefore, the beneficiaries of such unlawful orders cannot complain that the impugned order has not been passed in accordance with the conditions incorporated in the earlier orders.

(22) For the reasons mentioned above, the writ petition is dismissed. However, we take note of the statement made by Shri Sarin, learned Advocate General, Punjab, that the Department would independently review all the cases, including the cases of the petitioners Nos. 1 and 2 and if they or others are found entitled to promotions under Rule 13.8 (2) and Rule 13.9 (2) of the Punjab Police Rules, 1934, necessary orders will be passed by the competent authority. We hope that such action would be taken by the respondents within a period of one month and those who are legally entitled to get promotions under Rules 13.8 (2) and 13.9 (2) and the Policy instructions issued by the Director General of Police on 19th November, 1991 will be given such promotions.

(23) Before parting with the case we consider it necessary to take notice of the disquieting features of the action taken by the officers of the rank of Deputy Inspector General of Police. We do not want to express any final opinion on their actions but at the same time we cannot refrain from observing that the entire matter requires a thorough probe by the Government which must be conducted at the earliest and that at the same time the Government shall take necessary measures and pass appropriate orders so that none of the three Deputy Inspectors General of Police, who passed

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orders of promotions after their transfers are able to visit those ranges and thereby influence directly or indirectly the proceedings of the inquiry being held by the Government. We further direct the Government that if after making its inquiry the Government comes to the action taken by the concerned Deputy Inspectors General of Police are vitiated by *mala fides* or extraneous reasons, then the Government must necessarily initiate inquiry against the defaulting officers.

(24) We also take note of the action of Shri M. S. Randhawa, Judicial Magistrate, 1st Class, Ludhiana, who wrote D.O. letter No. 281 dated 8th May, 1995 to Shri Rajan Gupta, the then D.I.G. Ludhiana, and Shri H. S. Dhillon, Senior Superintendent of Police, Ludhiana, recommending promotion of Shri Hardev Singh. This action of Shri M. S. Randhawa is *prima facie* unbecoming of a Judicial Magistrate. We are *prima facie* of the opinion that by writing D.O. letter directly to the Deputy Inspector General of Police and to the Senior Superintendent of Police, making recommendation for promotion of an employee of that department, Shri M. S. Randhawa has demeaned the office held by him and, therefore, we consider it appropriate that this matter be placed before Hon'ble the Chief Justice for initiation of appropriate action against Shri M. S. Randhawa. The Registry is directed to place this file before Hon'ble the Chief Justice for necessary orders.

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R.N.R.