

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT: MR. JUSTICE MIAN SAQIB NISAR, HCJ
MR. JUSTICE SH. AZMAT SAEED
MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE SAJJAD ALI SHAH

INTRA COURT APPEALS NO.4, 6, 8, 9, 18, 19, 21 TO 23
OF 2017 AND 2 OF 2018

(Against the judgment dated 29.3.2017 of this Court
passed in Crl.O.Ps.No.33, 60, 55 and 62/2017)

AND

CRIMINAL MISC. APPLICATIONS NO.43 TO 45 OF 2018
(Applications for impleadment)

AND

CRL. REVIEW PETITIONS NO.42, 68 AND 523 OF 2017
(On review of this Court's judgments dated
29.3.2017/28.3.2017 passed in Crl.O.P.60/2017 and
C.M.A.687/2017)

AND

CIVIL MISC. APPLICATION NO.3347 OF 2017 IN CIVIL
REVIEW PETITION NO.NIL OF 2017 IN CIVIL MISC.
APPLICATION NO.687 OF 2017
(Permission to file and argue review petition - On review of
this Court's judgment dated 28.3.2017 passed in
C.M.A.687/2017)

AND

CRIMINAL ORIGINAL PETITIONS NO.138, 96, 121 TO
127, 132, 139, 167 AND 217 OF 2017, 4 OF 2018, 92
OF 2017, 152 OF 2016, 104 AND 214 OF 2017
(Non-compliance of Court's order)

AND

CRL. MISC. APPLICATIONS NO.1002 AND 937 OF 2017
(Applications for impleadment)

I.C.A.4/2017:	Akhter Umar Hayat Lalayka Vs. Mushtaq Ahmed Sukhaira & others
I.C.A.6/2017:	Manzoor Ahmed Vs. Mushtaq Ahmed Sukhaira and others

I.C.A.8/2017:	Awais Malik and others Vs. Mushtaq Ahmad Sukhera and others
I.C.A.9/2017:	Awais Malik and others Vs. Mushtaq Ahmad Sukhera and others
I.C.A.18/2017:	Mansoor Naji Vs. Mushtaq Ahmed Sukhaira and others
I.C.A.19/2017:	Malik Muhammad Sabir Vs. Mushtaq Ahmed Sukhera
I.C.A.21/2017:	Muhammad Sarwar Awan Vs. Mushtaq Ahmed Sukhaira and others
I.C.A.22/2017:	Muhammad Ashraf Chadder Vs. IGP, Punjab and others
I.C.A.23/2017:	Mian Shafqat Ali Vs. Capt. (R) Zahid Saeed and others
I.C.A.2/2018:	Muhammad Haseeb Vs. Muhammad Amin Vans and others
CrI.M.A.43/2018:	Impleadment application on behalf of Tahir Maqsood, DSP, CTD, Lahore
CrI.M.A.44/2018:	Impleadment application on behalf of Zulfiqar Ali Virk, Inspector
CrI.M.A.45/2018:	Impleadment application on behalf of Malik Muhammad Nawaz, Inspector
CrI.R.P.42/2017:	Province of Punjab through Chief Secretary, Punjab Vs. Awais Malik and others
CrI.R.P.68/2017:	Kafayat Ullah Bajwa Vs. I.G. Police, Punjab
CrI.R.P.523/2017:	Mrs. Nasim Chaudhry Vs. Inspector General of Police/Provincial Police Officer, Punjab Lahore
C.M.A.3347/2017:	Jamil Ahmed Vs. Government of Punjab through Secretary etc.
CrI.O.P.138/2017:	Jamil Ahmed Vs. Capt. (R) Zahid Saeed and others
CrI.O.P.96/2017:	Zafar Iqbal and others Vs. Azhar Hameed Khokhar etc.
CrI.O.P.121/2017:	Fida Hussain Vs. Usman Khattak and others
CrI.O.P.122/2017:	Muhammad Shahbaz Vs. Usman Khattak and others
CrI.O.P.123/2017:	Muhammad Shahbaz Vs. Usman Khattak and others

Crl.O.P.124/2017:	Muhammad Zaman Vs. Usman Khattak and others
Crl.O.P.125/2017:	Muhammad Ashraf Chadder Vs. Capt. Zahid Saeed and others
Crl.O.P.126/2017:	Khalid Farooq Khan Vs. Capt. Zahid Saeed and others
Crl.O.P.127/2017:	Mian Shafqat Ali Vs. Capt. Zahid Saeed and others
Crl.O.P.132/2017:	Yousaf Ali Vs. Israr Abbasi and another
Crl.O.P.139/2017:	Shaikh Muhammad Arshad Latif Vs. Major (R) Azam Suleman and another
Crl.O.P.167/2017:	Abdul Majid and others Vs. Khalil Ahmed and others
Crl.O.P.217/2017:	Athar Naveed Vs. Sultan Azam Temuri
Crl.O.P.4/2018:	Rana Mansoor Ahmad Khan Vs. Capt. (R) Zahid Saeed, Chief Secretary
Crl.O.P.92/2017:	Mansoor Naji Vs. Mushtaq Ahmed Sukhaira and others
Crl.O.P.152/2016:	Mansoor Naji Vs. Mushtaq Ahmed Sukhaira and others
Crl.O.P.104/2017:	Khalid Mahmood Afzal, DSP Vs. Syed Tahir Shahbaz and others
Crl.O.P.214/2017:	Abdul Majid and others Vs. Muhammad Akbar Harifal and others
Crl.M.A.1002/2017:	Impleadment application on behalf of applicant namely Muhammad Sarwar Awan
Crl.M.A.937/2017:	Impleadment application on behalf of applicant namely Shahid Pervaiz
For the appellant(s)/ applicant(s)/petitioner(s):	Malik Muhammad Qayyum, Sr. ASC (In I.C.As.4 & 18/2017)
	Khawaja Haris Ahmed, Sr. ASC Syed Rifaqat Hussain Shah, AOR (In I.C.As.8, 9 & 17/2017)
	Mr. Talat Farooq Sheikh, ASC Mr. Maqbool Hussain Sheikh, ASC Ch. Akhtar Ali, AOR (In I.C.As.6, 21, 22 & 23/2017)
	Mr. S. A. Mehmood Khan Sadozai, ASC (In I.C.A.19/2017)

Mr. Muhammad Ahsan Bhoon, ASC
(In I.C.A.2/2018)

Nemo
(In CrI.M.As.43 to 45/2018)

Mr. Shakeel-ur-Rehman Khan, A.G. Punjab
Mr. Waseem Mumtaz Malik, Addl.A.G.
(In CrI.R.P.42/2017)

Mr. Qamar-uz-Zaman, ASC
(In C.R.P.523/2017)

In person
(In C.M.A.3347/2017)

In person
(In CrI.R.P.68/2017)

Mr. Talat Farooq Sheikh, ASC
(In CrI.O.Ps.125, 126, 127, 139/2017 & 4/2018,
CrI.M.A.1002/2017)

Mr. M. Bashir Khan, ASC
(In CrI.O.P.132/2017)

Mr. Qausain Faisal, ASC
(In CrI.O.P.217/2017)

Mr. Mushtaq Ahmed, ASC
(In CrI.O.Ps.121 to 124/2017)

Mr. Aziz Ahmed Malik, ASC
(In CrI.O.P.96/2017)

Malik Muhammad Qayyum, Sr. ASC
(In CrI.O.Ps.92/2017 & 152/2016)

Mr. Muhammad Faiz Ahmed Cheema, ASC
(In CrI.O.P.214/2017)

Malik Azmatullah Kasi, ASC
(In CrI.O.P.167/2017)

Nemo
(In CrI.O.P.104/2017)

Nemo
(In CrI.M.A.937/2017)

For the respondent(s): Mr. Makhdoom Ali Khan, Sr. ASC
(For respondent No.5 in I.C.As.4,6,8,18,21 & 23/2017)

Nemo
(In CrI.R.P.42, 68 & 523/2017, C.M.A.3347/2017 &
CrI.O.P.138/2017)

On Court's notice: Syed Nayyar Abbas Rizvi, Addl.A.G.P.
Mr. Shakeel-ur-Rehman Khan, A.G. Punjab
Mr. Saif-ul-Murtaza, AIG Legal (For IGP Punjab)
Rana M. Ashraf, SO (Police) Home Deptt. Pb.

Date of hearing: 21.2.2018

JUDGMENT

Mian Saqib Nisar, CJ:- The titled cases, which we intend to decide through this consolidated judgment, pertain to the following three categories:

- i. **Intra Court Appeals** (ICAs) against the judgment dated 29.03.2017 reported as Interim Report by AIG Legal for I.G, Punjab (2017 SCMR 868);
- ii. **Criminal Original Petitions** (CrI.O.Ps) for violation of the judgment dated 30.12.2016 reported as Shahid Perviaz Vs. Ejaz Ahmad (2017 SCMR 206), and orders dated 08.12.2016 & 26.01.2016; and
- iii. **Review Petitions** (CrI.R.P/C.R.P) against judgment dated 29.03.2017 reported as Interim Report by AIG Legal for I.G, Punjab (2017 SCMR 868).

2. All these matters stem out of the judgments of this Court reported as Contempt Proceedings against Chief Secretary, Sindh (2013 SCMR 1752) and Ali Azhar Khan Baloch Vs. Province of Sindh (2015 SCMR 456). Through the former judgment *inter alia* the practice/concept of out of turn promotions was declared unconstitutional, being against Fundamental Rights as enshrined in the Constitution of the Islamic Republic of Pakistan, 1973. Through the latter judgment the Review Petitions filed by the aggrieved persons were dismissed by this Court. Copies of both these judgments were ordered to be sent to the Chief Secretaries of all the Provinces as well as the Secretary, Establishment Division, Islamabad with the direction to streamline the civil service structure in line with the principles enunciated in the aforesaid judgments. On 26.01.2016, while hearing Civil Appeal No. 184-L of 2013 (Regional Police Officer Gujranwala and another Vs. Ejaz Ahmad and others), wherein the issue of anti-dated

seniority of a police official was involved, this Court observed that the directions issued by this Court through the above mentioned two judgments delivered in the year 2013 and 2015 were not being complied with, especially in the Punjab Police Department. Relevant para therefrom reads as under:-

"3. The learned Additional Advocate General, Punjab, states that the Punjab Government has started implementing judgments of this Court reported as Contempt Proceedings Against Chief Secretary Sindh (2013 SCMR 1752) and Ali Azhar Khan Baloch Vs. Province of Sindh (2015 SCMR 456) and till date substantial portion of seniority of the Police personnel has been re-fixed. We must record our displeasure over the inaction on the part of the Punjab Government for the directions issued by this Court in 2013 and 2015. We expect that all out of turn promotions granted either to the police personnel on gallantry award or otherwise shall be undone within four weeks from today and their seniority be re-fixed with their batch mates in terms of the directions contained in the aforesaid judgments. Out of turn promotions ranging from Constable to any gazetted officers shall be streamlined in terms of the aforesaid two judgments. On completion of the exercise, the I.G Police Punjab, Home Secretary, Punjab and Chief Secretary, Punjab, shall submit compliance report with the Assistant Registrar of this Court for our perusal in Chambers. This order shall be communicated to the I.G, Punjab, Home Secretary, and Chief Secretary, Punjab, for their information and compliance and non-compliance of this judgment shall expose the concerned officials to contempt proceedings."

3. The above mentioned order of this Court dated 26.01.2016 was challenged by the employees of the Punjab Police Department through Civil Review Petition No. 49 of 2016 etc. inter alia on the ground

that their out of turn promotions were earned by the acts of gallantry/bravery during the performance of duties and they were promoted under Section 8-A of the Punjab Civil Servants Act, 1974, read with Rule 14-A of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974. These Review Petitions were heard by a Bench of five Honourable judges of this Court and after giving opportunity of exhaustive hearing to all the petitioners therein, these Review Petitions alongwith other connected applications were dismissed vide judgment dated 30.12.2016 (By majority of 4 to 1), and is reported as **Shahid Pervaiz Vs. Ejaz Ahmed** (2017 SCMR 206).

4. In Para 111 of **Shahid Pervaiz's case** (supra), it was inter alia observed that the cases wherein 'out of turn promotion' was granted to individuals, pursuant to the judgments of the High Court, Service Tribunal and the Supreme Court, *"shall remain intact unless reviewed"*.

The relevant portion of the said Para No. 111 reads as under:-

"111. Yet another anomalous consequence of this argument is that while two identical provincial laws are enacted and acted upon and one province repeals the law while the other continues with its operations. Subsequently, the vires of the law that continues on the statute books is examined by the Court and its provisions have found to be inconsistent with the Constitution or Fundamental Rights with the result that the benefits conferred or availed thereunder, unless protected by the category of past and closed transaction, have to be reversed and its deleterious effects undone. This category, quite obviously, consists of the cases wherein 'out of turn promotion' was granted to individuals, pursuant to the judgments of the High Court, Service Tribunal and the Supreme Court. They shall remain intact unless reviewed."

5. Moreover, while dismissing the said Review Petitions/Applications, compliance report was also directed to be submitted by the concerned authorities, within one month for perusal in Chambers. This exercise was directed to be completed within a period of one month. Para 143 of **Shahid Pervaiz's case** (supra), wherein these observations were made is also being reproduced hereunder for ease of the reference:-

"143. For the aforesaid reasons, all the listed Review Petitions and the Applications are dismissed. The I.G.P, Punjab, the Home Secretary, Punjab, and the Secretary, Establishment Division, are directed to comply with the judgment, by fixing the seniority of all the Police Officers who were given out of turn promotion along with their batch-mates, as if they were never given out of turn promotion. However, the orders of withdrawal of out of turn promotion passed by the Department/Competent Authority shall be recalled against the Police Officers who had earned out of turn promotions, pursuant to the judgments of superior Courts/Service Tribunals, as discussed in paragraph 111 of this judgment. For the purpose of compliance of this judgment, necessary D.P.C/Board, as the case may be, shall be immediately held without further loss of time and a compliance report be submitted to the Registrar of this Court for our perusal in Chambers. This exercise shall be completed within a period of one month. The Advocate General, Punjab, and the learned Attorney General for Pakistan shall communicate the directives of this Court to the relevant authorities."

6. In pursuance of the above directions, compliance report was submitted by the Inspector General of Police, Punjab (IGP) wherein, the IGP looked into each case of out of turn promotion after issuance of notices to all concerned and decided each case individually. The out of turn promotions given through the judgments of Court/ Tribunal were

also withdrawn and de-notified. However, the Home Department, Government of Punjab took a contrary view and objected to it (this action by the IGP) on the premise that under Para 111 read with Para 143 of **Shahid Pervaiz's case** (supra), there was an absolute protection afforded to such employees and their out of turn promotions could not be withdrawn. Against this withdrawal of out of turn promotion(s) various police employees again approached this Court by filing Criminal Original Petitions (Contempt Petitions) and various C.M.As, claiming, inter alia, that the IGP could not review their cases of out of turn promotions, which were already protected by this Court through the judgment in **Shahid Pervaiz's case** (supra) in Para 111 whereby this Court had observed that the out of turn promotions granted to individuals pursuant to the judgments of High Court, Service Tribunal and the Supreme Court *shall remain intact unless reviewed*. These Criminal Original Petitions alongwith applications were disposed of vide judgment dated 29.03.2017 in the terms that the view point of the Inspector General of Police, Punjab was correct and the officers should be de-notified in terms of the speaking orders passed by the Inspector General of Police, Punjab. This judgment dated 29.03.2017 is reported as **Interim Report by AIG Legal for I.G. Punjab, Home Department, Govt. of Punjab and Inspector General of Police, Punjab respectively (2017 SCMR 868)**.

7. After the judgments dated 30.12.2016 in the case of **Shahid Pervaiz (Supra)** and 29.03.2017 **Interim Report by AIG Legal for I.G, Punjab (Supra)**, certain aggrieved persons have now again approached this Court by filing Intra Court Appeals, Review Petitions, Civil Review Petition and Criminal Original Petitions. Moreover, some other applications for impleadment as party have also been filed, which will follow the fate of the main cases in which they are filed. Some other petitioners have also invoked the contempt jurisdiction for violation of

orders dated 26.01.2016 and 08.12.2016 passed by this Court which we will discuss in the later part of this judgment. The police officials/officers from the Province of Balochistan have also invoked the contempt jurisdiction (*Crl.O.P.No.167 and 214/2017*) for non-implementation of orders dated 26.01.2016 and 30.12.2016 passed by this Court in the Province of Balochistan.

8. The brief facts and relevant service profiles of the appellants/petitioners, who have claimed that the withdrawal of their out of turn promotions was against the judgments of this Court referred to above, are as under.

I.C.A 4/2017 in Crl.O.P 33/2017 (Akhtar Umer Hayat Lalayka Vs. Mushtaq Ahmed Sukhaira & others)

9. It was pleaded before us that Umer Hayat Lalayka was serving as Inspector in the Punjab Police and when he was posted at Police Station Piplan, Mianwali he displayed exemplary courage in an encounter with highly desperate elements including Ahmed Nawaz Barbari, who was killed by the appellant by putting his own life at risk. For this act of gallantry, he was recommended for out of turn promotion as Deputy Superintendent of Police (DSP) by the Superintendent of Police (SP), Mianwali to the Deputy Inspector General (DIG) on 27.07.1993. But he was denied the out of turn promotion by the Inspector General of Police (IGP), whereafter he approached Lahore High Court by filing Writ Petition No. 2445/1995, which was accepted on 03.12.1996. CPLA No.656/1995 was filed by the Government of Punjab before this Court against the said order, which was dismissed as being barred by time, however, the compatriots of the appellant filed CPLA No.1446-L/1997, which was dismissed on 18.04.1998 holding that the appellant was entitled to the out of turn promotion due to his act of gallantry. The

Review Petition against this order was also dismissed by this Court on 08.07.1998. It is further pleaded that vide Notification dated 17.10.1997, appellant was promoted from the post of Inspector to DSP and now whilst he was serving as D.I.G Police, his out of turn promotion from the post of Inspector to DSP has been withdrawn vide Notification dated 17.02.2016, in pursuance of the judgments of this Court in the cases of Contempt proceedings against Chief Secretary Sindh (2013 SCMR 1752) and Ali Azhar Khan Baloch Vs. Province of Sindh (2015 SCMR 456).

I.C.A 6/2017 in CrI.O.P 33/2017 (Manzoor Ahmed Vs. Mushtaq Ahmed Sukhaira and others)

10. It was pleaded before us that the appellant in ICA No.6/2017 namely, Manzoor Ahmed was appointed as Constable in the Punjab Police Department on 17.01.1987. He was granted out of turn promotion as Head Constable w.e.f 30.04.1990 in recognition of his performance in arresting five notorious criminals in Chiniot. Then he was granted out of turn promotion as Assistant Sub-Inspector (ASI) w.e.f 18.10.1993. Thereafter, he was granted out of turn promotion as (Sub-Inspector) SI w.e.f 05.01.2001. He filed departmental representation requesting ante-dated promotion to the rank of SI w.e.f 22.12.1996 citing and relying upon the case of out of turn promotion of one Hussain Haider, S.I. His departmental representation was rejected on the ground that the benefit extended to Hussain Haider, SI had also been withdrawn by the IGP, therefore appellant's claim had become infructuous. He filed Service Appeal No. 908/2005 before the Punjab Service Tribunal (PST), which was disposed of with the direction to the departmental authorities to consider his case on merits. But his case was considered and rejected by the department. He again filed CMA No.789/2012 in Appeal No. 908/2005, which was rejected by the PST and decision of the department

was upheld. On 30.04.2007, he was granted regular promotion to the rank of Inspector. Now his promotions to the ranks of Head Constable and then ASI, SI and Inspector have been withdrawn and after re-fixation of his seniority his status is now ASI w.e.f 12.08.2004.

I.C.A 8 and 9/2017 in CrI.O.P 33/2017 (Awais Malik and others Vs. Mushtaq Ahmad Sukhera and others)

11. There are eight appellants in these ICAs. It was pleaded before us that Appellant No. 1 namely, Awais Malik joined the Punjab Police Department as ASI on 22.06.1982 and thereafter, he was promoted as SI on 22.08.1987 and subsequently promoted as Inspector on 27.08.1995. On 18.01.1997, he suffered injuries in a bomb blast, which took place in the premises of the Sessions Court, in which the Chief of a banned outfit and fifteen officers lost their lives. It was pleaded that in view of his excellent performance, the appellant was recommended for out of turn promotion as DSP, by the then IGP, Punjab, under section 8-A of the Punjab Civil Servants Act, 1974, read with Rule 14-A of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974, which recommendation was not executed, therefore, the Petitioner filed Writ Petition before the Lahore High Court. The learned High Court disposed of the Writ Petition of the Petitioner with the direction to issue formal notification of promotion of the Petitioner as DSP. Thereafter, the Department approached this Court through CPLA Nos.443 and 584-L of 2001, which were dismissed on the ground of limitation. After dismissal of the Petitions of the Department by this Court, the Petitioner made a representation to the Home Secretary, Punjab, and eventually he was given out of turn promotion as DSP w.e.f. 18.01.1997 i.e. the date of incident and in due course he has been promoted as SP.

12. It was next pleaded that Appellant No. 2 namely, Ijaz Shafi, joined the Punjab Police Department as ASI in the year 1982 and he was promoted as SI on 09.09.1986. Due to his exceptional courage and outstanding performance shown in elimination of Wazir Khshk, a notorious Sindhi Dacoit, and recovering the entire looted amount, his name was admitted in List "F" as Inspector on 14.05.1992. But he was denied his regular promotion. He approached PST and vide judgment dated 21.03.2000 he was given ante-dated confirmation as Inspector w.e.f 06.04.1993. Pursuant to his representation before the competent authority regarding his seniority, he was given promotion as Inspector w.e.f 07.10.1990 instead of 14.05.1992 vide order dated 29.01.2003. Thereafter, in another incident, owing to his daring and persistent efforts and team work, the entire network of Lashkar-e-Jhangvi, involved in various cases of sectarian terrorism, was broken and the Governor of Punjab on a visit to Vehari on 04.04.2002 appreciating the performance of the team was pleased to announce one step promotion to the members of the team and the appellant was to be promoted as DSP, but his promotion was deferred by the Provincial Selection Board in its meeting held on 08.01.2004. Thereafter, he filed Writ Petition No. 1257/2005 before the Lahore High Court which was disposed of on 14.07.2005 having borne fruit and he was promoted as DSP w.e.f 02.02.2007. Thereafter, due to his representation to the Home Department, Punjab his date of promotion was changed to 13.03.2002 instead of 02.02.2007. He was then promoted as SP on regular basis vide Notification dated 31.01.2012.

13. It was next pleaded that the Appellant No. 3 namely, Muhammad Umer Virk joined the Police Department as ASI on 31.03.1985 and thereafter, he was promoted to the rank of Sub-Inspector on 01.11.1990. Pursuant to his outstanding performance, he

was promoted as Inspector. Thereafter, again on account of gallantry performance in an operation at Thokar Niaz Beg, Lahore he was recommended for promotion to the rank of DSP. However, these recommendations did not materialize and he filed Writ Petition No. 17232/1997 before the Lahore High Court which was allowed and he was directed to be *treated at par with those who had participated in the operation*. The Department assailed the said order before this Court by filing CPLA No. 1226-L/1998, which was dismissed being barred by time, vide order dated 09.09.1998. Thereafter, the appellant filed contempt petition before the High Court for implementation of its orders which was disposed of as he was promoted as DSP by the Department. Now the appellant is serving as SP w.e.f 30.12.2007.

14. Appellant No. 4, namely, Rana Shahid Pervaiz was appointed as ASI on 04.03.1984 in the Punjab Police; he was promoted as SI on 05.07.1987 and then as Inspector on 05.03.1990. In the year 1996, while he was posted as SHO Hanjarwal, he participated in an operation for the arrest of notorious outlaws Mujahid @ Musa and others, who were involved in the murder of deceased Mureed Abbas Yazdani. The accused were alleged to have started indiscriminate firing at the time of Fajar Prayer in Masjid Alkhair at Multan, which resulted in the murder of many people and injuries to others. It was pleaded that as a corollary of this gallant performance, he was recommended for promotion as DSP, but not promoted hence he approached the Lahore High Court, by filing Writ Petition No. 28879 of 1997, with the prayer that he may also be given out of turn promotion like the other members of the raiding party. This Writ Petition was clubbed with an identical Writ Petition No. 8147 of 1998, and both were allowed and the learned High Court directed the Respondent-Department to grant one step out of turn promotion to the appellant. However, the Department did not accept the decision of the

High Court and approached this Court through Civil Appeal No. 259-L of 2000, which was dismissed on the ground of limitation. It was pleaded that on dismissal of Appeal of the Government by this Court on the ground of limitation, the relevant committee was formed under section 8-A of the Punjab Civil Servants Act, 1974 read with Rule 14-A of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974 which also recommended out of turn promotion of the appellant and thus he was granted one step out of turn promotion as DSP, vide Notification dated 24.05.2001, with a rider that he would be allowed to wear the rank of DSP subject to the condition that his substantive promotion would be allowed in due course after his seniors got promotion. It was further pleaded that against the above condition, the appellant filed another Writ Petition before the Lahore High Court, which was allowed and it was directed that as a civil servant is entitled to promotion from the date he performed his duties as recognized by section 8-A *ibid*, therefore, the condition incorporated in the Notification dated 24.05.2001 was in violation of section 8-A *ibid*. The Department filed CPLA before this Court, which was dismissed. After dismissal of the Petition of the Department by this Court, the appellant made a representation to the Government and accordingly he was given out of turn promotion vide Notification dated 16.08.2007, w.e.f 24.10.1996. Now he is working as SP.

15. It was next pleaded that Appellant No. 5 namely, Mr. Muhammad Usman Anwar joined the Punjab Police Department on 23.05.1988 as ASI and then was promoted as SI on adhoc basis w.e.f 29.05.1991. He filed departmental representation before IGP for his confirmation as ASI and promotion as SI on regular basis w.e.f 22.08.1990 instead of 29.05.1991. No decision was made on his representation, as such he filed Appeal No. 929/1995 before the PST,

which was allowed and it was observed that the appellant should be confirmed as ASI and promoted as officiating Sub-Inspector w.e.f 22.08.1990 (instead of 29.05.1991) i.e. from the date of the act of gallantry performed by him and he should be confirmed as Sub-Inspector w.e.f 22.08.1990. Then due to change in the law, the judgment of the PST became ineffective and due to his seniority the appellant became eligible for further promotion. He submitted representation for his admission in List "F" and promotion as Inspector w.e.f 16.11.1995. His representation was rejected and he filed Appeal before the PST which was allowed on 15.04.2008 and he was directed to be confirmed as Inspector w.e.f 16.11.1995. Subsequently, a seniority list was issued, wherein his date of appointment as Inspector was not shown as 16.11.1995, therefore, he filed Writ Petition No. 9780/2014 before the Lahore High Court, which was allowed on 24.04.2014 and respondents were directed to show the seniority of the appellant w.e.f 16.11.1995 as already declared by the PST in its judgment dated 15.04.2008. Against this judgment CPLA No. 820-L/2014 was filed by the government before this Court, which was dismissed and thereafter, Review Petition No. 9/2015 was also dismissed by this Court.

16. It was further pleaded that the Appellant No. 6 namely, Naeem-ul-Hassan Babar joined the Police department on 10.03.1981 as ASI and thereafter, he was promoted as SI on 04.12.1985 and further promoted as Inspector on 08.04.1991. He was promoted as DSP vide Notification dated 29.04.1998 with immediate effect, in recognition of his extraordinary performance and exemplary courage in securing the arrest of hardcore sectarian terrorists of Lashkar-e-Jhangvi namely Nadeem alias Deemi and Muhammad Ali alias Ashfaqa. He filed representation with the Home Department, Government of Punjab for his promotion from the date of the act of gallantry i.e 04.08.1997. His representation

was not decided by the department, so he filed Writ Petition No. 4816/2007 before the Lahore High Court, wherein on 13.05.2008 the Court directed that an appropriate order preferably before next date of hearing should be passed in his representation pending before the department. Thereafter, on 21.06.2008 the Writ Petition was disposed of by observing that the *"Learned Additional Advocate General submits that representation filed by the petitioner has been accepted. Perhaps for the said reason, the petitioner is no more interested in following-up this petition. Disposed of accordingly."* He was promoted as SP w.e.f 31.01.2012.

17. It was next pleaded that Appellant No. 7 namely Jamat Ali Bokhari, joined the Punjab Police Department as ASI on 08.03.1982 and was promoted to the rank of SI on 12.01.1985 and then promoted as officiating Inspector on 15.11.1990. On 14.03.1998 he was granted out of turn promotion as DSP and allowed to wear the rank of DSP on the condition that his substantive promotion would be allowed in due course after his seniors got promotion. He filed departmental representation which was not decided and he then approached Lahore High Court by filing Writ Petition No. 1848/2007, which was disposed of on 22.04.2008 as having borne fruit, because the department had promoted him. Thereafter, appellant was promoted as SP w.e.f 31.01.2012.

18. It was also pleaded that the Appellant No. 8 namely Karamat Ullah Malik, joined the Punjab Police Department as ASI on 07.11.1988, was promoted as SI on 12.02.1991 and then promoted as Inspector on 05.05.1996. During his posting as Inspector on 05.03.1998 he arrested notorious Lashkar-e-Jhangvi terrorist namely Aziz Gujjar and also arrested the kidnapper of Dr. Bashir Ahmad, a renowned Neurosurgeon. On account of these achievements the then Chief Minister, Punjab on 06.03.1998 announced his one-step promotion from the rank of

Inspector to DSP. Thereafter, he was again recommended for out of turn promotion on account of an encounter with Abdul Rauf alias Googa Sheesh Naag and notorious outlaws. On account of delay in his promotion he filed Writ Petition No. 4483 of 2006 before the Lahore High Court and during pendency of this Writ Petition he also filed C.M.No.539/2008 praying for decision of already filed departmental representation for his ante-dated promotion as DSP. Directions were passed in the Writ Petition for disposal of his departmental representation. Thereafter, his departmental representation was accepted on 21.06.2008 and on 30.06.2008 the Court was pleased to dispose of the said Writ Petition as having borne fruit. It was also pleaded that on account of his gallantry, the President of Pakistan was also pleased to confer upon him the President Police Medal on 12.10.2007. Later on, he earned his regular promotion as SP vide Notification dated 03.07.2015.

I.C.A 18/2017 in Crl.O.P 33/2017 (Mansoor Naji Vs. Mushtaq Ahmed Sukhaira and others)

19. It was pleaded before us that the Appellant Mansoor Naji, Inspector in the Punjab Police, while posted in FIA on deputation on 28.08.1998, smashed a gang of smugglers and recovered 5 Kg heroine from a passenger. DG, FIA on 21.05.1999 recommended his accelerated promotion as DSP in view of his excellent performance and the two employees of FIA, who were deputed with him during the said incident were given out of turn promotion by the FIA, but the appellant was not promoted. He approached PST by filing Service Appeal No. 1788/2004 which was accepted on 27.12.2004. Although he was promoted as SP on his own turn but when his appeal was accepted by the PST, then he was granted ante-dated promotion w.e.f 24.06.1998 and on that basis his seniority was re-fixed. His seniority was affirmed in the C.P.No.1486-

L/2007 filed before this Court. It was further pleaded that apart from the judgment of the PST, there were two decisions of this Court in C.P.No.1486/2007 dated 15.07.2009 and C.A.No.293/2008 dated 08.09.2008 in favour of the appellant and he was entitled to the protection granted by the judgment dated 30.12.2016 in **Shahid Pervaiz's case** (supra).

I.C.A 19/2017 in CrI.O.P 55/2017 (Malik Muhammad Sabir Vs. Mushtaq Ahmed Sukhera)

20. It was pleaded that the Appellant Malik Muhammad Sabir was appointed in the Punjab Police Department in the year 1980 and when in the year 1993 he was Sub-Inspector and not promoted with his batch-mates, he filed an appeal before the PST, which was accepted on 27.03.2000, by holding that he should be promoted along-with his batch-mates. Then he was promoted from Sub-Inspector to Inspector. Later on in the year 2009 he was promoted as DSP as a matter of routine.

I.C.A 21/2017 in CrI.O.P 33/2017 (Muhammad Sarwar Awan Vs. Mushtaq Ahmed Sukhaira and others)

21. It was submitted that the Appellant Muhammad Sarwar Awan was appointed as ASI in the year 1998 and was promoted as officiating Sub-Inspector in the year 1991. Later on, he was recommended for one step out of turn promotion as Inspector under section 8-A (supra) read with Rule 14-A (ibid), which was not implemented, therefore, the Petitioner filed Writ Petition No.8147 of 1998, which was allowed, by judgment dated 22.06.1996. However, the Department challenged the judgment of the learned High Court before this Court through Civil Petition No.226-L of 2000, which was dismissed, vide judgment dated 26.04.2000. In the intervening period, the Petitioner

was promoted as DSP and now has been reverted to the post of Inspector.

I.C.A 22/2017 in CrI.O.P 33/2017 (Muhammad Ashraf Chadder Vs. IGP, Punjab and others)

22. It was next pleaded before us that the Appellant in ICA No. 22/2017, Muhammad Ashraf Chadder, joined the Punjab Police Department as ASI on 20.07.1986. He was granted out of turn promotion from the post of ASI w.e.f 07.10.1989, but it was withdrawn by the competent authority, which was challenged by the appellant through Writ Petition No. 8588/2008 before the Lahore High Court and the same was allowed on 20.11.2008. Thereafter, the out of turn promotion of the appellant was confirmed on 01.07.2009 and he was deemed to be promoted from that date. His date of promotion/confirmation as Sub-Inspector was modified as 07.10.1989 from 21.07.1998. Then he was promoted as Inspector in routine and also granted promotion as DSP. Now his out of turn promotion as SI has been withdrawn by the Department and he has been reverted back to the post of Inspector.

I.C.A 23/2017 in CrI.O.P 33/2017 (Mian Shafqat Ali Vs. Capt (R) Zahid Saeed and others)

23. The appellant in ICA No. 23/2017 namely Mian Shafqat Ali (Hockey Player) joined the Punjab Police Department on 22.12.1990 as temporary ASI, on the basis of Sports Policy and was confirmed w.e.f 12.06.1993. He was promoted as Sub-Inspector on 24.10.1993 and confirmed w.e.f 25.10.1995. He filed representation before IGP for promotion to the rank of officiating Sub-Inspector w.e.f 01.05.1991 i.e the date of victory at the National Junior Hockey Championship. He also filed representation before Addl.IGP seeking ante-dated promotion/confirmation as SI w.e.f 01.05.1991 instead of 24.10.1993

which was refused. Thereafter, he filed Appeal No. 1149/2007 before the PST, which was disposed of on 20.02.2008 and the department was directed to decide his representation. He was granted out of turn promotion/confirmation as Inspector w.e.f 17.10.2009 but later on his date of promotion was revised and he was promoted as Inspector w.e.f 22.10.1997. Now his out of turn promotion as ASI, confirmation as ASI, ante-dated out of turn promotion as SI and promotion to the rank of Inspector have been withdrawn by the department.

I.C.A 2/2018 in Crl.O.P 62/2017 in C.R.P 89/2016 (Muhammad Haseeb Vs. Muhammad Amin Vans and others)

24. It was pleaded before us that the Appellant in ICA No. 2/2018 Muhammad Haseeb Anjum was appointed as Constable in the year 1980 and in due course he was promoted as Head Constable (HC) and on 26.12.1990 he was promoted temporarily as ASI. He was confirmed as ASI in the year 1998 and was then promoted from the date of appointment as temporary ASI. He filed a representation before the department, which was rejected vide order 07.04.2006 thereafter, he filed appeal before the PST, which was allowed vide order dated 13.10.2006 and he was granted promotion from the date of his confirmation/appointment which has now been withdrawn by the department.

Crl.O.P.96/2017 (Zafar Iqbal and others Vs. Azhar Hameed Khokhar and others)

25. It was pleaded before us that the Petitioners in these contempt petitions were never promoted out of turn on the basis of gallantry rather they were promoted in accordance with the Rule 13.6 (2) of the Police Rules, 1934 as they stood either first or second in order of merit in the training. Their grievance is that their cases pending before the Punjab Service Tribunal may be decided expeditiously.

Crl.O.P 121/2017 (Fida Hussain Vs. Usman Khattak and others)

26. It was pleaded before us that the petitioner in Crl.O.P 121/2017, namely Fida Hussain was appointed as Constable on 08.10.1990 and thereafter, he passed the lower class course in the year 1995. He approached PST through Appeal No. 2678/2008 for ante-dated promotion, which was accepted on 30.03.2010 and the department was directed to consider him for anti-dated promotion as ASI and SI w.e.f the date when his juniors were granted the same benefit and then he was given anti-dated promotion w.e.f 12.07.1993 in pursuance of PST Judgment dated 30.03.2010. He passed training Intermediate Class Course in the year 2008 and was promoted as ASI on 12.08.2008 and was then promoted as Sub-Inspector on 05.01.2012. Now he has been reverted to the rank of Head Constable.

Crl.O.P 122 /2017 (Muhammad Shahbaz Vs. Usman Khattak)

27. The petitioner in Crl.O.P 122/2017 namely, Muhammad Shahbaz was granted promotion in pursuance of the judgment of PST dated 17.05.2012 in Service Appeal No. 48/2011, whereby the department was directed to consider his case for promotion and confirmation as ASI w.e.f 18.07.1998 and S.I w.e.f 26.11.2004. The department approached this Court by filing CPLA No. 2094/2012, which was disposed of on 28.02.2013 having become infructuous as the department had considered him for promotion.

Crl.O.P 123 /2017 (Muhammad Shahbaz Vs. Usman Khattak)

28. The petitioner in Crl.O.P 123/2017 namely, Muhammad Shahbaz joined the Punjab Police Department as Constable and then was granted out of turn promotion as Head Constable in recognition of his good performance w.e.f 13.07.1993 and thereafter he filed Service

Appeal before Punjab Service Tribunal for ante-dated promotion to the rank of ASI/SI being senior in rank to some other officials and his Appeal was accepted by Punjab Service Tribunal vide judgment dated 28.05.2010. He was given ante-dated promotion to the rank of ASI w.e.f 18.07.1998 and then promoted as SI w.e.f 26.11.2004.

Crl.O.P 124 /2017 (Muhammad Zaman Vs. Usman Khattak and others)

29. The petitioner in Crl.O.P 124/2017 namely, Muhammad Zaman was appointed as Constable on sports basis on 19.03.1995. On winning Gold Medal in National Games, 1995 he was promoted as Head Constable w.e.f 30.04.1995. On winning Gold Medal in National Games, 1998 he was again promoted to the rank of ASI w.e.f 27.04.1998 on sports basis. He was then sent for Intermediate Class Course on acceptance of Service Appeal No. 1131/2007 by the PST vide judgment dated 15.04.2008. After qualifying the Intermediate Class Course, his case for confirmation in the rank of ASI, admission of name to promotion list "E" and promotion to the rank of Officiating SI was considered by the DPC. On recommendation of DPC he was granted confirmation in the rank of ASI w.e.f 07.04.1998 i.e. the date of promotion on sports basis, he was admitted to promotion list "E" w.e.f 04.08.2009 and further promoted to the rank of Officiating S.I w.e.f 04.08.2009.

Crl.O.P 125/2017 (Muhammad Ashraf Chadder Vs. Capt. Zahid Saeed and others)

30. Crl.O.P 125/2017 has been filed on behalf of the petitioner Muhammad Ashraf Chadder against the judgment dated 30.12.2016 i.e. **Shahid Pervaiz's case** (supra). He has also filed ICA No. 22/2017 against judgment dated 29.03.2017 reported as Interim Report by AIG Legal for I.G, Punjab (supra). The detail of his service profile is given in the ICA 22/2017 above and need not be repeated.

Crl.O.P 126/2017 (Khalid Farooq Khan Vs. Capt. Zahid Saeed and others)

31. Crl.O.P 126/2017 has been filed on behalf of petitioner Khalid Farooq Khan. It was pleaded that he joined the Punjab Police Department as Constable on 24.10.1989. On the basis of 'family claim' in the year 1993, the petitioner was promoted as Head Constable w.e.f 08.08.1993 on ad-hoc basis, keeping in view the services rendered by his elder brother late Sub-Inspector Mushtaq Ahmad, who breathed his last on duty, while serving in Karachi and was declared as "Shaheed". It was pleaded that in the year 1994-1995, the petitioner underwent Lower Class Course and was enlisted in list "E" on 08.09.1998 and then was enlisted in list 'C' on 01.02.1995 and then in list "D" in the year 2002. He was granted promotion as ASI on 08.09.1998 in routine and then as SI in the year 2007. The petitioner claimed that he should have been appointed initially as ASI on the basis of family claim, therefore, he filed Service Appeal No. 1853/2006 which was allowed on 15.12.2006 in which it was *inter alia* held that the petitioner should have been granted promotion as ASI from the date his next junior and others were promoted. Thereafter, he was promoted by the order of PST, which was got implemented by filing Writ Petition No. 11383/2007 before the Lahore High Court. He was granted promotion as ASI w.e.f 08.09.1998 as per entitlement on family claim basis and Sub-Inspector w.e.f 04.12.2004.

Crl.O.P 127/2017 (Mian Shafqat Ali Vs. Capt. Zahid Saeed and others)

32. Crl.O.P 127/2017 has been filed on behalf of the petitioner Mian Shafqat Ali for violation of the judgment dated 30.12.2016 reported as Shahid Pervaiz (supra). He has also filed ICA No. 23/2017 against judgment dated 29.03.2017 Interim Report by AIG Legal for I.G, Punjab

(Supra). The detail of his service profile is given in the ICA 22/2017 above and need not be repeated.

CrI.O.P 132/2017 (Yousaf Ali Vs. Israr Abbasi and another)

33. It was pleaded that in the year 2003 when the petitioner was working as Head Constable in Rawalpindi, there was an attack on the President of Pakistan in Rawalpindi. He identified and arrested the accused and due to this performance on 26.05.2005 the DIG granted him shoulder promotion as ASI, but no seniority or salary of ASI was given to him, thereafter on 05.07.2011 after six years his shoulder promotion was withdrawn. He filed Service Appeal before the PST, which was accepted on 19.07.2012. The Department approached this Court by filing CPLA against this decision, which was dismissed by this Court and his rank was restored. Now again w.e.f 03.10.2016, he has been reverted to the rank of Head Constable.

CrI.O.P 139/2017 (Shaikh Muhammad Arshad Latif Vs. Major (R) Azam Suleman and another)

34. CrI.O.P 139/2017 was filed on behalf of petitioner Shaikh Muhammad Arshad Latif. It was pleaded that he joined the Police Department as ASI in the year 1984. He was confirmed as such in the year 1989 and was promoted as SI in the same year. He was confirmed as SI in 1991 and admitted to list "F" in the year 1993. He was considered for out of turn promotion as Inspector and back dated confirmation as SI. He was promoted as Inspector on officiating basis w.e.f 17.10.1990 in view of the recommendations made for his accelerated promotion. He filed Service Appeal No. 2128/2005 before the PST which was accepted on 19.07.2006 and the competent authority was directed to consider him for confirmation as ASI from the date of his appointment and it was further directed that he should also be

considered for ante-dated benefits provided his service record during the period of probation as ASI had remained satisfactory and if the seniority of anyone essentially senior to him was not compromised. He filed W.P.No.12998/2012 before the Lahore High Court, for implementation of order of PST dated 19.07.2006 and for confirmation as Inspector w.e.f 04.04.1991, which was disposed of on 24.11.2015 due to the fact that the judgment had been complied with as he was considered for promotion and his case was rejected, but in pursuance of some other judgment he was again considered for promotion and promoted as DSP. Now he has been reverted to the post of Inspector.

CrI.O.P 4/2018 (Rana Masroor Ahmad Khan Vs. Capt. (R) Zahid Saeed, Chief Secretary)

35. It was pleaded that the Petitioner Rana Masroor Ahmad Khan joined the Punjab Police Department as ASI on 13.03.1983. He was promoted as Sub-Inspector on 03.10.1986 and thereafter, granted out of turn promotion as Inspector on 08.10.1989, which was withdrawn and he was promoted as confirmed Inspector w.e.f 14.06.1991 and then vide Notification dated 30.04.1997 he was promoted as DSP. He filed Service Appeal No. 2583/2005 before the Punjab Service Tribunal for anti-dated seniority, which was allowed vide judgment dated 11.03.2008 and the petitioner was deemed to be promoted from the year 1997. Thereafter, the department approached this Court through Civil Appeals No. 627 to 631 & 1753/2008 against the petitioner and other employees of the Department assailing the judgment rendered by the PST dated 11.03.2008; the said Appeals were dismissed by this Court on 18.05.2009 having become infructuous and the order was got implemented by filing Writ Petition No. 25940/2010 before the Lahore High Court, which was disposed of on 10.05.2012 having fructified. The

petitioner was promoted as SP on 10.05.2012 and now stands reverted to the post of DSP.

Crl.R.P.68/2017 (Kafayat Ullah Bajwa Vs. IGP, Punjab)

36. Kafayat Ullah Bajwa (in person) was promoted as Inspector w.e.f 20.12.1991 due to his participation and gallant performance in a police encounter, which took place in the area of P.S Bhikki, District Sheikhupura on 20.12.1991, wherein one DSP and a Constable were martyred and four proclaimed offenders were killed. He was confirmed as Sub-Inspector due to a decision of this Court reported as Inspector-General of Police, Lahore Vs. Qayyum Nawaz Khan (1999 SCMR 1594), wherein it was settled that the date of confirmation cannot be other than the date of promotion. Therefore, he was granted date of confirmation as 07.10.1990 instead of 20.12.1991. During the interregnum period he was also promoted as DSP w.e.f 05.08.2005. He approached PST, Lahore by filing Service Appeal No.604/2008, which was accepted vide judgment dated 09.06.2009, but it was not implemented. Therefore, for its implementation he filed Writ Petition No. 3862/2010 before the Lahore High Court which was accepted on 25.05.2010. The said judgment attained finality when CPLA filed by the department before this Court was dismissed on the point of limitation. It was pleaded that when he was not being considered for promotion by the competent authority, he filed contempt petition before the Lahore High Court and it was in pursuance of that contempt petition that he was promoted from the rank of DSP to that of SP w.e.f 10.05.2012. He has been reverted to the post of DSP vide notification dated 28.06.2016.

C.R.P 523/2017 in CMA. 687/2017 (Mrs. Nasim Chaudhry Vs. IGP/Provincial Police Officer, Punjab, Lahore)

37. It was pleaded that the petitioner Mrs. Nasim Chaudhry was originally appointed as Sub-Inspector on 27.11.1986 and was confirmed on 01.07.1987 and in due course she became officiating Inspector on 27.11.1991 after five years. She was confirmed as Inspector on 20.11.1992. In the year 1993, she was given ante-dated seniority w.e.f 1988 on account of some outstanding action/ gallant act on her part when she had arrested some desperado in 1988. However, in 1997 the ante-dated seniority given in the year 1993 was withdrawn. Meanwhile DPC was held for promotions as DSP but she was not considered for the promotion. She approached the Punjab Service Tribunal and it was observed by the PST that she should be promoted along-with her juniors and she had not superseded anyone. IGP filed CPLA No.1617-L/1997 before this Court, which was dismissed on 15.04.1999. The petitioner approached Lahore High Court for implementation of the orders of this Court and in the contempt petition learned High Court vide order dated 27.09.1999 directed that the petitioner should be given promotion, but the IGP again approached this Court by filing Petition against the order dated 27.09.1999. This Court dismissed the petition vide order dated 20.10.1999 which is reported as Ziaul Hassan Vs. Naseem Chaudhry (2000 SCMR 645). Finally on 02.11.1999 the petitioner was promoted as DSP. Now in pursuance of judgments of this Court the Department has withdrawn her promotion as DSP and she has been reverted to the post of Inspector w.e.f 2014.

C.M.A 3347/2017 in C.R.P Nil/2017 in C.M.A 687/2017 in C.R.P.51/2016 (Jamil Ahmed Vs. Capt. (R) Zahid Saeed and others)

38. It was pleaded that the Petitioner Jamil Ahmed was appointed as ASI in the year 1998. Being instrumental in causing arrest of wanted terrorists, he was granted out of turn promotion in the year 1991 as Sub-Inspector and then out of turn promotion as Inspector in

the year 1998, under Section 8-A *ibid*. It was further pleaded that even in the year 1999, the Petitioner was recommended for out of turn promotion as DSP, which recommendation was not considered, therefore, he filed numerous writ petitions and Contempt Applications before the Lahore High Court and eventually he was promoted as DSP on 20.09.2010. It was pleaded that after an observation made by this Court vide order dated 26.01.2016, in Civil Appeal No.184-L of 2013, the Petitioner has been relegated to the post of ASI.

39. Khawaja Haris Ahmad, learned Sr.ASC, appeared for the appellants in ICA Nos. 8, 9 & 17/2017 and CrI.M.A.937/2017 in CrI.O.P 104/2017. He contended that the issue of out of turn promotions was first taken up in the case of Contempt Proceedings against the Chief Secretary Sindh (2013 SCMR 1752) and two things which come into focus in the said judgment are: i) the manner in which out of turn promotions were granted alongwith the legal frame work which governed them in the province of Sindh; and ii) that the concept of out of turn promotions was declared unconstitutional being against the Fundamental Rights of others whose smooth promotion was hampered. He next contended that in the Review Petition of this case i.e. Ali Azhar Khan Baloch Vs. Province of Sindh (2015 SCMR 456), again the concept of out of turn promotions was considered and while considering the issue of retrospective application of the judgment the cut-off date of 1994 given in the earlier judgment i.e. Contempt Proceedings against the Chief Secretary (Supra) was left open. He next submitted that the present appellants filed Review Petitions before this Court, in light of the laws applicable to the Province of Punjab, but ultimately their Review Petitions were dismissed by this Court vide judgment dated 30.12.2016 in **Shahid Pervaiz's case** (supra) *inter alia* on the ground that the law of out of turn

promotions was unconstitutional and any person who had benefited from it, could not be allowed to continue taking that benefit. He also contended that two exceptions were created in the said judgment of Shahid Pervaiz (supra) i.e. i). the persons who had retired or died; and ii). as per 111 of the said judgment, the employees who got their out of turn promotions in pursuance of some judgments, whether of the Service Tribunal, High Court or the Supreme Court, were protected unless their cases were reviewed.

40. He next submitted that in pursuance of this judgment dated 30.12.2016, the IGP, Punjab as well as Home Department, Punjab undertook an exercise and made a report regarding persons whose out of turn promotions were to be protected and then there arose the difference of opinion between the IGP and the Home Department, Punjab. The first difference was that the Home Department was of the view that all those who had any judgment in their favour had absolute protection but the IGP went into greater details and stated that if some judgment was passed on the ground that the petitioner was being discriminated against in comparison to some other employee who had been granted out of turn promotion (without having any judgment in his favour) and now when that other person was no longer protected, therefore, the out of turn promotions of those petitioners (having judgments in their favour) also could not be protected as the very basis of the judgment(s) i.e discrimination stood removed. He submitted that the other factor which was taken into consideration by the Home Department and not agreed to by the IGP, Punjab was the fact that seven out of the eight appellants had already been encadred and had become Superintendent of Police (SP) in the normal course and now they were part of the Police Service of Pakistan (PSP) which was not a matter, wherein the jurisdiction lay with

the IGP, as the Home Department had to move the Establishment Division for withdrawal of their out of turn promotion. He went on to submit that once a Police officer becomes DSP he is part of the Provincial cadre and then a Provincial Selection Board has to be convened to consider whether he is fit to be promoted as SP and when he becomes SP then he becomes part of the Police Service of Pakistan.

41. He also contended that in the given circumstances, the appellants took this protection as an absolute protection. Moreover, in each and every order passed by the Service Tribunal/Courts, whether decided on merits or otherwise, their rights were protected. Therefore, in terms of the judgment in the case of **Shahid Pervaiz's case** (supra) itself, their cases were protected. He next contended that in **Shahid Pervaiz's case** (supra) mainly two sets of Criminal Original Petitions (Contempt Petitions) were filed. In first set the petitioners were those who had judgments of judicial fora in their favour; and in the second set were Petitioners who sought implementation of the above mentioned judgment.

42. The learned counsel, after referring briefly to the Service Profiles of all the eight appellants, further contended that the law itself had provided for the out of turn promotions and Section 8-A was inserted in the Punjab Civil Servants Act, 1974 on 08.11.1987 through an amendment and then correspondingly on 09.02.1989 Rule 14-A was also introduced in the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974. He further contended that section 8-A *ibid* provided for promotion in case of exceptional and extra ordinary performance on the basis of gallantry and honesty etc., but this section was omitted on 17.10.2006 and similarly, Rule 14-A *ibid* was also omitted through a Notification dated 02.11.2007. The learned counsel next contended that neither the appellants/petitioners were instrumental in enacting this law

nor did they have any role in its omission. Furthermore, all of the appellants/petitioners before this Court earned their out of turn promotions whilst this law was intact and even in the report of the IGP Punjab, there is no indication whatsoever that the promotion granted to any of the individuals before this Court was against the law or in breach of any rule. Learned counsel also submitted that when the Review Petitions were dismissed by this Court vide Judgment dated 30.12.2016 in **Shahid Pervaiz's case** (supra), the five member bench protected past and closed transactions through a saving clause. He claimed that the present appellants/petitioners fall in that saving clause as provided in para 111 of the judgment in **Shahid Pervaiz's case** (supra).

43. He further submitted that the appellants/petitioners are exceptional police officers and there is no element of fake/illegal police encounters, manipulation or corruption on their part. They have also won awards and medals. He went on to argue that it was the law of the land in terms of Article 4 of the Constitution of Pakistan and there is long chain of judgments of this Court, starting from the case of Capt. (Retd). Abdul Qayyum v. Muhammad Iqbal (PLD 1992 SC 184) to Farhat Abbas Vs. Inspector General (2009 SCMR 245), wherein the law of out of turn promotions has been upheld. In all these cases the out of turn promotions were either upheld or the departmental authorities were directed to act according to law and grant the out of turn promotions to the employees and the Service Tribunal/ High Court/this Court never decided the merits, suitability or fitness of the employees. Moreover, he contended that most of these cases were decided mainly on two grounds; *firstly*, that if once the out of turn promotion was announced under the valid law and the procedure was followed then the concerned authorities had to abide by that and the petitioners could not be denied the out of

turn of promotion; and *secondly*, when the other employees were given out of turn promotions then claimants were also held entitled.

44. His next contention was that in terms of Article 189 of the Constitution, the judgments of this Court are binding on all other Courts and it was for the first time in the case of Muhammad Nadeem Arif v. Inspector General of Police (2011 SCMR 408), that the concept of out of turn promotions was declared against the Constitution and Islam, but even in this Judgment the out of promotion was not set-aside. He then referred to the case of Ghulam Shabbir v. Muhammad Munir Abbasi (2011 PLC (C.S.) 763), to substantiate that the law on the point of out of turn promotions was never struck down, despite observing it unconstitutional and against the injunctions of Islam and it was only so done in the case of Contempt proceedings against Chief Secretary Sindh (2013 SCMR 1752) on 12.06.2013, but none of the above referred judgments were either recalled or specifically discussed and held to be *per incuriam*.

45. He next argued that certain exceptions were created by the Court itself in **Shahid Pervaiz's case** (supra), e.g. in para No. 111 the judgments of judicial fora were protected; in para No. 119 an exception was created to save retired/ dead employees; and in Para No. 143 this Court observed that *"the orders of withdrawal of out of turn promotion passed by the Department/Competent Authority shall be recalled against the Police Officers who had earned out of turn promotions, pursuant to the judgments of superior Courts/Service Tribunals, as discussed in paragraph 111 of this judgment"*. He next referred to para No. 123 of **Shahid Pervaiz's case** (supra) regarding past and closed transactions wherein it was observed that:-

"123. We are clear in our view that the issue of past and closed transaction (except what has been concluded in paragraph 111) does not arise in the instant case as we have already declared void ab initio

the legislative instruments that provided for out of turn promotions.”

The learned counsel contended that nowhere in the judgment were the legislative instruments declared *void ab initio*, and if these legislative instruments had been *void ab initio* then why were the exceptions created?

46. He then submitted that both in terms of Articles 4 and 189 of the Constitution of Pakistan sanctity and certainty is attached to the orders of the Court. When law is made by the legislature, thereafter interpreted and declared by this Court and followed by the department then the rights of the parties should be protected. He also contended that in these cases the out of turn promotions were granted 15-20 years prior to the striking down of this law. There will be no judgment on the merits of the out of turn promotions because the law had itself provided that the recommendations made for out of turn promotion would be placed before the Selection Board, for its determination and only thereafter, the out of turn promotion would be granted. He next submitted that the judgments rendered by the Courts are mostly those, wherein the out of turn promotions in the first instance were provided, promised and/or being processed, but thereafter, were either withheld or delayed or the IGP was transferred and the next IGP, who followed, thought differently.

47. Khawaja Haris Ahmad, learned Sr.ASC also contended that the phrase “in pursuance of” as used in para 111 of **Shahid Pervaiz’s case** (supra) should be given concrete meaning, because through this phrase a saving clause was created for the employees who had judicial verdicts in their favour and in most of the Notifications while granting out of turn promotions under the orders of Service Tribunal /Court this phrase has been used. He next contended that when the judgment dated

30.12.2006 was delivered by the five member bench then nothing could be added or subtracted in that judgment but this Court through judgment dated 29.03.2017 reported as Interim Report by AIG Legal for I.G, Punjab (supra) while upholding the view point of IGP added something new which was not there in the main judgment. He further submitted that while considering interim report of IGP, a Bench consisting of two Hon'ble Judges also passed an order dated 14.02.2017, wherein certain additional observations were made which were not there in the original order. He added that this Court vide judgment dated 30.12.2016 had directed that the seniority of all those having earned out of promotion be fixed with their batch-mates, but in the order dated 14.02.2017 reference was also made to the earlier judgments of this Court and the compliance of all those judgments was sought by observing that in no case would out of turn promotions be upheld, so it was an addition to the judgment dated 30.12.2016 rendered in the case of **Shahid Pervaiz's case** (supra). He also contended that although the judgment dated 29.03.2017 itself clarifies that this Court is not reviewing the judgment dated 30.12.2016, but in essence the judgment was reviewed.

48. Adding to the above contention the learned counsel next submitted that the other ground on which the judgment dated 29.03.2017 was passed, was that these cases could be reviewed because these matters do not fall within the jurisdiction of the High Court under Article 212, and the employees should have approached the Service Tribunal and these orders of the High Court are nullity in the eyes of law. This according to the learned counsel was an additional reason given for denying the out of turn promotions. He also contended that this was not a case of promotion in terms of eligibility, rather it was case of fitness & suitability and it has been held by the Courts that fitness and suitability

does not come within the jurisdiction and domain of the Service Tribunal.

49. Learned Counsel next submitted that the orders passed by the IGP for withdrawal of the out of turn promotions are not the speaking orders for the reason that he also took into account the order of this Court dated 14.02.2017, whereby this Court had directed that the earlier judgments of this Court be adhered to and since the judgment in **Shahid Pervaiz's case** (supra), which had created exceptions, was not referred to in the order dated 14.02.2017 of this Court, therefore, the IGP was made to follow and implement the earlier judgments, which was against the mandate of **Shahid Pervaiz's case** (supra) and an addition in the main judgment.

50. He lastly submitted that the appellants have been enjoying these offices for a long period of time and are not responsible for whatever benefit they have gained or acquired through out of turn promotions. They approached the Courts of law and the Courts granted them the benefit of an out of turn promotion. Now it is a matter of human dignity that their rights may be protected as they are going to be adversely affected. While concluding his arguments he prayed that as in Para 119 of **Shahid Pervaiz's case** (supra) dead and retired employees were saved by creating an exception, in the same lines, keeping in view the spirit of Articles 9 and 14 of the Constitution of Pakistan, an option to retire may be given to these persons within a reasonable period of time.

51. Malik Muhammad Qayyum, learned Sr.ASC appeared in ICA Nos. 4 & 18/2017 on behalf of Appellants Akhtar Umer Hayat Lalayka and Mansoor Naji respectively. He has also appeared in CrI.O.P.Nos.92 and 152/2016 filed on behalf of Mansoor Naji. The learned counsel after giving the service profile of both appellants contended that in the

judgment dated 30.12.2016 rendered in **Shahid Pervaiz's case** (supra) an exception was created by this Court itself and the out of turn promotions earned through judicial orders were protected and this exception should be implemented,. He also contended that the out of promotions already granted were to be protected under the principle of past and closed transactions and these past and closed transactions could not be hit by some new interpretation and now by way of changing the interpretation the benefit of out of turn promotion earlier granted, under the valid law at that time and thereafter validated through judgments, could not be taken away especially by the judgments in which the appellants were not a party, despite the fact that section 8-A supra was omitted in the year 2006. Regarding doctrine of past and closed transactions he referred to the cases of Income Tax Officer Karachi v. Cement Agencies (PLD 1969 SC 322), Pir Baksh and another v. Chairman Allotment Committee (PLD 1987 SC 145). He further added that if an exception is correctly created then there is no need to review it. The learned counsel lastly submitted that the appellant Mansoor Naji did not want to exercise the option of retirement. However, Umer Hayat Lalayka wanted to exercise the option of retirement, if it was so provided.

52. Mr. Tallat Farooq Sheikh, ASC appeared for appellants in ICA Nos. 6, 21, 22 & 23/2017 on behalf of appellants Manzoor Ahmed, Muhammad Sarwar Awan, Muhammad Ashraf Chadder and Mian Shafqat Ali, respectively. He has also appeared in Criminal Original Petition Nos. 125, 126, 127, 139/2017 & 4/2018 on behalf of petitioners namely Muhammad Ashraf Chadder, Khalid Farooq Khan, Mian Shafqat Ali, Shaikh Muhammad Arshad Latif and Rana Mansoor Ahmad Khan, respectively. The learned counsel submitted that the promotions of the appellants/petitioners were protected in light of Para 111 of **Shahid Pervaiz's case** (supra). He further added that Khalid Farooq Khan was

never granted out of turn promotion and his promotion as Head Constable was based on a family claim as his brother was martyred, while serving as SI in the Sindh Police, therefore the same could not be withdrawn. He further submitted that the out of turn promotion granted to Rana Masroor Ahmad Khan had already been withdrawn, therefore, the Department had violated the judgment dated 30.12.2016. He also contended that the out of turn promotions granted through the judgments of the Service Tribunal / Courts were protected under Para 111 of **Shahid Pervaiz's case** (supra) and Article 264(c) of the Constitution which provided that the rights accrued under a repealed law would not be affected. He has also prayed that contempt proceedings be initiated against the Respondents for not implementing the judgment of this Court in **Shahid Pervaiz's case** (supra) in its letter and spirit.

53. Mr. S.A Mehmood Khan Saddozai, ASC appeared on behalf of Malik Muhammad Sabir appellant in ICA 19/2017 and submitted that in the year 1993, when appellant was Sub-Inspector and not promoted with his batch-mates, he filed appeal before the PST which was accepted on 27.03.2000, by holding that he should be promoted alongwith his batch-mates. Then he was promoted from Sub-Inspector to Inspector. Later on in the year 2009 he was promoted as DSP as a matter of routine. The learned counsel contended that the appellant never got out of turn promotion and now the department had reverted him under the garb of implementation of judgments of this Court. He added that the appellant was inducted in 1980 in the police department and now having 36 years of service, he was on the verge of retirement.

54. Mr. Ahsan Bhoon, learned ASC appeared for the appellant Muhammad Haseeb Anjum in ICA No. 2/2018 and submitted that the appellant was appointed as Constable in 1980 and in due course he was promoted as Head Constable and on 26.12.1990 he was promoted

temporarily as ASI. He was confirmed as ASI in 1998 and was then promoted from the date of appointment as temporary promotion. He filed a representation before the department, which was rejected vide order 07.04.2006 thereafter, he filed an appeal before the PST which was allowed vide order dated 13.10.2006 and he was granted promotion from the date of his confirmation/appointment which has now been withdrawn by the department.

55. The learned counsel contended that during the hearing of these matters earlier, IGP was directed to submit a report of all those cases which were protected by Court orders and in response to that direction, the IGP had filed a list of 129 persons whose cases were protected, as falling in the exception created by para 111 in **Shahid Pervaiz's case** (supra) and the name of the petitioner was present in that list. He further submitted that the appellant had filed Crl.O.P.No.62/2017 against the judgment dated 30.12.2016, which was dismissed vide judgment dated 29.03.2017. Now he has filed this ICA against the judgment dated 29.03.2017.

56. Mr. Aziz Ahmed Malik, learned ASC appearing for the petitioners in Crl.O.P No. 96 of 2017 submitted that the petitioners in this case were never promoted out of turn on the basis of gallantry rather they were promoted in accordance with the Rule 13.6 (2) of the Police Rules, 1934 as they stood either first or second in order of merit in training. He further submitted that the petitioners had earlier approached this Court by filing review petition (C.R.P.No.285/2016 in C.A.No.184-L/2013) against the order of this Court dated 26.01.2016 which was disposed of by this Court in the following terms:

"We have heard the learned ASCs for the review Petitioners. Their prime contention is that the judgment under review dated 26.01.2016, and the ratio of other two judgments in the case of Contempt Proceedings

against Chief Secretary Sindh (2013 SCMR 1752) and Ali Azhar Khan Baloch vs. Province of Sindh (2015 SCMR 456), was not at all applicable or attracted in their cases, however, through different Orders, they have been non-suited by the departmental authority, solely on this account.

2. *When confronted with this position, Mr. Kamran Adil, AIG (Legal), Punjab, states that the departmental authority will be ready to examine such contentions of the petitioners in case representations are made in this regard.*

3. *With the above statement, the learned ASCs for the review petitioners are satisfied, but they request for some fixed time frame to avoid inordinate delay in such exercise.*

4. *In view of the above, these petitions are disposed of with the observation that in case representations are made by the petitioners before the competent authority, that shall be heard and disposed of as expeditiously as possible."*

The learned counsel next contended that the petitioners had approached the departmental authorities in light of the above observations, but as their representations did not receive any positive response, they approached the PST and now their matters are pending before the said forum. He further submitted that he will be satisfied if directions are given for decision of these cases expeditiously before the said forum.

57. Mr. Mushtaq Ahmed, ASC appeared on behalf of petitioners in CrI.O.P.No.121 to 124/2017 and contended that the petitioners were protected under Para 111 of **Shahid Pervaiz's case** (supra) and the respondents have committed contempt of this Court by not implementing the judgment dated 30.12.2016 and the petitioners despite having

judicial orders in their favour have been reverted/ demoted, therefore, contempt proceedings be initiated against the Respondents.

58. Mr. Qausain Faisal, learned ASC appeared for the petitioner in CrI.O.P.No.217/2017 and contended that the appellant's case was protected under para 111 of **Shahid Pervaiz's case** (supra) as the petitioner had a judgment of the PST dated 28.02.2008 in Appeal No. 2549/2007 in his favour, whereby he was granted seniority as confirmed Inspector w.e.f 21.04.1999 which was implemented and the said judgment having not been assailed before any higher fora had attained finality and was protected under the principle of past and closed transaction. He prayed that contempt proceedings be initiated against the Respondents for not implementing the judgment of this Court in **Shahid Pervaiz's case** (supra) in its letter and spirit.

59. Yousaf Ali appeared in person in CrI.O.P.No.132/2017 and submitted that his case was also protected as having been decided upto the level of this Court and now when he has been reverted to the rank of Head Constable, the department has committed contempt of the judgment of this Court. He has prayed that contempt proceedings be initiated against the Respondents for not implementing the judgment of this Court in **Shahid Pervaiz's case** (supra) in its letter and spirit.

60. Mr. Shakil-ur-Rehman Khan, learned Advocate General Punjab through CrI.R.P. No.42/2017 seeks review of judgment dated 29.03.2017 reported as Interim Report by AIG Legal for I.G, Punjab (supra), whereby the view point of IGP, Punjab was considered as correct as against that of the Home Department, Government of Punjab which was of the view that all the persons having judicial decisions in their favour were protected by the judgment of this Court in **Shahid Pervaiz's case** (supra). The learned law officer contended that when this Court in Para Nos. 111 & 143 of **Shahid Pervaiz's case** (supra) had directed that

the cases decided by the judicial forums will not be opened and will be treated as past and closed, then how could the executive authority i.e. IGP, Punjab review the judgments passed by the judicial fora? He next submitted that although the Government of Punjab had no cavil with the implementation of the judgment, but the remarks in Para 17 of the judgment dated 29.03.2017 Interim Report by AIG Legal for I.G, Punjab (Supra), may be expunged, wherein this Court was pleased to observe that:

"17.However, now before us the Home Department and the learned AG have taken a complete u-turn and support the very same out of turn promotions that were earlier opposed by them of the pretext of the judgment in the Shahid Pervaiz case."

61. Kafayat Ullah Bajwa appeared in person in CrI.R.P.No.68/2017 in CrI.O.P.No.60/2017. He seeks review of the judgment dated 29.03.2017. He submitted that his case was protected under Para No. 111 read with Para No.143 of the judgment dated 30.12.2016 and the three member Bench could not withdraw the protection given by Para 111 in **Shahid Pervaiz's case** (supra) by endorsing the view point of IGP.

62. Mr. Jamil Ahmed appeared in person in the two petitions i.e. C.M.A.No.3347/2017 in C.R.P.No.Nil/2017 in C.M.A.No.687/2017 in C.R.P.No.51/2016 and CrI.O.P.No.138/2017. Through the first one which is an impleadment application, wherein after being impleaded he seeks review of the judgment of this Court dated 29.03.2017 in the case of Interim Report by AIG Legal for I.G, Punjab (Supra), whereas, through the second one he has invoked the contempt jurisdiction of this Court alleging that contempt of judgment dated 30.12.2016 has been committed. He has submitted that the three member bench of this Court

vide judgment dated 29.03.2017 could not review the judgment dated 30.12.2016 passed by 5-Member Bench and moreover the IGP Punjab had no authority whatsoever, under the law to review the orders of this Court as the out of turn promotions earned through judicial orders were protected under Para 111 of **Shahid Pervaiz's case** (supra). He also contended that the then IGP Punjab committed contempt of this Court by not protecting his out of turn promotion and the IGP could not sit in appeal over the judgment of this Court and review a matter which was already decided by the High Court and protected through the judgment of this Court. He prayed that contempt proceedings be initiated against the Respondents for not implementing the judgment of this Court in **Shahid Pervaiz's case** (supra) in letter and spirit.

63. Mr. Makhdoom Ali Khan, learned Sr.ASC appeared on behalf of Respondent No.5 in ICA Nos.4, 6, 8, 18, 21 and 23 of 2017. He contended that the main line of arguments before this Court by the appellants / petitioners (in the Intra Court Appeals or the Contempt Petitions) has been the gallant record of the appellants/petitioners and that they were deservedly promoted out of turn. According to the learned counsel this argument was already considered in **Shahid Pervaiz's case** (supra) and rejected and against that judgment no Review or Intra Court Appeal is pending before this Court, therefore, that judgment has become final. Learned counsel referred to Para 118 of **Shahid Pervaiz's case** (supra) relevant part of which is reproduced hereunder:

"118. The contention of the learned Counsel that the effect of the aforesaid judgments which declares the concept of out of turn promotion unconstitutional cannot be extended to apply retrospectively on the cases where law granting out of turn promotions was omitted, is without force..... Thus, there is neither any reason in principle nor any precedent which bars the

Courts from examining the provisions of a repealed statute in a case pending before it on the touchstone of its inconsistency with the provisions of the Constitution or the Fundamental Rights, as enumerated in the Constitution."

Mr. Makhdoom Ali Khan, learned Sr.ASC next contended that the argument regarding prospective or retrospective application of the judgment and the principle of past and closed transactions was also considered and rejected with a few carve outs and it was observed by this Court that the officers, who are presently serving the department cannot seek shelter under the doctrine of past and closed transactions. He further submitted that this view of the Court was in line with the case of Pensionary benefits of Judges reported as Application by Abdul Rehman Farooq Pirzada v. Begum Nusrat Ali Gonda (PLD 2013 SC 829). Moreover, he added that the learned Bench itself observed that there were two carve outs from the principle of past and closed transactions and the retrospective application of the judgment. These carve outs were the employees who had retired or died. He relied on Para No. 119 of the judgment in the **Shahid Pervaiz's case** (supra).

64. The learned counsel next contended that regarding employees who are still in service, there was a further carve out in the judgment and it was observed that the cases decided by the Service Tribunal/Courts would be protected unless reviewed. He pointed out that the cases decided by the Service Tribunal /Courts were mostly decided on the basis of limitation and there were no orders on the merits of the cases. He further contended that these cases decided by the judicial forums were either decided on the ground of discrimination or merely disposed of without discussing the merits of the case on the ground that the petition/appeal had borne fruit as during pendency of the matter, the

employee was promoted out of turn by the department itself. He also contended that the cases which were decided on the basis of discrimination were again divided into two parts i.e. *One*, the cases wherein the persons were granted out of turn promotion on the basis of a gallant act in the same incident; and *second*, the cases wherein the appellants were relying on each other's case. He also added that in one case all that the Service Tribunal said was to decide the case on merits and nothing further, so all these cases did not belong to the category, which could be said to be protected by a Court order.

65. He further contended that when the report of IGP, Punjab came up before the three member bench then there were two options i.e. either the IGP had the power or did not have the power to review. In either case it would end up giving meaning to the words "*they shall remain intact, unless reviewed*". The meaning which the 3-Member Bench of this Court placed on this phrase was that the review had to take place at the departmental level and this was the interpretation of the Bench given in the judgment dated 29.03.2017.

66. He lastly, contended that now even this Court can Suo Moto review the matter and remove the exception given in Para 111 read with Para 143 of the judgment dated 30.12.2016, whereby the out of turn promotions granted in pursuance of any judicial order were protected. He added that the Court would be absolutely justified to review it on account of three reasons:

- i. These cases were decided on the basis of discrimination with some other person/officer and those persons themselves have now been reverted;
- ii. In some of the cases there was no protection given at all because the matter was disposed of due to the reason that the petition had borne fruit or it was directed that the case should be decided on merits by the department; and

- iii. The cases pertaining to the Sports category were never part of the carve out either in para 111 or 119 of **Shahid Pervaiz's case** (supra).

The learned counsel while concluding has prayed that these cases may be dismissed with costs.

67. We have heard learned counsel for the parties and perused the record with their able assistance.

68. First of all we would like to deal with the argument of past and closed transactions, which is the core issue in the instant matter. In **Shahid Pervaiz's case** (supra), this argument was also raised and considered, wherein it was *inter alia* observed that:-

"116. As to the claim that the out of turn promotions are covered by the doctrine of past and closed transaction, the infirmity of the argument is self-evident. Sometimes there are wrongs without individual victims while in other cases there are identified individual victims. The brunt of out of turn promotions is always borne by the individual officers who were bypassed due to out of turn promotions. The damaging effect on the careers of deserving officers who suffered due to these out of turn promotions continue during service and even after retirement in terms of pensionary benefits. If the beneficiaries of this illegal exercise are reverted to the positions to which they would have been entitled to, on their respective merit and promotion, on their turn, this would immediately open up vistas of promotion for those deserving officers who were earlier bypassed due to out of turn promotions.

117. In the light of the rules and principles laid down by this Court, we with respect are not inclined to agree with the proposition that vested rights that were created under a law subsequently declared unconstitutional by this Court have attained finality under doctrine of past and closed transaction, and that they are immune from

the application of the aforementioned judgments of this Court. We have maintained that vested rights are generated only under a valid and uncontested instrument of law. An instrument that was still born or treated by this Court as non est is barred from creating any vested rights, let alone being protected under the doctrine of past and closed transactions. We believe that it is our duty to protect the rights and interests created under a law and also to deny the enjoyment of rights created under an invalid law. In the instant case, the Petitioners are claiming the protection of rights that were created under a law that has failed to pass the test of constitutionality, as determined by this Court; hence, they cannot take the plea of past and closed transaction."

However, in Para 111 it was further observed that, ".....the cases wherein 'out of turn promotion' was granted to individuals, pursuant to the judgments of the High Court, Service Tribunal and the Supreme Court. They shall remain intact unless reviewed."

69. Similarly, other argument advanced by the learned counsel for the parties was that the out of turn promotions were earned when section 8-A *ibid* was a valid law, and the rights created under the said law are protected in light of Article 264(c) of the Constitution, moreover, it was not the fault of the appellants/petitioners that they were promoted out of turn, so they have vested rights which need to be protected. This argument was also considered in **Shahid Pervaiz's case** (supra), and it was observed that:-

"118. The contention of the learned Counsel that the effect of the aforesaid judgments which declares the concept of out of turn promotion unconstitutional cannot be extended to apply retrospectively on the cases where law granting out of turn promotions was omitted, is without force. Insofar as the issue of examining the

provisions of a repealed statute is concerned, such an exercise is carried out by Courts in routine in the context of section 6 of the General Clauses Act, as well as Article 264 of the Constitution of Pakistan. Whenever any right, obligation, privilege or liability acquired, accrued or incurred under the repealed law is raised, the Courts are necessarily required to examine the provisions of the repealed statute. Thus, there is neither any reason in principle nor any precedent which bars the Courts from examining the provisions of a repealed statute in a case pending before it on the touchstone of its inconsistency with the provisions of the Constitution or the Fundamental Rights, as enumerated in the Constitution. Any other conclusion would lead to the absurd consequences that while the statute remains on the statute book, the Courts can examine its vires but once it was repealed by a subsequent statute, its effect, even if ex facie inconsistent with the Constitution or Fundamental Rights goes beyond the realm of judicial review. If such were the effect of repeal, then all that would be required to create a protected class of legislation is promulgation of patently unconstitutional statutes creating rights in favour of certain interested persons which though completely destructive of the Fundamental Rights of others, stood protected behind an impenetrable wall by the mere repeal of the statute through such unconstitutional Act. Such would not only be a fraud upon the statute but would be completely destructive of the rule of law and constitutional governance. Thus, there is no reason which compels the Court to sustain such an absurd proposition. As and when a repealed statute is invoked or raised in support of any claim, right, office or act, before the Court, the Court would always be entitled to examine its validity on the touchstone of the Constitution and Fundamental Rights. We have not been able to discover any instance from our own history as well as that of other legal systems with entrenched judicial review on the

touchstone of the Constitution, where the Courts have refrained from examining the vires of the statute on the mere ground that at the time of review such law stood repealed by a subsequent statute."

70. With respect, we do not agree with the learned counsel for the appellants/ petitioners that the exception created in Para 111 read with Para 143 in the judgment of **Shahid Pervaiz's case** (supra), is an absolute one. It was observed that *"the cases wherein 'out of turn promotion' was granted to individuals, pursuant to the judgments of the High Court, Service Tribunal and the Supreme Court. They shall remain intact unless reviewed."* The Court in judgment dated 29.03.2017 has taken the word "Review" in its general meaning, whereby the Department/ IGP could also re-examine the individual cases. Seen from another angle if we take it to mean that the review was to take place by the judicial authorities then this itself would be contrary to the judgment itself. In Para 119, it was observed that the employees who are still in service cannot seek refuge in the doctrine of past and closed transaction. It was held that:-

"119.....the case of an employee who had enjoyed an out of turn promotion pursuant to a law found to be ultra vires the Fundamental Rights, who now stands retired and or died, it would constitute a past and closed transaction inasmuch as it would be a futile exercise to re-open the case of such an employee. On the other hand, employees who were so promoted under such a statute and who continue to remain in service, would be liable to be restored to the position that existed prior to the benefit conferred under the statute found inconsistent with Fundamental Rights. Indeed, once a statute has been declared as being unconstitutional for any reason, all direct benefits continuing to flow from the same are to be stopped."

Reference in this behalf may be made to the case of Dr. Mobashir Hassan v. Federation of Pakistan (PLD 2010 SC 265)....."

71. When the very concept of out of turn promotion was declared to be unconstitutional then the exception created in Para 111 could not be said to be extended to the in service employees whether they had any judicial verdict in their favour or not. They were not protected under the doctrine of past and closed transaction as observed above. Moreover, no such protection was provided in the cases of Contempt Proceedings against the Chief Secretary Sindh (Supra) and Ali Azhar Khan Baloch (Supra), which were required to be followed by all the provinces to streamline the civil service structure. It would not be justified if any such benefit were to be extended to the employees of the Punjab Police. Although no one has sought review of this exception and the judgment in **Shahid Pervaiz's case** (supra) was already passed under the review jurisdiction. Second review is barred by law and no party can now approach this Court for a second review, however, this Court has absolute power to re-visit its earlier judgments/orders by invoking its Suo Motu Jurisdiction under Articles 184(3), 187 or 188 of the Constitution. This Power is not dependant upon an application of any party and it was so held in the case of Khalid Iqbal Vs. Mirza Khan (PLD 2015 SC 50), in the following words:-

"12. The question of maintainability of the 2nd Criminal Review Petition on the ground that this Court has to do complete justice by invoking Article 187(1) of the Constitution is also misconceived. The provisions of Article 187(1) cannot be attracted in the present case, as this Court has already recorded findings against the petitioner by the Judgment dated 28-2-2001, against which review was also dismissed and there was no 'lis' pending before this Court warranting exercise of its

jurisdiction under Article 187(1) of the Constitution, besides Rule 9 of the Order XXVI of the Supreme Court Rules, bars 2nd Review Petition. There is a distinction between right of a party to approach the Court and jurisdiction of the Court to do complete justice on its own. Once this Court has finally determined the right of the petitioner in the judgment dated 28-2-2001, holding him guilty, the petitioner through 2nd Review Petition, cannot re-agitate it. If such a Review Petition is allowed to be entertained, it will land in a situation where findings of this Court against a party will never attain finality.

13. *This, however, does not mean that the jurisdiction of this Court is barred by any restriction placed by the Constitution; there is no Article in the Constitution which imposes any restriction or bar on this Court to revisit its earlier decision or even to depart from them, nor the doctrine of stare decisis will come in its way so long as revisiting of the judgment is warranted, in view of the significant impact on the fundamental rights of citizens or in the interest of public good.*

On perusal of the paragraphs referred to hereinabove, we can safely reach a conclusion that this Court has absolute powers to re-visit, to review and or to set aside its earlier judgments/orders by invoking its Suo Motu Jurisdiction under Articles 184(3), 187 or 188 of the Constitution. The Powers of this Court to exercise its inherent jurisdiction under the above referred Articles of the Constitution are not dependant upon an application of a party."

The same view has been reiterated in a recent judgment dated 5.1.2018 passed in the case of **Syed Shabbar Raza Rizvi Vs. Federation of Pakistan** (Const.P.No.1/2016).

72. The acts of gallantry in no way justify out of turn promotions. However, in order to increase the morale of the police personnel, we support the proposition that on exhibiting exceptional acts of gallantry, they should be given awards and rewards on merits and this concept is in line with the spirit of Article 259 (2) of the Constitution.

73. The contention of Khawaja Haris Ahmad, learned Sr.ASC that in Para No. 123 of **Shahid Pervaiz's case** (supra) this Court had wrongly observed that *"we have already declared void ab initio the legislative instruments that provided for out of turn promotions."* because nowhere in the earlier judgment was such a declaration made, is also without force. Suffice it to say that in Para 104 of Shahid Pervaiz' Case (Supra), it was observed that:

"104. Through the successions of its orders, this Court has consistently maintained the unconstitutionality, and the consequential nullity of the instruments providing for the out of turn promotion."

Moreover, in Para 129 of the judgment of **Ali Azhar Khan Baloch's case** (supra), this Court was pleased to observe that when any legislative instrument is declared unconstitutional, the effect of such declaration is that such legislative instrument becomes void ab initio. The relevant part of Para 129 is being reproduced hereunder:

"129. Now, it is a settled law of this Court that no right or obligation can accrue under an unconstitutional law. Once this Court has declared a legislative instrument as being unconstitutional, the effect of such declaration is that such legislative instrument becomes void ab initio, devoid of any force of law, neither can it impose any obligation, nor can it expose anyone to any liability."

74. Regarding the Sports Policy it has already been observed in **Shahid Pervaiz's case** (supra) that this policy to the extent of accelerated promotions is not sustainable, being violative of *"the provisions of Punjab Civil Servants Act, 1974, and the rules framed thereunder, and which Act itself is created pursuant to the provisions of Articles 240 and 242 of the Constitution"*. However, it was further observed in the said judgment that *"it would be open to the government to frame rules providing a Sports Group within police in order to encourage and incentivize sports, which will not form part of the regular police force. In other words, the members of Sports Group shall not be assigned field posting, but will be restricted to their specialized Group."* We are in agreement with these observations.

75. As far as the Review Petition filed by the Advocate General Punjab for expungement of remarks in Para 17 of the Interim Report by AIG Legal for I.G, Punjab (2017 SCMR 868) is concerned, it is clear that the Court had rightly observed in judgment dated 29.03.2017 that *"It should also not be lost sight of that the competent authority/the IG had decided not to grant out of turn promotion to the officials/officers who then went to court/tribunal. At that juncture the Government of Punjab had resisted these cases, but, had belatedly filed appeals before this Court against the orders/judgments granting out of turn promotions. However, now before us the Home Department and the learned AG have taken a complete u-turn and support the very same out of turn promotions that were earlier opposed by them on the pretext of the judgment in the Shahid Pervaiz case...."*. The learned Advocate General Punjab has placed no material on record to show that such observations were incorrect rather he has objected to the words "u-turn" used in these observations. These words were used in their common meaning and when there is no denial

of the fact that the petitions/appeals filed by the Government of Punjab were mostly dismissed by this Court on the point of limitation, therefore, we do not find any reason to expunge these remarks.

76. Keeping in view the above we hold as under:-

- i. The exception, created in para No.111 of the **Shahid Pervaiz's Case** (*Supra*) read with para No.143 thereof, wherein the protection was extended to the category of cases "wherein 'out of turn promotion' was granted to individuals, pursuant to the judgments of the High Court, Service Tribunal and the Supreme Court", is hereby withdrawn by exercising Suo Moto Review Jurisdiction;
- ii. The Intra Court Appeals filed against judgment dated 29.03.2017 and the Criminal Original Petitions filed for violation of judgment dated 30.12.2016 are dismissed. Furthermore, the Review Petitions filed against judgment dated 29.03.2017 are also dismissed. As the main cases have been decided hereinabove, the applications for impleadment as party are dismissed;
- iii. The Criminal Original Petition No. 96/2017 filed for violation of order dated 08.12.2016 is disposed of with the direction that the Punjab Service Tribunal shall proceed to decide the cases of the petitioners pending before it expeditiously, preferably within a period of two months of the decision of this case;
- iv. It would be open to the government to frame rules providing a Sports Group within the police in order to encourage sports but it will not form part of the regular police force and the members of Sports Group shall not be assigned field posting, and will only be restricted to their specialized Group; as already observed in **Shahid Pervaiz's case** (*supra*);

- v. The I.G.P, Punjab, the Home Secretary, Punjab, and the Secretary, Establishment Division, are directed to comply with the judgment, by fixing the seniority of all the Police Officers/Officials who were given out of turn promotions along with their batch-mates, as if they were never given out of turn promotion;
- vi. For the purpose of compliance of this judgment, necessary D.P.C/Board, as the case may be, shall be immediately held and a compliance report be submitted to the Registrar of this Court for our perusal in Chambers within a period of one month. The Advocate General, Punjab, and the learned Attorney General for Pakistan shall communicate the directives of this Court to the relevant authorities.

77. Before parting with this judgment, we acknowledge the assistance rendered by all the learned counsels for the parties and the learned Law Officer on the issue at hand.

78. Criminal Original Petitions No.167 and 214 of 2017 relate to the province of Balochistan, wherein it has been complained that the judgments of this Court dated 26.01.2016 and 30.12.2016 have not been implemented in letter and spirit in the Province of Balochistan. The same are, therefore, separated and office is directed to fix them before the appropriate Bench.

CHIEF JUSTICE

JUDGE

JUDGE

JUDGE

JUDGE

Announced in open Court

on **13.5.2018** at **Islamabad**

Approved For Reporting