

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT
MR. JUSTICE NASIR-UL-MULK, HCJ
MR. JUSTICE GULZAR AHMED
MR. JUSTICE MUSHIR ALAM

Civil Appeals No.1122 & 1123 of 2011

Against judgment dated 05.05.2011 of
Federal Service Tribunal, Islamabad, passed
in Appeal No.33(L)CS of 2008.

Muhammad Zafar Ali, etc
Abdul Waheed, etc

VERSUS

Asim Gulzar, etc

Appellants (in CA#1122/11)

Appellants (in CA#1123/11)

Respondents (in both cases)

Civil Appeal No.1343 of 2014

Against order dated 03.10.2014 of
High Court of Sindh at Karachi,
passed in C.P.No.D-1085 of 2013.

Syed Muhammad Abbas Rizvi, etc

Appellants

VERSUS

Federation of Pakistan & others

Respondents

Criminal Appeal No.436 of 2011

Against order dated 09.08.2011 of
High Court of Sindh, Circuit Court,
Hyderabad, passed in C.P.No.D-198
of 2009.

Asim Gulzar, etc

Appellants

VERSUS

Attaullah Khan Chandio, etc

Respondents

Civil Appeal No.431 of 2013

Against order dated 18.01.2013
of High Court of Sindh at
Karachi, passed in C. P. No. D-
3657 of 2009.

Asim Gulzar and others

Appellants

VERSUS

Attaullah Khan Chandio, etc

Respondents

For the Appellant(s):

Hafiz S. A. Rehman, Sr.ASC
Mr. Mehmood A. Sheikh, AOR
(in CA# 1122 of 2011)

Mr. M. Akram Sheikh, Sr.ASC
Mr. Mehmood A. Sheikh, AOR
(in CA# 1123 of 2011)

Mr. Sajid Ilyas Bhatti, DAG
Mr. M. S. Khattak, AOR
Mr. Shahbaz Kirmani, SO
(in CA# 431 of 2013)
Mr. Khalid Javed Khan, ASC
(in CA# 1343 of 2014)

Nemo *(in Cr.A# 436 of 2011)*

For the Respondents:

Mr. Hamid Khan, Sr.ASC
*(No. 1, 18, 22, 28, 33, 35, 37 & 49 in CA# 1122 of 2011
and No.1 In CA# 1123/ 11 and No.10-13 in CA# 1343/ 14)*

Mr. Sajid Ilyas Bhatti, DAG
(No. 2&4 in CA# 1122 of 2011)

Mr. Waqar Ahmed Khan, Addl.AG, KPK
(No.3 in CA# 1122&1123 of 2011)

Mr. Farooq Amjad Mir, ASC
(No.101 in CA# 1122 of 2011)

Mr. Tariq Mehmood Jehangiri, ASC
(No.4 in CA# 1343 of 2014)

Mr. M. Siddique Khan Baloch, AOR
(No.1 in Cr.A# 436/ 11)

On Court's Notice:

Mr. Sajid Ilyas Bhatti, DAG
Mr. Waqar Ahmed Khan, Addl.AG, KPK
Mr. Razzaq A. Mirza, Addl.AG, Punjab
Mr. Muhammad Ayaz Khan Swati,
Addl. AG, Balochistan
Mr. Qasim Mirjat, Addl.AG, Sindh.

Date of Hearing:

15.12.2014

JUDGMENT

NASIR-UL-MULK, CJ.- . The common question in all the appeals before us is whether under Rule 11(2)(c) of the Police Service of Pakistan (Composition, Cadre and Seniority) Rules, 1985 (hereinafter to be referred to as "**the Rules, 1985**") the seniority of the police officers from the Provinces inducted into the Police Service of

Pakistan (hereinafter to be referred to as the “**PSP**”) is to be reckoned from the date when the vacancies occurred in the senior cadre reserved for that particular Province.

2. Leave to Appeal was first granted in Criminal Petition No. 442 of 2011, Civil Petitions No. 907 and 957 of 2011 by a comprehensive order. It reads:

“The controversy in these petitions is regarding fixation of seniority between the police officers, who were initially appointed in the Police Service of Pakistan (P.S.P.) and those police officers from the Provincial Police Service later encadred in the Police Service of Pakistan. Asim Gulzar, Respondent in Civil Petitions No. 907 and 957 of 2011 and petitioner in Criminal Petition No. 442 of 2011, who belonged to P.S.P., challenged in appeal before the Federal Service Tribunal the Notification of the Establishment Division dated **11-12.2007**, whereby 12 police officers of the Police Service of N.W.F.P. (now Khyber Pakhtunkhwa) were appointed as Superintendent of Police (BPS-18) in the Police Service of Pakistan in accordance with Rules 7 and 11 of the Police Service of Pakistan (Composition, Cadre and Seniority) Rules, 1985 (hereinafter referred as to the 1985 Rules) with effect from **21.10.1997**. The appeal was allowed in terms that the Establishment Division was directed to devise a formula for fixation of seniority directly recruited officers in the Police Service of Pakistan and appointees from the Provincial Police Service upon encadrement. The order was assailed by the said encadred police officers, Abdul Waheed and others. This Court remanded the case to the Federal Service Tribunal to decide the same on merits and in the meanwhile kept the Notification dated 11.12.2007 in abeyance. Upon remand, the appeal

of Asim Gulzar was allowed and it was held that though Rule 11(2)(c) of the 1985 Rules do permit the encadrement of police officers from the Provincial Cadre to the Police Service of Pakistan from the date on which vacancy in P.S.P. occurs, the said Rule cannot over ride the statute under which the Rules have been framed, namely the Civil Servants Act, 1973, Section 8(4) whereof provides that '*seniority in a post, service or cadre to which a civil servant is promoted shall take effect from the date of regular appointment to that post*'. Thus it was held that the ante-dated appointment of the officers from K.P.K. by Notification dated 11.12.2007 was contrary to the provision of the Act, and consequently the Notification was set aside. A direction was given that in order to avoid complications the encadrement of the Provincial Police officers in the Police Service of Pakistan shall be carried out annually.

2. Civil Petitions No. 907 and 957 of 2011 have been filed by the officers, who were granted ante-dated encadrement by Notification dated 11.12.2007 and Criminal Petition No. 442 of 2011 arises out of order of the High Court of Sindh dated 09.08.2011 in a contempt application, filed by the Respondent, Attaullah Khan Chandio, for the implementation of its judgment dated 26.11.2009. The said judgment, it appears, was passed on the concession of the respondent Department that the case of the Respondent, Attaullah Khan Chandio, a police officer from the Provincial cadre of Sindh for ante-dated encadrement, was under consideration. By the impugned order dated 09.08.2011 the High Court directed the Establishment Division to alter the date of encadrement from 19.10.2010 to 01.07.1999. A Notification has been issued in pursuant to the said direction. We are mindful that

the said petition arises out of an order passed in contempt proceedings but the basic issue involved in it is the same as in the other two Petitions regarding the ante-date encadrement of the Provincial police officers in the Police Service of Pakistan.

3. For the sake of facility the two relevant provisions, which came under discussion before the Service Tribunal, are reproduced:

“7. Appointment of members of Police Cadre of a Province:-

Members of the Police Cadre of a Province shall be appointed to the Service on the basis of selection made on the recommendation of the Governor;

Provided that appointment of members of the Police Cadre of a Province under this rule shall not exceed 40% of the senior cadre posts in that Province as specified in the Schedule.

.....
11. Seniority. (1) *The members of the Service Referred to in clauses (a) and (b) of sub-rule (2) of Rule 3 shall retain the same seniority as is shown in the gradation list as it stood immediately before the commencement of these rules.*

(2) *Persons appointed to the Service in accordance with these rules shall count seniority from the date of regular appointment against a post in the service to the following conditions namely:-*

(a).....

(b).....

(c) *Members of the Police cadre of a particular Province selected in a year shall on appointment to the Service take seniority inter se as in the Provincial cadre and in keeping with that sequence, **each such member shall reckon his date of regular appointment to the Service from the day the***

respective vacancy arose in the senior cadre posts reserved in that Province for such officers as specified in the schedule:

.....”

Section 8(4) of the Civil Servants Act, 1973.

“8(4). Seniority in a post, service or cadre to which a civil servant is promoted shall take effect from the date of regular appointment to that post:

Provided that civil servants who are selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their inter se seniority as in the lower post.”

4. After hearing the learned counsel for the parties, we grant leave to appeal in all the above matters to consider whether:

i.) Rule 11(2)(c) of the 1985 Rules allows encadrement of a Provincial Police officer in the Police Service of Pakistan from the date on which the vacancy for the concerned Province occurs or it shall take effect from the date of the Notification of encadrement.

ii). in the event that the said Rule allows such ante-dated encadrement, does it violate the statutory provision of Section 8(4) of the Civil Servants Act.

iii) the judgment of this Court in MALIK NASIM-UL-HAQ v. FEDERATION OF PAKISTAN (Civil Petition No. 1649 of 2010) dated 03.09.2010 has finally determined that the encadrement of the Provincial police officer cannot be ante-dated to the falling of a vacancy.

5. The learned counsel for the parties may raise additional issues, including maintainability of the service appeal before the Service Tribunal and whether Criminal Petition No. 442 of 2011 is barred by time. Since the questions involved are likely to

affect the seniority of a number of police officers, let the appeals **be fixed for hearing in the month of January, 2012** and shall be heard on the present record, with liberty to the parties to file additional documents.”

3. Civil Appeal No.1343 of 2014, filed later, arises out of the judgment by the High Court of Sindh, Karachi dated 03.10.2014 which had also rejected antedated seniority of the encadred members of Provincial police and held that the seniority of the encadred officers shall be reckoned from the date of their encadrement in PSP and not from the date on which the vacancy occurred. The High Court directed that in future the Province of Sindh should send recommendations for encadrement on time and also that the Establishment Division should notify the same without undue delay. Leave to Appeal was granted against the order of the Sindh High Court on 16.10.2014.

4. Federation of Pakistan has filed Civil Appeal No. 431 of 2013 against a judgment of the Sindh High Court, Karachi dated 18.01.2013 in a Writ Petition filed by Mr. Ali Sher Jakhrani seeking directions from the Court that he be encadred in PSP against 40% quota of the province. During the pendency of the case the petitioner was encadred by the defendant with antedated seniority. The petition was thus disposed of in view of redressal of the grievance of the petitioner with further direction that the respondent should give effect to all Rules relating to the appointment of the petitioner including Rule 7 and 11 (2) (c) of the Rules, 1985 .

5. Hafiz S. A. Rehman, learned Sr. ASC, appearing for the appellants in Civil Appeal No. 1122 of 2011 raised preliminary objection to the very maintainability of the Service Appeal filed by the

contesting respondents before the Federal Service Tribunal. The learned counsel pointed out that departmental appeal by the respondents was filed on 22.10.2007 against the antedated encadrement of police officers from Punjab, even before the issuance of notification dated 11.12.2007 which had encadred with retrospective effect the Provincial Police Officers from the Province of KPK. The said representation by Asim Gulzar was rejected on 10.11.2007 and was communicated to the officer on 04.01.2008 against which he filed Service Appeal on 09.02.2008. In the light of the above facts the learned counsel submitted that though the departmental representations were made against the retrospective effect of the encadrement of the Provincial police officers from Punjab the Service Appeal challenged the retrospective encadrement of the police officers from Khyber Pakhtunkhwa. That the very filing of the appeal was not maintainable as the departmental representation preceded the appointment and no departmental representation was made against the encadrement of the police officer from KPK. The learned counsel pointed out that this question was specifically raised before the Federal Service Tribunal but was not addressed.

6. The argument so raised may have some merits on the strict legal plane, however, the questions formulated in the Leave Granting Order would require adjudication for three reasons. First, that the determination of the questions will not only decide seniority between the parties before us but will settle generally the issue of seniority between the officers of the PSP initially appointed and those appointed from the Provinces through encadrement. Secondly, the above objections are only confined to the decision of the Federal Service Tribunal relating to the encadrement of police officers from

Khyber Pakhtunkhwa whereas three of the appeals pertain to the Province of Sindh arising out of the judgments of the Sindh High Court against which no such objections have been raised and finally, though the departmental representation of Asim Gulzar dated 22.10.2007 mentioned the retrospective promotion of encadred police officers from Punjab, vide two notifications dated 12.04.2005 and 13.12.2006, he had generally represented against all such retrospective encadrements, as is obvious from Paragraph 16 where he makes the prayer: “the appointments of all officers of members of police cadre of a Province who have been given retrospective appointments in the PSP cadre should be declared null and void, especially the above mentioned officers”

7. On merits the learned counsel gave a brief background narrating that the vacancies reserved for the Province of Khyber Pakhtunkhwa for encadrement were available from the year 1997 but due to failure of the executive authority the Provincial government did not submit them to the Federal Government in time for encadrement. That the Provincial police officers should not suffer due to the negligence of the authorities. He referred to the summary prepared for the Governor of the Province wherein past negligence was admitted. The learned counsel referred to Section 8 of the Civil Servants Act, 1973 (hereinafter to be referred to as “**the Act, 1973**”) dealing with seniority and read out sub-section (2) thereof providing that seniority of a civil servant shall be reckoned in relation to other civil servants belonging to the same service or cadre as may be “prescribed”; that the word “prescribed” as used in the provision refers to the rule making powers of the President under Section 25 of the Act, 1973. Taking the argument further, the learned counsel

contended that the Rules, 1985 have been framed under Section 25 of the Act, 1973 exclusively for the police force; that Rule 7 of the said Rules provide for the appointment of members of the Provincial police to PSP and Rule 11 (2) (c) of the Rules, 1985 provide for the mechanism of determining their seniority. He contended that the matter related to 'encadrement' and neither to 'promotion' nor to 'appointment' and hence can be resolved by holding that under Rule 11 (2) (c) of the Rules, 1985 encadrement is to be made from the date on which the vacancy occurs.

8. Mr. Muhammad Akram Sheikh, Sr. ASC, representing the appellant in Civil Appeal No. 1123 of 2011 reiterated the arguments earlier raised before the Federal Service Tribunal and further contended that resolution of the controversy requires harmonious reading of Section 8 (4) of the Act, 1973 with Rule 11 (2) of the Rules, 1985. That the basic issue relates to the determination of the date of encadrement either from the date when the vacancy arose or from the date of issuance of notification. He contended that 'encadrement' and 'seniority' are two different concepts. Section 8 (4) of the Act, 1973 refers to promotion and not to encadrement and the said provision can only be used to determine seniority on promotion. Referring to Rule 11 (2) (c) of the Rules, 1985 he argued that the date of encadrement and seniority from its plain reading are to be reckoned from the occurrence of the Provincial vacancy under 40% of the quota. Developing from this he contended that notwithstanding that the notification was issued on 11.12.2007 encadrement should be deemed from the date on which the vacancy occurred. The learned counsel added that the vacancies in the PSP reserved for the

Provinces had not been filled in the past in view of the centralized military rule in the country extending to the Provinces.

9. Mr. Khalid Javed Khan, ASC appearing for the appellant in Civil Appeal 1343 of 2014 narrated the history of the PSP. The learned Counsel argued that police had always been a Provincial subject and an exception was made for the creation of PSP. In this context he referred to sub-rule (b) of Rule 2 of Police Service of Pakistan (Composition and Cadre) Rules, 1969. That under Rule 4, a provision was made for appointment to PSP upon recommendation by the Governor which was not to exceed one third of the members of the Senior Cadre posts in that Province. These Rules were repealed by the Rules, 1985 which vide Rule 7 increased the quota from the Provinces to 40%. That the Rules, 1985 provide three means of joining the PSP: through initial appointment (Rule 5); through Armed Forces (Rule 6); and from the Provinces (Rule 7) in accordance with the cadre quota given in the Schedule. Proceeding with his arguments he contended that encadrement fell under Section 8 (3) of the Act, 1973 as it was an initial appointment. He contrasted this position with Section 8 (4) of the Act, 1973 and argued that it concerned promotion and encadrement was not an instance of promotion. He argued that apart from the two options of looking at the issue from the perspective of either Section 8 of the Act, 1973 or Rule 11 (2) (c) of the Rule, 1985, there is a third option of harmonizing these provisions of law; that the 'correct date' shall be determined as the date when during the subsistence of a vacancy the officer to be appointed becomes eligible for encadrement. This argument was put forth in order to meet the observations of the High court of Sindh pointing out a possible anomaly where a Provincial

police officer may not be eligible for appointment when the vacancy occurs for that Province. Reliance was placed on **Government of NWFP v. Buner Khan and others** (1985 SCMR 1158) to argue that there is no room for stopgap arrangement in law and that the rightful person should be granted promotion on the seats reserved. Reference was further made to **Muhammad Bachal Memon v. Syed Tanveer Hussain Shah** (2014 SCMR 1539) and **Malik Ghulam Rasool v. Government of Punjab** (1985 SCMR 1107).

10. Mr. Hamid Khan, Sr. ASC for most of the contesting respondents in Civil Appeal No. 1122, 1123 of 2011 and 1343 of 2014 referred to Article 240 of the Constitution to argue that the Act, 1973 was enacted pursuant to the said Constitutional provision and the previous arrangement between Federation and the Provinces is no more relevant. He argued that the said Article mentions three kinds of services i.e. those in connection with the Federation, All Pakistan Services and Provincial services. That the present case refers to All Pakistan Service. Coming to the legal aspects of the case, he argued that it is an instance of promotion in service as determined in **Islamic Republic of Pakistan v. Isralul Haq** (PLD 1981 SC 531) as members of the Provincial police service enter a new service of PSP through the process of encadrement. Referring to Rule 3 (2) (b) he argued that PSP has been by express provision said to consist of “persons appointed or *deemed to have been* appointed to the Police Service of Pakistan”. The term ‘deemed’ he argued includes those who did not enter the PSP directly. He further argued that there were three ways of joining the PSP: through initial appointment, from the Armed Forces and from the Provincial police force through encadrement. For the process of encadrement he submitted that no

definite quota has been provided in the Rules 1985 as it uses the words that the quota “shall not exceed 40%”. That PSP is in essence a new service in which entrants from three different streams join and merge with each other. He next argued that in view of people coming from different streams, a special provision was created for determining seniority. That there are two types of seniority in PSP a) Intra-Service Seniority b) Inter-Service Seniority. That seniority of each group is to be determined separately in accordance with separate rules laid out in Rule 11 the Rules, 1985. He argued that for this reason the provision is to be read strictly, otherwise confusion would prevail among people entering PSP from different streams. He gave an example of a person coming from the Armed Forces to the PSP who may demand seniority from the date of his commission into the Armed Forces. When Rule 11 (2) (c) of the Rules, 1985 is read with Section 8 (4) of the Act, 1973 a situation emerges that appointment is to be reckoned from the date of appointment which shall be the ‘date of encadrement’. Reliance in this context was placed on **Khushi Muhammad and 3 others v. The General Manager (now Vice-Chairman), Pakistan Western Railway, Headquarters Office, Lahore and others** (PLD 1970 SC 203). He argued that granting seniority to an officer before his induction into the service would create an absurd situation where a person would draw benefit from the service even before his entry into it. Reliance in this case was placed upon **Muhammad Iqbal Khokhar v. The Governement of the Punjab** (PLD 1991 SC 35). He emphasized that it is a clear position of law that a person can not be encadred from an earlier date. In this context he relied upon **Nani She and Ors v. State**

of Arunachal Pradesh and Ors (AIR 2007 SC 2356) to contend that quota for promotees could not be backdated.

11. Though some of the statutory provisions have been mentioned in the Leave Granting Order, however, for the purposes of clarity and comparison relevant provisions of Section 8 of the Act, 1973 and Rules 5, 6, 7 and 11 of the Rules, 1985 need to be reproduced.

Section 8 of the Act, 1973 reads:

“8. Seniority. (1) For proper administration of a service, cadre or post the appointing authority shall cause a seniority list of the members for the time being of such service, cadre or post to be prepared, but nothing herein contained shall be construed to confer any vested right to a particular seniority in such service, cadre or post, as the case may be.

(2) Subject to the provisions of sub-section (1), the seniority of a civil servant shall be reckoned in relation to other civil servants belonging to the same service or cadre whether serving in the same department or office or not, as may be prescribed.

(3) Seniority on initial appointment to a service, cadre or post shall be determined as may be prescribed.

(4) Seniority in a post, service or cadre to which a civil servant is promoted shall take effect from the date of regular appointment to that post:

Provided that civil servants who are selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their *inter se* seniority as in the lower post. ”

Rules 5, 6, 7 and 11 of the Rules, 1985 read as below:

“5. Initial appointment.- (1) Initial appointment to the service against cadre posts in basic Grade 17 shall be made on the basis of the results of the competitive examinations held for the purpose by the Commission.

6. Appointment of officers of Armed Forces.- Officers of the Armed Forces of the rank of Captain and Major or equivalent shall be eligible for appointment to the Service in accordance with the procedure laid down by Government and against the cadre posts reserved for them from time to time.

7. Appointment of members of Police cadre of a Province.- Members of the Police cadre of a Province shall be appointed to the Service on the basis of selection made on the recommendation of the Governor:

Provided that appointment of members of the police cadre of a Province under this rule **shall not exceed 40% of the senior cadre posts** in that Province as specified in the Schedule.

11.Seniority.-(1)...

(2) Persons appointed to the Service in accordance with these rules shall count seniority from the date of regular appointment against a post in the Service subject to the following conditions, namely:-

(a) persons selected for **initial appointment** on the basis of the same competitive examination shall on appointment reckon seniority inter se in accordance with the merit position obtained in that examination;

(b) officers of the **Armed Forces** selected for appointment to a cadre post on regular basis in a batch shall on appointment retain their seniority inter se:

Provided that officers of the Armed Forces appointed in basic Grade 17 in a year shall be treated as senior to probationers appointed in the same year on the basis of the competitive examination held by Commission.

(c) members of the **police cadre of a particular Province** selected in a year shall on appointment to the Service take seniority inter se as in the Provincial cadre and in keeping with that sequence, each such member shall reckon his date of regular appointment to the Service from the day the respective vacancy arose in the senior cadre posts reserved in that Province for such officers as specified in the schedule:

Provided that, if the date of regular appointment of officers of two or more Provinces be the same, their seniority inter se shall be determined on the basis of their date of regular appointment to the post of Superintendent of Police;

(d) officers selected for promotion in the same batch shall on promotion retain their seniority as in the lower post; and

(e) *the general principles of seniority set out in the Establishment Division O.M. No. 1/16/69-D. II dated the 31st December, 1970, shall apply in matters not covered by these rules."

12. Mr. Hamid Khan, learned Sr. ASC had canvassed that the seniority of encadred police officers would fall under Section 8(4) of the Act as it amounts to promotion in that the encadrement would bring about better prospects in the terms and conditions of service including brighter chances of promotion. This argument has been

successfully countered by Mr. Khalid Javed, learned ASC by referring to Section 9 of the Act, 1973 which uses the term promotion to mean movement to a higher post for the time being reserved under the rules for departmental promotion in the service or cadre to which he belongs. Thus promotion would mean moving up to a higher post whereas the Provincial police officers are encadred in the same grade in the PSP as they had been in the Provincial services. We also do not find ourselves in agreement with Mr. Khalid Javed's contention that encadrement of police officers amounts to initial appointment within the meaning of Section 8(3) of the Act, 1973 as Rules 5 and 7 of the Rules, 1985 reproduced above show that for the purpose of determination of seniority initial appointees are those selected through competitive examination by the Federal Public Service Commission. For the present case the relevant provision is subsection 2 of Section 8 of the Act, 1973 which provides that the inter se seniority of civil servants shall be determined in the manner as may be "prescribed" by rules framed under Section 25 of the Act, 1973. The Civil Servants (Seniority) Rules, 1993 by clause (i) of sub-rule 2 of Rule 1 expressly exclude civil servants governed under the Police Service of Pakistan (Composition, Cadre and Seniority) Rules, 1985. Therefore, the PSP is regulated by its own rules, namely, the Rules, 1985.

13. It is common ground between the appellants and the respondents that Rule 11(2)(c) is not in conflict with either subsection 2, subsection 3 or for that matter subsection 4 of Section 8 of the Act, 1973. The Rules, 1985 provide 3 modes of appointments to the PSP: initial appointment (Rule 5), appointment of officer of the Armed Forces (Rule 6) and appointment of members of the Provincial Police

(Rule 7). The seniority amongst the police officers is regulated by Rule 11. Clause 'a' of sub-rule 2 of Rule 11 provides for seniority between the officers inducted into the Police Service of Pakistan through initial appointment. Clause 'b' regulates the seniority of those appointed in the Police Service of Pakistan from the Armed Forces, whereas clause 'c' deals with the seniority of the police official encadred from the Provinces. The said Rules do not make any provision for determining seniority in between the various groups except to a limited extent under proviso to clause 'b', between initial appointees and the officers coming from the Armed Forces appointed in the same year; that the latter shall rank senior to those appointed through the process of induction through initial appointment. However, there is no provision for regulating seniority between initial appointees and those encadred from the Provinces. Rule 11 therefore only provides criteria for determining seniority within each group. Rule 11(2)(c) is confined to determination of seniority amongst the encadred police officers. Thus, where a question of seniority arises either between those coming from the same Province or between officers encadred from different Provinces the same will be determined in accordance with Rule 11(2)(c). The said rule is thus to be restricted only to the determination of seniority in the encadred group and cannot be made applicable for determining their seniority vis-à-vis the other two groups. When it comes to deciding seniority between members of different groups the relevant date would be that of their regular appointment. For the purposes of determination of inter se seniority encadred provincial police officers can not be considered initial appointees in view of the clear mode of appointment for each of the three groups stated in Rules 5, 6 and 7 where 'initial

appointment' is confined to those appointed against a cadre post through competitive examination held by the Federal Public Service Commission. We therefore find no conflict of Rule 11 (2) (c) with any provision of Section 8 of the Act, 1973 and the two can exist in harmony.

14. Another aspect of the case is that Rule 11(2)(c) only provides for determination of seniority and not appointment. The appointments in the encadred group are made under Rule 7 which states that "Members of the Police cadre of a Province shall be appointed to the Service on the basis of selection made on the recommendation of the Governor". Had the intention of the legislation been to make provision for retrospective appointment of such officers from the date on which the vacancy arose in a Province it would have been specifically mentioned in Rule 7. The use of the words "shall be appointed to the service" indicates that the appointment is to be with prospective effect and not retrospective effect. The settled principle is that appointments are always prospective in nature notwithstanding a vacancy occurring earlier. This has been clearly held by this Court in the case of **Khushi Muhammad** (ibid) where it was held that "it would be against all notions of natural justice that persons who join service in a grade first should be relegated to a junior position as against those who join later, merely because they fill vacancies which were deemed to be reserved for them. The ration of 50:50 between the direct recruits and the departmental promotees merely related to the policy of their recruitment to the grade and is not to be extended to the fixation of their seniority or their confirmation *inter se*." The appointment of the encadred police officers from the Provinces is to be made with prospective effect and retrospective effect can be given

to such appointments only for the limited purpose of determining their own inter-se seniority in accordance with Rule 11(2)(c) of the Rules, 1985.

15. In view of the above the notification dated 11.12.2007 appointing the police officers from the Province of K.P.K. w.e.f. 21.10.1997 retrospectively was in violation of Rule 7 of the Rules, 1985. Similarly, the High Court of Sindh had erred in directing retrospective encadrement of Provincial police officers in PSP. These are the reasons for our short order of the same date which reads:-

“For reasons to be recorded separately, Civil Appeals No.1122 & 1123 of 2011 and Civil Appeal No. 1343 of 2014 are dismissed, whereas Criminal Appeal No. 436 of 2011 and Civil Appeal No. 431 of 2013 are allowed. The impugned judgments/orders are set aside.”

Chief Justice

Judge

Judge

Islamabad
December 15, 2014
Safdar Shirazi/*

“NOT APPROVED FOR REPORTING”