

Supreme Court of India

M.S.Sandhu & Anr.Etc.Etc vs State Of Punjab & Ors.Etc.Etc on 7 May, 1948

Author: .....J.

Bench: Surinder Singh Nijjar, A.K. Sikri

[REPORTABLE]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS...5397-5406/2014

(arising out of S.L.P.(Civil) Nos.36319-36328/2009)

M.S.Sandhu & Anr. Etc.

.....Appellants

Vs.

State of Punjab & Ors. Etc.

.....Respondents

WITH

C.A.Nos.5407-5409/2014 @ SLP(Civil) Nos.36330-36332/2009

C.A. Nos.5413-5422/2014 @ SLP(civil) Nos.36334-36343/2009

C.A.Nos.5410-5412/2014 @ SLP(Civil) Nos.36344-36346/2009

C.A.Nos.5439-5441/2014 @ SLP(civil) Nos.36347-36349/2009

C.A.Nos.5426-5428/2014 @ SLP(Civil) Nos.36350-36352/2009

C.A. Nos.5429-5438/2014 @ SLP(Civil) Nos. 36353-36362/2009

C.A. Nos.5423-5425/2014 @ SLP(Civil) Nos. 36363-36365/2009

## J U D G M E N T

A.K.SIKRI,J.

1. Leave granted.

2. The perennial dispute of seniority between the direct recruits and promotees, that keeps showing its fang time and again in one form or the other, has surfaced in these batch of appeals as well. Having regard to the nature of the dispute, we deem it proper to narrate the facts sequentially and while doing so, we will also be stating the respective positions which the parties to this lis have taken. In this manner by the time statement of facts is over, we shall have crystallized the issues as well, which need to be answered.

3. Genesis of the dispute lies in the Punjab Police Service Rules 1959 (hereinafter referred to as “1959 Rules”) and the origin can be traced to the judgment of this Court in the case of Paramjit Singh & Ors. vs. Ram Rakha 1979 (3) SCC 478. The dispute before us relates to seniority in the cadre of Deputy Superintendent of Police (DSP) between the direct recruits and promotees in these proceedings, which was the subject matter of the aforesaid decision as well. However, before discussing the nature of dispute we would like to take stock of the relevant provisions of 1959 Rules.

4. 1959 Rules are framed by the Governor of Punjab in exercise of powers vested by the proviso to Article 309 of the Constitution. Rule 2 which is definition clause defines “Service to mean the Punjab Police Service Rule 2

(f)”. As per Rule 3 the Service shall comprise of the posts specified in Appendix ‘A’ to these Rules which shows 62 posts in the cadre of DSP. Method of recruitment is stipulated in Rule 6 as per which 80% posts are to be filled by promotion from the rank of Inspectors and 20% by direct recruitment. Rule 8 provides that both promotees and direct recruits would be on probation for a period of two years and in case of promotees, the Government may by special order in each case permit period of officiating appointment to the Service to count towards the period of probation. This rule also empowers the Government to extend the period of probation by not more than one year, if it deems fit. Rule 10, which is the most crucial provision and would remain fulcrum of the discussion hereinafter, provides for fixation of seniority and reads as under:

“SENIORITY OF MEMBERS OF SERVICE :-

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

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

(i) a member who is appointed to the Service by promotion shall be senior to the members appointed otherwise;

(ii) in the case of members who were appointed by direct appointment, the seniority shall be determined in accordance with their position in the competitive examination;

(iii) in the case of members who were appointed to the service by promotion, the seniority shall be determined in accordance with the date of their entry in position list ‘G’ .” As is clear from the above, date of confirmation in Service is the relevant date and determinative factor for assigning seniority.

5. This very rule of seniority in a dispute between direct recruits and promotees, came up for consideration before this Court in Paramjit Singh’s case. Respondents 1 and 2 in the said case, who were promotees to the cadre of DSPs of February 1961 and January 1961 respectively, had filed the Writ Petition in the High Court of Punjab and Haryana, at Chandigarh praying for a direction to confirm them in the Service. Apart from impleading State functionaries, six other persons who were

direct recruits were also impleaded as respondents. These direct recruits were appointed as DSPs between May 1961 and May 1965. The grievance of the said two promotees was that quota rule of 80% by promotion and 20% by direct recruitment was not adhered to at the time of confirmation in the Service, and therefore, even though they were members of the Service since a period earlier to the said direct recruits, they were not confirmed though the latter were confirmed and, as a consequence, were made senior to these promotees, by virtue of Rule 10. On these premise, failure to confirm them in the post available to them was challenged as breach of the 1959 Rules and also in violation of Art.16 of the Constitution. The contention of the Government as well as the direct recruits was that quota applies at the stage of initial recruitment and not at the time of confirmation and there was no allegation that the quota rule was violated at the time of initial recruitment. It was also argued that no one can claim to be confirmed as a matter of right. Further, the said promotees were on officiating basis against temporary posts and therefore for want of permanent posts, they could not be confirmed till substantive vacancies in the permanent strength of the cadre were available. The argument of the promotees was that if seniority is to be reckoned from the date of confirmation in the service, confirmation must be made available to the recruits from both the sources, namely promotees and direct recruits. It was argued that if the direct recruits are confirmed or deemed confirmed on satisfactory completion of probation and at the same time the cases of promotees for confirmation are not considered, it would put them in a serious disadvantage in so far as further promotions is concerned, viz. nomination to Indian Police Service. Seniority-cum-merit being the criteria and the basic cadre being the cadre of DSPs from nomination is to be made, their cases would not come up for consideration in the absence of confirmation. On consideration of the entire matter, the Court held that as the determinative date for fixing the seniority is the date of confirmation, quota rule will have to be observed not only at the stage of recruitment but at the stage of confirmation as well. Else, it would result in discrimination to the promotees and would impinge upon their seniority in the Service. The Court chose to give this interpretation as according to it, this was the only way out to save Rule 10 from the vice of arbitrariness. It is clear from the following discussion:

“Now, if the other view is taken that the quota rule would apply both at the time of recruitment and at the time of confirmation, Rule 10 which provides for seniority according to the date of confirmation would certainly be saved from the vice of unreasonableness. Is such a construction possible? One need not stretch the language to bring about the desired result but in this case upon a harmonious reading of Rules 3,6,8 and 10, the conclusion is inescapable that quota rule is operating both at the time of initial recruitment and at the time of confirmation. If the rule of seniority were one otherwise than according to date of confirmation it would not have become necessary to apply the quota rule at the stage of confirmation but in this case the quota rule is linked up with the seniority rule and unless the quota rule is strictly observed in practice it will be difficult to hold that the seniority rule is not unreasonable and does not offend Art.16(see S.G.Jaisinghani's case at pp.717 and 718). Quota rule is linked up with seniority rule because, not the date of entry in service determines the seniority but the date of confirmation determines seniority and, therefore, quota rule is inextricably intertwined with the seniority rule and any delinking would render the seniority rule wholly unreasonable. And other view would

lead to the most undesirable result wholly unintended by the framers of the rule. It must be remembered that after recruitment, members of the service, though drawn from two different sources – direct recruits and promotees – constitute a single integrated cadre. They discharge identical functions, bear similar responsibilities and acquire an equal amount of experience in the respective assignments. In this background in S.B.Patwardhan's case this Court held that if the promotees are treated with an evil eye and an unequal hand in the matter of seniority as was done under Rule 8(iii), the rule would suffer from the vice of unreasonableness and would offend Art.16 and it was actually rule is applied at the stage of initial recruitment and wholly ignored at the time of confirmation because in that event while direct recruits will get confirmation automatically, the promotees would hang out for years as has happened in the case of respondents 1 and 2 and if they are not confirmed they would never get seniority and their chances of being considered for promotion to the higher post would be wholly jeopardized. To avoid this utterly unconscionable outcome the construction we have put on Rule 8 would be in consonance with justice and reason."

6. After solving the dispute in the aforesaid manner, the Court also made certain other observations in para 14. We would refer to that para at the relevant stage inasmuch as it is the contention of the appellants before us that observations made in the said para are legally erroneous which position is now acknowledged by this Court in the Constitution Bench judgment in the case of B.S.Yadav vs. U.O.I. 1980 Suppl. SCC 524.

7. To put it succinctly, in Paramjit Singh's case, this Court held that rule of quota shall apply at the time of confirmation also and confirmation was to be done on the basis of vacancies. It would mean that even at the time of confirmation quota of 4:1 between the promotees and direct recruits would be applicable.

8. Implementing this judgment, the State Government prepared seniority list dated 4.6.1981 thereby granting dates of confirmation from 1961 to 1981. This led to filing of an application for clarification in Paramjit Singh's case by the appellants in the said case. Dismissing the application the Court made the following categorical remarks:

"There was no ambiguity in the Court's earlier judgment. What the Court meant was that quota should be co-related to the vacancies which are to be filled in. Who retired and from what source he was recruited may not be very relevant because retirement from service may not follow the quota rule. A roster had to be introduced which was to continue while giving confirmation. Introduction of roster only postulates ascertainment of available number of vacancies and proceeding to make recruitment keeping in view of the quota. If recruitment is strictly made according to quota there will be no difficulty in applying the very rule of quota even while giving confirmation. It was, thus, maintained that since the quota in the present case is 4 : 1 that, four promotes to one direct recruit, therefore, whenever vacancies occur, the appointing authority has first to recruit four promotes irrespective of the factors or circumstances causing the vacancies and as soon as four promotes are recruited to

bring in a direct recruit.”

9. Having noticed the ratio of the case of Paramjit Singh (supra), we now proceed to take stock of the factual details of the dispute in these appeals. A number of posts of the DSPs were created in the year 1989 and the State Government was not finding suitable persons for appointment to the said posts. The State Government accepted the proposal of the Director General of Police, Punjab and relaxed the condition of experience from 6 years to 4 years as Inspector for promotion to the post of DSP. Thereafter, between November, 1989 to December 1989, 85 Inspectors who had more than 4 years of service but less than 6 years, were promoted to the rank of DSP. The Punjab Public Service Commission, ultimately in the year 1998, granted approval to the aforesaid appointments and the promotes, DSPs of 1989 batch were brought on list ‘G’ from the date of their promotion.

10. A Writ Petition being CWP No.17397 of 1999 was filed by direct recruits of 1990 and 1991 thereby challenging the action of the State Government in bringing the promoted DSPs of 1989 batch on list ‘G’ from the date of their promotion as DSPs in the High Court. It was the grievance of the writ petitioners/direct recruits in the said writ petition that the promotees who were appointed as DSPs from the year 1987 to 1989 were promoted in excess of their quota of 80%.

11. Thereafter, the State Government vide order dated 10.10.2000 confirmed the promotees DSPs of 1989 batch. The aforesaid action of confirmation of 1989 batch DSPs was challenged by one Tulsi Ram by way of filing CWP No.16419 of 2000 in the High Court. The question which arose in the said writ petition for the determination by the High Court was whether the promotion of the promotees officers of 1989 batch to the post of DSP was de hors the Rules and whether they could be given the benefit of that service for the purpose of their seniority.

12. The Division Bench of the High Court vide judgment dated 26.4.2001 dismissed the writ petition filed by Tulsi Ram holding that the promotee officers are entitled to the benefit of their temporary service which they rendered as DSPs and that service has to count towards their seniority. The said judgment is reported in 2002 (5) SLR 409. The Special Leave Petition against the said judgment was dismissed by this Court and in view of the dismissal of the Special Leave Petition the aforesaid judgment became final so far as the promotees DSPs of 1989 batch are concerned.

13. Thereafter, the State Government finalized the seniority list of the members of the Punjab Police Service vide order dated 7.7.2005. One of the writ petitioners in W.P.No.17397 of 1999 namely Gurpreet Singh Bhuller filed the Civil Writ Petition No.12206 of 2005 challenging the aforesaid seniority list and also prayed that the seniority list of the members of the Punjab Police Service may be prepared in accordance with the judgment of this Court in Paramjit Singh’s case.

14. The High Court, vide impugned judgment dated 10.4.2008, has allowed the Civil Writ Petition No.12206 of 2005 and quashed the seniority list dated 7.7.2005 thereby directing the State Government to prepare the seniority list in accordance with the judgment of this Court in Paramjit Singh’s case. It is this judgment which is assailed before us.

15. Some more factual details need a mention at this stage. When W.P. No.16419/2000 filed by direct recruits was dismissed by the High Court on 26.4.2001 and SLP there against was also dismissed, the State Government initially took the position based on the aforesaid judgment, viz. that the requirement of 6 years service for promotion to the post of DSP which was relaxed to 4 years was approved and confirmed held valid therefore seniority would be given from 1988. However, the Government, thereafter, chose to constitute a Committee to go into the entire gamut of these issues. The Committee went into the length & breadth of all the relevant issues, including the earlier judgment of this Court in the case of Paramjit Singh and recommended that judgment in Paramjit Singh's case should be followed. On the basis of the said recommendation, the State Government passed the orders dated 7.7.2005 accepting the same. Interestingly, in the meantime, many promotees DSPs who were brought on list 'G', had been inducted into IPS Service. However, the Government decided not to interfere with the said career progression of those DSPs and they are left untouched.

16. These developments and issues were debated before the High Court which has, vide impugned judgment dated 10.4.2008, held that the decision of the Government following the dicta in Paramjit Singh's case is apt & justified. It has been directed that this judgment be implemented and consequential change in IPS be also made. However, those promotees DSPs who had already been inducted as IPS and were not impleaded in the parties in the said case filed an application stating that they were adversely affected. On that application the High Court passed the order deleting the direction of making consequential changes in the IPS. The promotees also filed Review Petition seeking review of the said judgment. This petition has been dismissed by the High Court vide order dated 24.4.2009. Before us, in all these appeals, promotees DSPs have come forward challenging the decision of the High Court in the Writ Petition as well as in the Review Petition.

17. Two more developments which need to be mentioned at this stage are:

(1) The State Government has already circulated seniority list on 15.12.2009 on the basis of direction given in the judgment of the High Court i.e. after the filing of the SLPs.

(2) The earlier 1959 Rules have been repealed with the promulgation of the Punjab Civil Services General Conditions of Service Rules, 1994. Indubitably, Rule 20 of these Rules categorically mentions that only common permanent post would constitute the cadre and not the temporary ones. Vital change is made in the rule fixing seniority. Now, from the date of framing of these Rules dated 4.9.1994, length of service is adopted as the criteria for fixing the seniority and thereby giving go bye to the earlier criteria based on the date of confirmation.

18. Mr. P.S. Patwalia and Mr. Nidesh Gupta, Senior Advocates appeared for the appellants in these cases and advanced detail arguments in support of promotees' case. Opening the front, Mr. Patwalia, at the outset drew the attention of this Court to the subsequent case of B.S.Yadav vs. U.O.I. (supra) and submitted that the Constitution Bench in that case has laid down principle of law in unequivocal terms that rule of rotation cannot be read into the rule of seniority. He, thus, submitted that observations of the Division Bench in Paramjit Singh's case in para 14 that rule of quota shall apply at the time of confirmation also did not remain valid any longer. In this endeavour, Mr.

Patwalia specifically referred to para 35 of B.S.Yadav judgment, wherein the Constitution Bench framed two issues that needed to be resolved. We reproduce issue No.2 as framed as first issue does not concern us:

“(2) whether the High Court, basing itself on the rule of quota, is justified in applying the rule of rotation at the time of confirmation of promotees and direct recruits as District and Sessions Judges.”

19. He emphasized that question No.2 framed in the said case arose directly for consideration in the present set of appeals also which was answered by the Constitution Bench in para 53 onwards. In para 53, the Court noticed that the main thrust of the argument of the promotees was that method of rotation cannot apply at the time of confirmation as it would be violative of their fundamental rights under Art.14 and 16 of the Constitution. This is answered in subsequent paras. Our purpose would be served in reproducing discussion contained in paras 65 to 68 which are as follows:

“65. In the light of these contentions, the question for determination is whether the method of confirmation adopted by the High Court by the rotation of promotees and direct recruits in the ratio of 2 : 1 is justified on a proper interpretation of the relevant rules. Is the operation of Rule 8 confined to the stage of initial recruitment to the Service by promotion and by direct appointment? Or, can that rule be superimposed on Rules 10 and 12 so as to justify its application at the stage of confirmation also? These are the questions which are posed for our consideration.

66. Rule 8, as its very heading shows, provides for a distinct condition of service with reference to a specific point of time, namely : “Recruitment to Service”. The words “to be filled up by direct recruitment” which occur in the proviso to sub-rule (2) of Rule 8 also point in the direction that the operation of this sub- rule is confined to the stage of initial recruitment to the Service either by promotion or by direct appointment from the Bar. Rules 10, 11 and 12 provide for the regulation of probation, reversion of promoted officers and seniority, which conditions of service are distinct and separate from “Recruitment to Service” dealt with in Rule 8. In other words, Rule 8 only fixes the respective quota of recruits from the two sources specified in clauses (i) and (ii) of sub-rule (1). Such reservation is intended to be made at the stage of initial appointments only, by reserving 2/3rd of the total number of posts in the cadre for promotees and 1/3rd for direct recruits. It seems to us evident that a post which falls vacant in the quota of promotees cannot be filled by the confirmation of a direct recruit therein nor indeed can a promotee be confirmed in a post which is within the quota of direct recruits.

67. If this be the true construction of Rule 8, the method of confirmation by rotation of direct recruits and promotees, regardless of whether the vacancy assigned to the particular officer falls within the quota of the class to which he belongs will be in contravention of that rule. It was held by this Court in Punjab & Haryana High Court v. State of Haryana that “appointment” is not a continuous process, that the process

of appointment is complete as soon as a person is initially recruited to the service either by promotion or by direct recruitment and that confirmation is not a part of the process of appointment. The necessity of treating “recruitment to the Service” and “confirmation” as two distinct and separate matters can be appreciated if only it is realised that “recruitment to the Service” is a matter which falls within the power of the Governor under Article 233 while “confirmation” is a matter of “control” vesting in the High Court under Article 235. The superimposition of Rule 8, which fixes the quota at the stage of recruitment, on the rules relating to confirmation and seniority is therefore contrary to the basic constitutional concepts governing judicial service.

68. This apart, the application of rota system at the stage of confirmation is beset with practical difficulties. For example, if vacancies in the quota of direct recruits cannot be filled for 2 or 3 years for the not uncommon reason that direct recruits are not available, and during that period several vacancies occur in the quota of promotees who have been officiating continuously for two or three years, can the postponement of the confirmation of such promotees against vacant posts in their quota, until the direct recruits are appointed and become eligible for confirmation on completing the prescribed period of probation, be justified on any reasonable ground? Is it proper and fair to defer the confirmation of the promotees merely because direct recruits are not available at that point of time so as to enable the High Court to make confirmations from both the sources by rotation? This, precisely, is what the High Court has done by the impugned notification dated August 25, 1976 and that is the reason why it has not confirmed ten more promotees in Punjab, for whom vacancies are available within the quota of promotees.”

20. It is noteworthy that judgment in Paramjit Singh (supra) was specifically noticed and discussed by the Constitution Bench in para 71 to which we shall advert later while undertaking our analysis as the outcome of these proceedings depends on the true impact of the discussion contained in that para.

21. The Constitution Bench, thereafter, discussed the judgment of the High Court which was impugned in the B.S.Yadav, and held that the High Court was not justified in applying the rule of rotation at the time of confirmation of the members of the superior judicial service. For the sake of clarity, we would like to reproduce para 72 and 73 containing such a ratio:

“72. In our opinion, therefore, the High Court was not justified in applying the rule of rotation at the time of confirmation of the members of the Superior Judicial Service who were appointed to that Service by promotion and by direct recruitment. In fact, we would like to remind that a special Bench of five learned Judges of the High Court of Punjab & Haryana had itself held on December 13, 1977 in N.S. Rao v. State of Haryana that the rule of rota cannot be read into the rule of quota prescribed by Rule 8 of the Punjab Superior Judicial Service Rules. It was observed by the Special Bench in para 14 of its judgment that a plain reading of Rule 8 shows that the intention of the framers of the rules was only to provide for quota and that no indication at all has



been given that the rotational system also had to be followed at the time of confirmation or for the purpose of fixing seniority. In coming to this conclusion, the High Court placed reliance on the decisions of this Court in A.K. Subraman and N.K. Chauhan to which we have already referred. The High Court expressed its conclusion in para 22 of the judgment by saying that Rules 8 and 12 are independent of each other, that the rotational system cannot impliedly be read into the quota rule prescribed by Rule 8 and that the members of the Superior Judicial Service are entitled to claim seniority, strictly in accordance with the provisions of Rule 12. We are unable to understand how, in the discharge of its administrative functions, the High Court could have failed to follow a judgment of its own special Bench consisting of five learned Judges. We are of the opinion that the aforesaid judgment has taken a correct view of the matter on a combined reading of Rules 8 and 12.

73. We would like to say at the cost of repetition that we are not dealing with the abstract question as to whether the rule of quota necessarily excludes the rule of rotation. We are only concerned to point out that it is not correct to say that the rule of rota must necessarily be read into the rule of quota. We have to decide in these cases the narrow question as to whether, on a true interpretation of Rules 8 and 12 of the Superior Judicial Service Rules of Punjab and Haryana, the quota rule prescribed by Rule 8 justifies, without more, its extension at the time of confirmation so that, after every two promotees are confirmed one direct recruit has to be confirmed and until that is done, promotees cannot be confirmed even if vacancies are available within their quota in which they can be confirmed. We are of the opinion, on a proper interpretation of the rules, that promotees are entitled to be confirmed in the vacancies which are available within their quota of 2/3rd, whether or not 1/3rd of the vacancies are occupied by confirmed direct recruits. And similarly, direct recruits are entitled to be confirmed in vacancies which are available within their quota of 1/3rd, whether or not 2/3rd of the vacancies are occupied by confirmed promotees. What we find lacking in justification is the refusal of the High Court to confirm the promotees even if vacancies are available in their quota in which they can be confirmed merely because, by doing so, more than two promotees may have to be confirmed at one time, without the confirmation of a proportionate number of direct recruits. The fairness which Articles 14 and 16 postulate is that if a promotee is otherwise fit for confirmation and a vacancy falling within the quota of promotees is available in which he can be confirmed, his confirmation ought not to be postponed until a direct recruit, whether yet appointed or not, completes his period of probation and thereupon becomes eligible for confirmation. The adoption of this principle in the matter of confirmation, will not, in practice, give any undue advantage to the promotees. The facts and figures supplied by the High Court in Annexure 'R-4' to its counter-affidavit in Writ Petition No. 266 of 1979 show that vacancies in the quota of promotees do not generally become available before the promotees have put in two to five years' service as officiating District and Sessions Judges."

22. Based on the aforesaid dicta in B.S.Yadav, the learned senior counsel paraphrased his submissions as follows:

(1) Judgment in Paramjit Singh's case was never implemented by the Government when it was pronounced. This was clear from the fact that the appellants promotees who were promoted in the November/December 1989 were promoted in relaxation of the rule providing for length of service as eligibility condition and their names were also brought in the list "G". Many persons of 1989 Batch were even further inducted into the IPS. This list was even approved, though belatedly in the year 1998 and that was the reason for the confirmation orders coming in the year 2000. However, that was much before the direct recruits were confirmed. In case, quota is applied at the stage of confirmation also, it would seriously affect these promotees who are otherwise much senior to the direct recruits.

(2) In a situation like this, the Government rightly felt that the judgment in Paramjit's Singh case was not capable of implementation. This was even the stand of the Government in the Writ Petition No.1739/1999 filed before the High Court by the direct recruits. A specific counter affidavit was filed stating that the promotees did not exceed their quota and their seniority was rightly determined. However, the Government turned turtle thereafter and took a 'U' turn.

(3) In any case within one year of the judgment in Parmajit Singh, which was rendered in the year 1979 Constitution Bench in B.S.Yadav in the year 1980, strengthened the legal position which impliedly overruled Paramjit Singh's case.

(4) If at all, judgment in Paramjit Singh is to be confined to its own facts without treating it as it precedent.

(5) Fault is found with the impugned judgment of the High Court which decided to follow Paramjit Singh's case on the ground that when this case was decided by the High Court in the year 2008, the High Court had before it Constitution Bench in B.S.Yadav and the High Court was supposed to follow the law laid down therein which had binding force, rather than choosing to follow another judgment which had lost its sheen.

(6) The judgment in Paramjit Singh, if followed now, is going to create anomalous situation.

23. Mr. Nidesh Gupta while adopting the aforesaid submissions, further pointed out that rule of 80:20 for promotees and direct recruits was only a quota rule and not a rota rule. In so far as quota is concerned that was kept within bounds while making promotions of the promotees to DSP Cadre. He argued that in such a scenario, the subsequent judgment of the Supreme Court in R.K.Sabharwal vs. U.O.I. (1995) 2 SCC 745 would also be applicable which laid down rule of promotion on post basis and not vacancy basis. He further submitted that the judgment in B.S.Yadav was followed in Suraj Parkash Gupta vs. State of J & K. 2000 (7) SCC 561 wherein the Court has held as under:

"41. The direct recruits contend that rota is to be implied or read into the "quota" rule. It is also argued that there has been a previous practice of applying a rota and

that this fact stands conceded in the counter-affidavit filed by the Government in SWP No. 824-B of 1994. Reliance is also placed on the Cabinet note of December 1997 where the view of the Law Department that quota-rota rule is to be applied, is referred to.” He also referred to the judgment of G.S.Lamba & Ors. v. U.O.I. & Ors.1985 (2) SCC 604 and relied upon paras 17, 23 and 25 which are as under:

“17. It is too late in the day to dispute that it would be open to the Government, while constituting a service, to provide for recruitment to it from more than one source and also to reserve quota for each source. As a logical corollary, it would equally be open to the Government to provide for seniority rule related to rotation of vacancies. Shortly this is called quota rule of recruitment and rota rule of seniority interlinking them. So far there is no controversy. The contention of the petitioners is that in implementing this rule there has been such large scale deviation that it results in denial of equality to the members of the service similarly circumstanced. It will be presently demonstrably established that where rota rule of seniority is interlinked with quota rule of recruitment, and if the latter is unreasonably departed from and breaks down under its own weight, it would be unfair and unjust to give effect to the rota rule of seniority. To some extent this is not res integra. Though some advance has been made on this proposition in later decisions.

23. Now turning to the impugned seniority lists, what the Union of India appears to have done is that it has applied the quota and rotated the vacancies but where candidates from a particular source were not available, the vacancies were deemed to be kept open (some kind of carry forward) to be filled in by later recruitment from the same source years after the vacancy occurred, but in the meantime the vacancy was filled in presumably by excess recruitment from the other sources. That is clearly either non-implementation of the quota rule or malfunctioning of the quota rule and yet the rota rule is adhered to which is both impermissible under the Rules as well as unjust, unfair and inequitable being violative of Articles 14 and 16.

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

24. Mr. Rajeev Dhawan, learned senior counsel appearing for the private respondents in some of these appeals, submitted that the central issue was as to whether

judgment in Paramjit Singh is per incuriam and had not to be followed at all. His submission was that it was not so as the judgment pertains to the same 1959 Rules and same Service Cadre i.e. DSP. Therefore, there was no reason to depart from the ratio in Paramjit Singh which had the direct bearing. He argued that in Paramjit this Court had emphasized that there were specific reasons, rationale and justification for attaching rota to quota because the Court was dealing with exceptional situation and found that linkage of the two as the only just solution. At that time, this was done to give benefit to the promotees. Now, these promotees cannot turn round and the ratio in Paramjit Singh, when the fact situation does not suit the application of that rule. Mr. Dhawan also referred to certain portion of the judgment and B.S.Yadav argued that the said judgment is based on the interpretation which was to be given to Rule 8 of Punjab Superior Judicial Service Rules, 1963. He further stressed that when Paramjit Singh is specifically taken note in B.S.Yadav and not overruled, it would mean that the said judgment is in fact upheld by the Constitution Bench. It was also argued that the promotees were not even appointed to the substantive vacancies and therefore cannot take advantage of their so called continuous service rendered in temporary post of DSPs.

He, concluding his argument with emphatic plea that the peculiar situation which prevailed qua this particular Service rightly led the High Court to follow the dicta of Paramjit Singh giving sufficient justifiable reasons in support.

25. Mr. Gurminder Singh, Sr. Advocate, appeared for some other private respondents in these appeals. He also endeavoured to bring home the different situation under which Paramjit Singh and B.S.Yadav cases were decided. His submission was that even if Paramjit Singh was to be confined to its own facts, the solution therein was valid in so far as this very Service is concerned. As the present case also related to same Rules and same Service, there was no illegality in following Paramjit Singh. He further submitted that the reason for bunching, which had taken place in the instant case, was direct recruits were not appointed at time and the vacancies remained unfilled for long period. In fact between 1971 and 1985 there was no recruitment under this quota. He also mentioned that Rules were again amended in the year 2010 i.e. w.e.f. 18.8.2010. With the amendment of Rule 10, now length of service is the criteria. He referred to orders of confirmation dated 19.12.2011 and submitted that this was the most equitable solution which could be achieved by the Government. Therefore, there was no reason to interfere with the exercise which had been accomplished on the basis of the Expert Committee's report and to which the High Court in given its imprimatur in the impugned judgment.

26. Mr. Khanna who appeared on behalf of the State Government submitted that the stand of the Government was very clear, namely, quota was maintained on the cadre strength. He also submitted that the State had no other alternative except to follow dicta in Paramjit Singh which gave interpretation to Rule 10 and that was binding on the State Government.

27. From what we have noted above, including the submissions of learned counsel for the various parties, it becomes clear that the entire issue hinges primarily upon an answer to the question as to

whether dicta laid down in Paramjit Singh's case be followed or we need to deviate therefrom and follow the principle laid down in B.S.Yadav's case. All other issues and arguments raised would pale into insignificance once answer to this core issue becomes available. In fact upon decision on this central issue, answer to other peripheral issues would itself surface. Therefore, we proceed to address this issue in the first place.

28. We have carefully considered the submissions of the learned counsel for the parties on this aspect. As pointed out above, shorn off any niceties and nuances which have been projected before us, the core issue is as to whether judgment of this Court in Paramjit Singh's case was rightly followed by the High Court. The case of Paramjit Singh was concerned with same 1959 Rules pertaining to the officers of this very cadre, namely DSP Cadre. It was interpreting the rule in the context which had arisen before it. The Court was of the opinion that to save rule 10 from the vice of the arbitrariness and to avert the situation of striking down the same, it would be appropriate to interpret the said Rule 10 to mean that rule of quota shall apply not only at the time of appointment but at the time of confirmation also and confirmation was to be done on the basis of vacancies. This was achieved in the manner stated in para 14 of the said judgment which reads that:

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

29. The appellants' argument is that this principle is totally discarded by the subsequent Constitution Bench judgment in the case of B.S.Yadav wherein it is held that the rule of quota applicable at the stage of appointment/recruitment will have no applicability at the time of confirmation. Thus, on the one hand, we have the judgment in the case of Paramjit Singh which pertains to these very Rules and the ratio of this judgment is applied by the High Court and on the

other hand, we have the law laid down by the Constitution Bench in B.S.Yadav wherein the provisions of some other rules came up for interpretation.

30. According to us, in a matter like this, the approach of the High Court to follow the dicta in Paramjit Singh is most appropriate which pertains to the same Service and same Rules. That is the mandate of Article 141 of the Constitution. The High Court could depart only in a situation where it finds that the said judgment has been subsequently overruled, specifically or impliedly or it is per-incurium. Therefore, the moot question would be to examine as to whether B.S.Yadav overrules the judgment in Paramjit Singh.

31. Significantly, Paramjit Singh's case has been specifically taken note of and commented upon by the Constitution bench. Therefore, we are not faced with a situation where Paramjit Singh judgment has gone unnoticed. This judgment has been discussed by the Constitution Bench in para 71, as under:

“71. In Paramjit Singh Sandhu v. Ram Rakha it was held by this Court on a harmonious reading of Rules 3, 4, 6, 8, and 10 of the Punjab Police Rules, 1959 that the quota rule was operative both at the time of initial recruitment and at the time of confirmation. We would like to clarify that this case is not an authority for the proposition that whenever service rules provide for quota, the rule of rota must be read into the rule of quota. We are not laying down that the rules of quota and rota cannot coexist. Service rules may so provide or they may yield to such an interpretation. In that event, their validity may have to be tested in the total setting of facts. Therefore, whether the quota system has to be observed not only at the stage of initial recruitment but also at the stage of confirmation is not a matter of abstract law but will depend on the wording of the rules and the scheme of the rules under consideration. Any dogmatic assertion, one way or the other, is wrong to make. On a review of these authorities, all that we would like to say is that on a proper interpretation of the rules governing the Punjab and Haryana Superior Judicial Service, the rule of rota cannot be read into the rule of quota. In other words, the ratio of 2 : 1 shall have to be applied at the stage of recruitment but cannot, on the language of the relevant rules, be applied at the stage of confirmation.”

32. From the reading of the aforesaid extracted portion, it follows that the Court made it clear that it was not laying down that rule of quota and rota cannot go exist. Service rules, in a particular case may specifically provide the co-existence of quota and rota. There may also be a situation where service rules be interpreted as such. That is a very important comment made by the Constitution Bench after taking note of the ratio in Paramjit Singh's case. It is specifically noted how the Court on harmonious reading of Rules 3,4,6,8 and 10 of these 1959 Rules had come to the conclusion that quota rule was operative both at the time of initial appointment and at the time of confirmation. After taking note of this ratio on the harmonious interpretation of the Rules in question, rather than stating that such an interpretation was impermissible or wrongly given, the Constitution Bench clarifies that there may be circumstances where such an interpretation would be permissible and validity of the rules would be tested in the total setting of facts. That was precisely done by the

Bench in Paramjit Singh's case. Only conclusion which can be drawn from the reading of para 71 of the judgment is that the harmonious reading of the 1959 Rules done in that case was in fact approved, and by no stretch of reasoning, can it be inferred that it was overruled.

33. It needs to be highlighted at this stage that having regard to the overall circumstances and the factual position which prevailed while deciding Paramjit Singh's case, the Court held that in order to save Rule 10 from the vice of arbitrariness, the only interpretation which could be given was to hold that the quota rule would apply both at the time of recruitment and at the time of confirmation. Detailed reasons are given justifying the said line of action taken by the Court and that portion of the judgment has already been extracted. In the beginning, not only this, even when the Review Petition was filed the Court made it clear that there was no ambiguity in the judgment. It was also made clear that what the Court meant was that quota should be co-related to the vacancies which are to be filled in. Who retired and from what source he was recruited may not be very relevant because retirement from service may not follow the quota rule. A roster had to be introduced which was to continue while giving confirmation. Introduction of roster only postulates ascertainment of available number of vacancies and proceeding to make recruitment keeping in view of the quota.

34. It was argued by the learned counsel for the respondent that the language of the rules that interpreted in B.S.Yadav (supra) viz. the Punjab Judicial Service Rules 1963, are different from Punjab Police Rules 1959. It is not even necessary to go into this aspect minutely, inasmuch as from the above discussion it becomes clear that the judgment in Paramjit Singh is not overruled by B.S.Yadav either impliedly or specifically. It also cannot be said that Paramjit Singh's case is per incuriam nor was it argued. Once, we go by the ratio of that judgment, the seniority being dependent upon the date of confirmation made it necessary to introduce the roster by giving four vacancies to promotees and the five vacancy to the direct recruit and adhere to the same strictly to bring it in consonance with justice and reason.

35. The learned senior counsel appearing for the appellants have tried to argue that if the aforesaid rule is followed it would act to the prejudice of the appellants. The appellants are the promotees. It was at the instance of this very class viz. promotee officers in the same service who had questioned the validity of the Rule 10, this Court was provoked to decide that the quota rule had to be applied not only at the stage of initial recruitment, but also at the stage of confirmation. It is strange that when another set of promotees now feel that the aforesaid interpretation rendered in favour of their own class, is not conducive to them and the outcome is to their prejudice, they want the Court to take a 'U' turn. Such a situation cannot be countenanced as it would be anathema to the principle of doctrine of stare decisis. Moreover, once we find that the B.S.Yadav does not overrule Paramjit Singh and rather explains and approves that judgment, the High Court had no option but to follow Paramjit Singh, as well as the coordinate Bench of this Court.

36. Notwithstanding the above, it would be appropriate to point out that the argument of the appellants that the operation of the rotational principle in quota would lead to inequitable results was refuted by the respondents who submitted that by applying the principle as directed by this Court, the State Government has drawn out a seniority, the perusal of which shows that against the existing strength of the service of 450 there are 406 promotee officers as against 360 vacancies

following to their share @ 80% and 44 direct recruits as against 90 vacancies to their share @ 20%. The further appointment to the promotion to the IPS cadre is made solely on the basis of merit and the ratio of officers which make it to the IPS from the State Service cannot be taken as an indicator of any discrimination resulting by virtue of the 959 Rules. We find some substance in the aforesaid argument. Somewhat similar argument, as taken by the appellants before us, was commented upon by this Court in Maharashtra Vikrikar Karamchari Sangathan v. State of Maharashtra (2000) 2 SCC 552, at page 567:

“Lastly, it was contended on behalf of the appellants that some of the appellants have put in more than 17 years of service when a few of the direct recruits were either schooling and/or nor born in the cadre. If the appellants were to be pushed down, it would cause great hardship to them. We are unable to subscribe to this contention because if there is patent violation of the quota rule, the result must follow and the appellants who remained in the office for all these years cannot take the advantage of this situation. This submission is, therefore, devoid of any substance.”

37. The operation of the Rules may result in harsh consequences as far as appellants are concerned. But on the vagaries of such outcomes, the Court cannot keep on interpreting a rule differently. It is more especially when the promotees being in excess of their quota have enjoyed the fortuitous appointment beyond their quota of vacancies.

38. Likewise, argument of the appellants that the quota rule had broken down would not cut much ice. First of all, such an argument was not even raised/pleaded, nor any material was placed on record which shows that the adherence to the quota rule as possible leading to break down of the quota. Private respondents have made fervent plea that as a matter of record whenever State Government had endeavoured to make direct recruitments, vacancies had been duly filled with adequate number of candidates. Therefore, for want of any material no definite findings can be recorded on this aspect, more so, such a case was not pleaded before the High Court. May be, because of such situation recurring time and again either in favour of the promotees or in favour of the direct recruits, the Government has remedied the situation by amending the rules thereby bringing the rule of continuous length of service for determining the seniority. It is always open to the Government to take such steps for the benefit of all in the service and to ensure that the result is equitable. However, in the instant case, we do not find fault with the judgment of the High Court.

39. We, accordingly, hold that the approach of the High Court in following the dicta laid down in Paramjit Singh was perfectly justified. Finding no merit in these appeals, the same are hereby dismissed. No costs.

.....J.

(Surinder Singh Nijjar) .....J.

(A.K.Sikri) New Delhi, Dated: May 07, 2014