

(2018) 08 CAT CK 0077

In the Central Administrative Tribunal

Case No : Original Application No. 3507 Of 2017

Inspector (Exe) Surender Singh And Ors

APPELLANT

Vs

Lt. Governor, Delhi And Ors

RESPONDENT

Date of Decision : 24-08-2018

Acts Referred:

Delhi Police Act, 1978 — Section 5, 147
Himachal Pradesh And Andaman And Nicobar Islands Police Services Rules, 1965 —
Rule 5, 11, 12, 14, 17, 29
Delhi, Andaman And Nicobar Islands Police Service Rules, 2003 — Rule 7(2)(c)
Delhi Police (Promotion And Confirmation) Rules, 1980 — Rule 4, 5
Constitution Of India, 1950 — Article 309

Citation : (2018) 08 CAT CK 0077

Hon'ble Judges : V. Ajay Kumar, Nita Chowdhury, Member (A)

Bench : Division Bench

Advocate : Ajesh Luthra, Jasvinder Kaur, Amit Anand, Nilansh Gaur, Rohit Bhagat, R.K. Jain, Hemant Jain, Jasmit Singh

Final Decision : Dismissed

Judgement

Nita Chowdhury, Member (A)

1. The applicants have filed this OA seeking the following reliefs:-

"8.1 May quash and set aside PHQ Order dated 30.09.2016 in respect of Respondents No.4 to 11;

8.2 May direct the Respondents to prepare and integrated seniority list of Inspectors of only those cadre, which have sanctioned post of ACP (Entry Grade - DANIPS) maintaining the inter se seniority on the basis of length of service/date of appointment;

8.3 May direct Respondent No. 3 (MHA) to consider, appoint and promote only the eligible Inspectors from Delhi Police to the post of ACP (DANIPS) of the cadre/ ex-cadre/Technical having sanctioned strength for the post of ACP as

declared by the Respondent No.2;

8.4 May further direct the Respondents No. 1 & 2 to prepare a separate seniority list for Inspectors (Ministerial/Stenographers) as per rules for the purpose of further promotion in its own cadre without encroaching upon the posts meant for Inspector (exe.) Delhi Police.

8.5 May pass such other further orders/directions deem fit and proper in the facts of the case in favour of the applicant and against the Respondents.

2. Facts of the case are that the applicants are direct recruits of Delhi Police as they joined Delhi Police as Sub-Inspector (Executive) in the years 1990 to 1992 in terms of Delhi Police (Appointment & Recruitment Rules, 1980. The applicants secured promotion to the rank of Inspector in due course. A chart showing the details of appointment and promotions secured by the applicants is annexed as Annexure A-3).

2.1 It is the contention of the applicants that respondent nos.4 to 11 are presently in the substantive post of Inspectors in the Ministerial/Stenographer cadre of Delhi Police and holding the Look After Charge of the post of Assistant Commissioner of Police (ACP) by virtue of impugned order. A chart showing the details of appointment and promotions secured by the private respondents is annexed as Annexure A-4). The respondent nos.12 to 28 in the substantive post of Inspectors belong to Ministerial/Women Police Cadre and have been shown senior to the applicants in the Provisional Integrated Seniority list of Inspectors circulated by respondent no.2 vide O/o No.41294-393/CB-I/PHQ dated 14.07.2017 (Annexure A-5), even though the respondent nos.4 to 28 were recruited/promoted to the rank of Sub-Inspector in their respective cadres in the dates subsequent to the date of appointment of the applicants.

2.2 In the year 1997-98, Respondent No.2 prepared an integrated seniority list of Inspectors of Delhi Police for the purpose of promotion to the post of Assistant Commissioner of Police (ACP) (Entry grade DANIPS). The same was challenged by the then Inspectors (Executive) vide OA No.1454/1998 S.S. Yadav and others vs. Commissioner of Police and others) before this Tribunal, which was dismissed by this Tribunal holding that the long standing practice followed by the respondents to prepare integrated seniority list from 1972 is not contrary to any statutory provision of the Rules. Aggrieved by the said Order, the applicants therein have preferred a Writ Petition (Civil) No.7721/2001 before the Hon"ble Delhi High Court which was dismissed vide Order dated 24.1.2002 (Annexure A-6) leaving the contention of inter-se-seniority amongst the Inspectors open.

2.3 It is the contention of the applicants that the respondent nos.1 and 2 concealed the sanctioned cadre wise strength in the previous case, i.e., OA 1454/1998 and W.P.(C) No.7721/2001 (supra) inasmuch as there has been no amendment in the Delhi Police (Appointment & Recruitment) Rules, 1980 and Delhi Police (Promotion & Confirmation) Rules, 1980 by the respondents so as to justify such integrated seniority list as well as the illegal and arbitrary act of

allowing promotion to the Inspectors (Ministerial/Stenographer) to the post of ACP (Entry Grade DANIPS) and in the case of Woman Police, the sanctioned number of vacancies earmarked are just 1 (ONE) for the post of ACP (DANIPS).

2.4 The applicants joined Delhi Police against the post of Sub-Inspector in Sub Inspector (Exe.) Cadre in the year 1990-1992 where as private respondents were promoted to the rank of Sub Inspector (Min/Steno/Women Police) in Delhi Police in the years of 1991 - 1994.

2.5 Respondent nos.1 and 2 vide Office Order dated 30.9.2016 assigned look after charge of ACP to respondent nos.4 to 11 despite the fact that Inspectors (Executive) much senior to the said respondents were waiting for consideration and promotion to the post of ACP and were eligible to hold and discharge the look after charge of ACP as well.

2.6 The respondent nos.1 and 2 published provisional integrated seniority list of Inspectors in Delhi Police as on 1.7.2017 eligible for consideration and promotion to the post of ACP (Entry grade DANIPS) which was circulated on 14.7.2017. The applicants preferred their representations/objections to the said provisional integrated seniority list on 31.7.2017, 2.8.2017, 3.8.2017, 11.8.2017, 13.8.2017, 18.9.2017 (Annexure A-7 colly.) but to no purpose. Hence, they filed the instant OA seeking the reliefs as quoted above.

2.7 The applicants have challenged the impugned order on the following grounds:-

(i) statutory rules does not empower the respondent nos.1 and 2 to prepare an Integrated Seniority List of Inspectors in Delhi Police for the purpose of promotion to the post of ACP and even otherwise, the said list can be prepared only for those ranks which together form the feeder cadre for the next higher post of Assistant Commissioner of Police (ACP) subject to eligibility. Ministerial/Stenographer cadre of Delhi Police does not have sanctioned post of ACP and, therefore, the Inspectors from Ministerial/Stenographer cadre cannot claim any right for consideration and promotion to the next post, i.e., ACP. As such inclusion of names of Inspectors (Mins./Steno.) in the Integrated Seniority List is patently wrong, unjustified and de hors the rules;

(ii) The said Integrated Seniority List does not include Inspectors from other cadres such as MT, Computers, Research Cell, Finger Print and Traffic Engineer, which have sanctioned post of ACP as the respondents have not prepared any other integrated seniority list of Inspectors which comprise of only those cadres which are eligible for consideration and promotion to the post of ACP (DANIPS) against the sanctioned post of ACP in its cadre;

(iii) The very purpose to allow such discriminatory elements, i.e., inclusion of ineligible cadre to the integrated seniority list of Inspectors to be used at a later date for consideration and promotion to the post of ACP (Entry Grade DANIPS) takes away the right of deserving candidates of consideration and promotion;

(iv) The private respondents belong to Ministerial/Stenographer cadre that does not have sanctioned post of ACP, cannot be allowed to hold ad-hoc/look after charge of ACP since it is not only against the rules but also pushes back the Inspectors (Executive) from such ad-hoc appointments as well. Further in the case of Respondent no.7, Inspector Bharat Bhushan originally belongs to Ministerial Cadre and after 32 years of service in the Ministerial cadre, his cadre was changed to that of Stenographer so as to accommodate him for further promotion despite absence of Rules and regulations authorizing/empowering respondent nos.1 and 2 to affect such change in service conditions. Reliance has been placed on the judgments of Hon'ble Apex Court in the cases of Jammu & Kashmir Public Service Commission vs. Dr. Narendra Mohan, (1994) 2 SCC 630; Bhupendra Nath Hazarika & another vs. State of Assam and Ors. (Civil Appeal Nos.8514-8515 of 2012) as also of Hon'ble Guwahti High Court in Dani Bello vs. State of Arunachal Pradesh, Gauhati High Court, Itanagar decided on 20.4.2011, 2011 (2) GLT 686;

(v) Even if the ground of long time practice regarding preparation of such integrated seniority list of Inspectors adopted by the Respondent nos.1 and 2 is considered to be at a better footing than the rules governing promotion, the issue of inter se seniority of Inspector (Exe.) and Inspectors (Mins./Steno.) cannot be ignored. It is a well settled principle of service jurisprudence that seniority is to be determined from the date of appointment and is the length of regular service in the grade. The applicants in the instant OA are much senior to the private respondents but have been superseded by the persons much juniors. Reliance has been placed on the judgment of the Apex Court in the case of State of Haryana and others vs. Vijay Singh and others, 2012 8 SCC 633;

(vi) By placing reliance on DOP&T's OM dated 11.11.2010 on the subject of consolidated orders on seniority, applicants submitted that respondent nos.1 and 2 have deliberately and willfully violated the relevant rules governing the inter-se-seniority of Inspectors while preparing integrated seniority list of Inspectors as the said respondents have gone beyond the cadre wise strength and have illegally, arbitrarily and in an unjustified manner considered, appointed and promoted ineligible Inspectors (Min./Steno.) and excess number of Inspectors (W/Exec.) to the post of ACP (Entry Grade DANIPS) in complete violation of rules.

3. Pursuant to notices issued to the respondents, official respondent no.1 and 2 have filed their reply. Although notices were also issued to the private respondents but they have chosen not to file any reply despite sufficient opportunity were granted to them.

4. In the reply filed by respondent nos.1 and 2, before giving reply, they have raised preliminary objection that in the present OA, the applicants have challenged the order dated 30. 9.2016 (Annexure A-1) vide which 57 Inspectors of Delhi Police have been assigned the look after charge of the rank of ACP in the interest of Govt. work and will exercise the powers/duties of ACP till further orders subject to the condition that no financial benefits of the higher post will be

conferred and the seniority in the rank of ACP will not accrue. But the applicants have made only 8 Officers as private respondents as respondent nos.4 to 11 in the array of parties while other officers have not been impleaded as private respondents in the present OA as such the instant OA is not maintainable on the ground of non-joinder of necessary party. Further the applicant have impleaded 17 other officials as respondent nos.12 to 28 in the array of parties while their names are not appeared in the impugned order dated 30. 9.2016 and as such the instant OA is also not maintainable being mis-joinder of the parties.

4.1 They further stated that although the applicants have not challenged the provisional integrated seniority list of Inspectors of Delhi Police as on 1.7.2017 issued by official respondents vide U.O. dated 14.7.2017, however, the applicants have prayed and sought relief against the same. The said provisional seniority list contains the names of Inspectors of Delhi Police as on 1.7.2017 in order of their seniority for the purpose of their appointment to the Entry Grade of DANIPS against promotion quota vacancy. In the said seniority list, the names of Inspectors of Male (Executive), Women (Executive), Ministerial and Stenographers cadres have been interposed. A list of such officials has been stated by the official respondents. If the applicants are aggrieved of the manner in which the said integrated seniority list was prepared and issued by the official respondents vide UO dated 14.7.2017, they should have impleaded all the 149 Inspectors, as mentioned in the said list, other than Male (Executive) as private respondents whose names have been interposed in the provisional integrated seniority list of Inspectors as on 1.7.2017. Similarly, if the applicants are aggrieved of the official respondents' order dated 30.9.2016 (Annexure A-1), they should have impleaded the names of only those officers whose names appeared in the said order. Thus, the instant OA is not maintainable on the ground of non-joinder/mis-joinder of necessary parties.

4.2 The official respondents further stated that the issue raised by the applicants in the present OA has already been adjudicated by this Tribunal in OA 1454/1998 and also by the Hon"ble High Court of Delhi in Writ Petition (Civil) No.7721/2001. Thus, the instant OA is not maintainable on the ground of principle of res judicata.

4.3 The official respondents also stated that prior to enactment of Delhi Police Act, 1978, the Recruitment, Promotions, Seniority and other terms and conditions relating to the Members of the Delhi Police Force were governed and regulated by the provisions of Punjab Police Rules, 1934. On 8.11.1965, the 8.11.1965, the Central Government while exercising power under proviso to Article 309 of the Constitution of India had framed Delhi, Himachal Pradesh and Andaman and Nicobar Islands Police Services Rules, 1965 (for short "Rules of 1965"). These rules provided for various aspects of terms and conditions of service of Grade I and Grade II officers, i.e., in the common parlance at that time for DSP (Deputy Superintendent of Police). These Rules of 1965 were replaced by 1971 Rules, which came into force from 23.1.1971. Thereafter, 1971 Rules were

amended from time to time upto 1991 and replaced by 1995 Rules and subsequently by 1998 and 2003 Rules were amended in the year 2009 and 2010. The copies of the said Rules were annexed as Annexure R-2 (Colly.). Rules 5, 11, 14, 29 as also Rules 12 to 17 of Rules of 1965 have been relied upon by them.

4.4 The official respondents also stated that Inspectors of Delhi Police of all cadre performing whatever duties, have always been kept and shown in a common seniority list. The first common seniority list of all the Inspectors of Delhi Police was prepared in the year 1972 and the same was prepared thereafter in 1975 and 1979 (Annexure R-3 (Colly.)). On 29.9.1980 the Administrator of Delhi while exercising jurisdiction conferred by proviso to Article 309 of the Constitution of India had framed certain Rules regarding method of recruitment and qualification necessary for appointment to the post of ACP (Programmer) in the Crime Records Office in Delhi Police (Annexure R-4). Similarly on 31.3.1987, another Notification was issued in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India regarding the method of recruitment and qualifications necessary for appointment to the post of ACP (Motor Transport) in Delhi Police (Annexure R-5). Further on 16.4.1987, a Notification was also issued in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India regarding method of recruitment and qualifications necessary for appointment to the post of ACP (Finger-Print Bureau) in Delhi Police (Annexure R-6). Further on 15.4.1988, another Notification was issued in exercise of powers conferred by the proviso to Article 309 of the Constitution of India regarding the method of recruitment and qualifications necessary for appointment to the post of ACP (Transport Engineer) (Annexure R-7). Further on 22.8.1988, another Notification was issued in exercise of powers conferred by the proviso to Article 309 of Constitution of India regarding the method of recruitment and qualifications necessary for appointment to the post of ACP (Communication) in Delhi Police (Annexure R-8). Similarly, another post of ACP/SRO (Senior Research Officer) for the Research Cell had been created in the year 1969 but the RRs for the said post were not finalized and were pending approval with the competent authority. However, the Govt. of NCT of Delhi vide its Notification dated 7.7.2017 has notified the RRs for the post of ACP (SRO) (Annexure R-9).

4.5 They further stated that as on date the following are the sanctioned posts for these specialized categories posts in the rank of ACP:-

(I) ACP (Programmer)	- 03
(II) ACP (Motor & Transport	- 03
(III) ACP (Finger Print)	- 01
(IV) ACP (Transport Engineer)	- 01
(V) ACP (Communication)	- 06
(VI) ACP, SRO (Research Cell)	- 02

4.6 The complete details of these above mentioned 06 different specialized wings are as under:-

I. Programmer (Computer)

In the year 1969, there was one post of Programmer in the rank of Inspector and one post of Deputy Superintendent of Police (at present ACP) sanctioned. The record reveals that the post of Inspector in this Wing of police service was filled up by Shri M.C. Gupta. He was appointed as Inspector Computer on 18.7.1970 and continued to occupy that post till 4.9.1981. He was promoted as ACP on 5.9.1981 and the post of Inspector in this Wing, which fell vacant due to promotion of Shri M.C. Gupta, to the rank of ACP/Programmer, was filled up on 9.7.1982 by appointing Shri Jag Mohan Chander to the rank of Inspector/Programmer. Subsequently, the posts of ACP and Inspectors in this Wing were sanctioned from time to time and as on date there are 03 ACP and 10 Inspectors in this Wing.

The first Combined seniority list of Confirmed Inspectors was prepared in 1972. Thereafter, a combined list was prepared in 1975 and 1979 as well. Though the Recruitment Rules for this Wing of Police Service were finalized on 29.9.1980 requiring the department to prepare a separate seniority list of these Inspectors, however, on account of inadvertent error the name of Shri M.C. Gupta, Inspector of this Wing of police service continued to remain in the common seniority list of Inspectors which was published in the year 1984. Besides, the name of Shri Jag Mohan Chander, Inspector of this Wing was also shown inadvertently in the common seniority list of confirmed Inspectors published in the year 1987.

In the year 1986, the Government had sanctioned 06 more posts in this Wing of service, i.e., Computer and Programmer meaning thereby that the sanctioned strength of Inspectors had gone up from 1 to 7. Shri Jag Mohan Chander had stood appointed as Computer Centre Supervisor (ACP) in this Wing of service on 5.10.1988. Four more posts of Inspectors in this Wing of service were filled up by deputation by the following four officers:-

Sl. NO.

Name of the Officer

Date

1.

Shri Virender Singh, D-I/115

01.12.1987

2.

Shri M.S. Tripathi, D-2527

30.10.1987

Repatriated

3.

Shri Vijay Kumar Singh, D2532

28.10.1987

Repatriated

4.

Shri Kamal Singh

01.11.1993

Repatriated

These officers who had joined the service initially on deputation were regularly absorbed/appointed in the post of Inspector in this Wing of service on the following dates respectively:-

Sl. No.

Name of the Officer

Date

1.

Shri Virender Singh, D-I/115

Absorbed on 01.12.1987

2.

Shri Gyanender Singh

Absorbed on 15.03.1990

3.

Shri Mahesh Batra

Absorbed on 09.07.1992

4.

Ms. Himashu Saluja

Absorbed on 11.06.199

Shri Jag Mohan had left the service on 10.10.1982, meaning thereby out of 07 sanctioned posts only four stood filled up on 1992. The error which was continued in the common seniority list of 1984 and 1987, i.e., the name of Inspectors of this Wing of service instead of being excluded from the common seniority list was being continued in the said common seniority list. The names of

all the above four Inspectors were not a part of the common seniority list published in the year 1994 onwards and they enjoyed their seniority as per the RRs applicable to this Wing of service.

II. Motor Transport

One post of Inspector of this Wing was sanctioned in the year, 1963 which was filled up on 28.10.1969 by appointing Shri R.K. Mittal. Five more posts in this Wing were sanctioned in the year 1986. The details of filling up of further posts are as under:-

1. Madan Lal, D-I/55
 - 12.10.1989
2. Mohinder Singh, D-I/74
 - 12.10.1989
3. Gurmej Singh, D-I/962
 - 24.04.1995
4. Kapoor Singh, D-I/1000
 - 01.02.1996
5. Lal Man, D-I/1001
 - 01.02.1996
6. Krishan Lal, D-19
 - 01.02.1996

The first Inspector who was appointed in 1969 was shown in the common seniority list issued in the years 1979 and 1984. The Recruitment Rules were finalized on 31.3.1987. Whereafter, the Inspectors of this Wing could not have been included in the common seniority list of Inspectors. However, one Inspector of this Wing was again shown in the common seniority list published in 1987 inadvertently. However, the Inspectors of this Wing were deleted and not shown in the common seniority list of Inspectors published in the year 1984 and thereafter.

III. Finger Print Bureau

It was on 30.8.1982 that one post of ACP and two posts of Inspector were sanctioned in this Wing. Recruitment Rules were finalized on 16.4.1987. These two posts of Inspectors were filled up on 21.09.1994 and 05.12.1995 respectively, i.e., after 1987. There is a separate seniority for these two posts and they were not included in any of the common seniority list of Inspectors published after their appointments.

IV. Transport Engineer

In this Wing one post of Inspector was sanctioned on 13.9.1985. The RRs were finalized on 15.4.1988. There is one Inspector holding the post sanctioned in this Wing and his name was never included in the common seniority list of Inspectors published by the department from time to time.

V. Communication

The Communication wing in the Delhi Police was created in the year 1957. Initially two posts of Inspectors of this wing were sanctioned. From time to time, this strength was increased and at present 06 - ACP and 32 Inspectors are sanctioned in this wing. The names of Inspectors of this wing continued to be brought in the common seniority list upto the year 1987. In the common seniority list of 1972 there were two Inspectors of this wing, two in the year 1975, two in 1979, two in 1984 and four in 1987. The RRs for this Wing were finalized on 22.08.1988 and thereafter Inspectors of this wing were excluded from the array of common seniority list published in 1994.

VI. Research Cell

One post of statistician in the rank of Sub-Inspector alongwith two posts of Junior Research Officer in the rank of Inspector and two posts of Senior Research Officer in the rank of ACP were sanctioned in Delhi Police. Shri Rajan Bhagat was appointed as Statistician in the rank of Sub-Inspector on 28.02.1981 and he became Junior Research Officer in the rank of Inspector on 13.08.1985 and thereafter he became Senior Research Officer in the rank of ACP. The RRs for this Wing for ACP were not finalized till then. Since the RRs were not finalized, his name was shown in the common seniority list of Inspectors published on 3.9.1987 when he was holding the post of Junior Research Officer. Since he was holding a technical post, as such, the name was excluded from the common seniority list published on 1994. He, however, made a representation to the Government that since RRs for this Wing were not finalized, he deserves to continue in the common seniority list of Inspectors and as such his name was directed to be included in the Common Seniority List published in the year 1994. However, the Govt. of NCT of Delhi vide its Notification dated 07.07.2017 has notified that RRs for the post of Assistant Commissioner of Police (Senior Research Officer). As such the name of present incumbents occupying the posts of Inspector (JR) have not been included in the provisional integrated seniority list of Inspector as on 01.07.2017.

4.7 They also stated that there are 73 sanctioned posts in the rank of Inspectors exclusively for women. It is apparent from the record that woman police officers who were junior in the rank of Sub-Inspector as compared to male Sub-Inspector in the force, got accelerated promotion to the post of Inspector because of exclusively sanctioned strength of 73 posts of Inspectors. However, now, the scenario has changed. At present, Women, Sub-Inspector (Executive) of the year 1995 are being considered for promotion to the post of Inspector while on the

other hand, the Male Sub-Inspector (Executive) of the year 1997 are getting promotion to the post of Inspector (Executive) as compared to Women Sub-Inspector (Executive) as is evident from the perusal of entries at Sl. Nos.1009, 1012, 1104, 1105, 1106, 1107, 1108, 1282 and 1283 in the provisional integrated seniority list of Inspector (Annexure A-5). These Women Sub-Inspectors (Executive) are of the year 1995 while they got promotion to the post of Inspector even after the promotion of Male Sub-Inspector (Executive) of the years 1996 and 1997. However, they all are entitled to remain in the integrated seniority list of Inspectors of Delhi Police and their seniority in the integrated seniority list has always been reckoned from the date of their regular promotion to the post of Inspector which is in accordance with the rules.

4.8 The names of three Stenographers have also been interposed in the integrated seniority list of Inspectors issued by the official respondent vide U.O. dated 14.7.2017. Their names are existing at Sl. Nos.50, 51 and 52 of the integrated seniority list. Their names are existing at Sl. NO.50, 51 and 52 of the integrated seniority list. They have also been made private respondent nos.7,8 and 9 respectively. It is submitted that there is no sanctioned post of ACP (Stenographers) in Delhi Police. Earlier, there were 03 posts of Inspector (Stenographer) sanctioned in Delhi Police and RRs of these posts were notified vide Govt. of NCT of Delhi's notification dated 23.2.2006 (Annexure R-10). These three incumbents were promoted to the post of ACP (DANIPS). It is also pointed out that in Delhi Police, the stenographer cadre was subsequently re-structure and the following posts were upgraded/created in the year 2012 vide Govt. of India, Ministry of Home Affairs, New Delhi's letter No.14040/86/2009-UTP, dated 09.05.2012 (Annexure R-11).

The details of upgraded/newly created posts is as under:-

No. of posts before re-structuring

No. of posts after re-structuring

ASI

111

80

Inspector

03

34

Total

114

114

4.8 They have further stated that the said sanctioned letter dated 9.5.2012, it was stipulated that Inspectors (Stenographer) will not be eligible for inclusion in the Common Seniority List of Inspectors being considered for induction into DANIPS. While promoting the eligible elevated Sub-Inspector (Stenographer), appropriate declaration from the existing ASI (Stenographer) have to be obtained, they are aware that they have no claim to get inducted into DANIPS Cadre. Accordingly, the promotion rules for the newly created/upgraded post were notified by the Govt. of NCT of Delhi vide Notification dated 29.6.2012 (Annexure R-12). The same promotion rules also contain the same conditions as was stipulated in the sanction letter dated 9.5.2012. Therefore, none of the Inspectors (Stenographer) who were promoted in accordance with these new rules were included in the Provisional Integrated Seniority list of Inspector as on 1.7.2017. However, 3 Inspectors (Stenographer) promoted to the post of Inspector (Stenographer) in accordance with the old rules, were supposed to be included in the Provisional Integrated Seniority List of Inspector as on 1.7.2017 and accordingly their names were interposed at Sl. No.50, 51 and 52 of the Integrated Seniority List which is in conformity with the principle adopted by the Department.

4.9 They further reiterated that the common seniority list of Inspectors was prepared in the year 1972 then in 1975 and thereafter in 1979. Till this time, all the inspectors even in the said specialized Wings were included in these common seniority lists of Inspectors. As and when, the RRs of these different Wings were finalized, the Inspectors of these specialized Wings were getting excluded from the common seniority list and their names were getting mentioned in the individual seniority of the above mentioned respective specialized Wings, except some inadvertent and bonafide errors which had taken place in this regard.

4.10 They also stated that seniority list of Inspectors after 1979 were then published in 1984, 1987, 1994, 1996, 1997, 1999, 2002 and now in the year 2017 (Annexure R-13 (colly.)).

4.11 They further stated that on perusal of aforesaid seniority lists, it becomes absolutely clear that all the Inspectors in Delhi Police Force found their names in the common seniority list except those in the above mentioned 06 specialized Wings after their respective rules were being finalized. Whatever inadvertent and bonafide errors which had crept into the preparation of the seniority list stood corrected on the issuance of the common seniority list in the year 1994. The Inspectors working in other 06 specialized wings find their names in the list of Inspector of that specific Wings itself and were excluded from the common seniority list as and when their recruitment rules were finalized.

4.12 They also stated that as of today, there are 1255 sanctioned posts of Inspectors in Delhi Police which is besides, over and above the individual sanctioned posts of Inspectors in the above mentioned 06 specialized Wings. The details of available posts of Inspectors in these 06 specialized Wings are as under:-

Sl. No.

Particular

No. of sanctioned posts of Inspectors

1.

Programmer/Computer

10

2.

Mother Transport (MT)

07

3.

Finger Print Bureau

02

4.

Transport Engineer

01

5.

Communication

32

6.

Junior Research Cell

02

Out of 1255 posts of Inspectors in Delhi Police, 73 are exclusively for Women Inspectors and 71 are earmarked for Inspectors (Ministerial). The seniority list for all these Inspectors of Delhi Police has always remained common as per the rules and practice followed by Delhi Police. They further submitted that in view of this consistent position prevailing from the very beginning, there are no separate posts of ACPs as ACP (Executive), ACP (Women), ACP (Ministerial) etc. in DANIPS Cadre. All the promotions to the post of ACPs, except for the specific specialized 06 Wings, are filled up from amongst the Inspectors of the Common Seniority List of Inspectors in Delhi Police Force. However, all the Inspectors including Inspector (Executive), Inspector (Women) and Inspector (Ministerial) from the very beginning, i.e., from 1972 onwards have always remained in one common seniority list.

4.13 The contention of the applicants that only Male Inspectors (Exe.) are eligible candidates for promotion to the post of ACP (DANIPS) is not supported by any evidence or material facts. Rule 7(2)(c) and Schedule-II of DANIPS Rules, 2003 which provides the eligibility criteria for promotion to the post of ACP (DANIPS) is re-produced as under:-

"The vacancies in the promotion quota shall be filled by selection from amongst officers holding posts mentioned in Schedule II with three years regular service in the grade on the basis of recommendation of the Departmental Promotion Committee."

Schedule-II

(See rule 7)

POST/GRADE/SERVICE ELIGIBLE FOR INDUCATION INTO ENTRY GRADE

Inspector of Delhi, Andaman and Nicobar Islands Police, Lakshadweep Police, Daman and Diu Police and Dadra and Nagar Haveli Police.

The above provisions of DANIPS Rules, 2003 do not prescribe or make it essential that only Male Inspectors (Executive) of Delhi Police are eligible for promotion to the post of ACP (DANIPS).

4.14 They further stated that in Delhi Police, the duties of ACP (DANIPS) are multifarious. In each District of Delhi Police, there is a Women Cell to deal with women related cases/matters. These Women Cell are headed by an officer of the rank of ACP for which there are sanctioned post which constitute and form the part of DANIPS. It is supposed that Districts Women Cells are preferably headed by Woman Officer. Apart from this, there is a Special Police Unit for Women and Children (erstwhile known as "Crime Against Women Cell") to deal with Women and Children related cases/matters. In this Unit, there are 05 sanctioned posts of ACP. These posts also constitute and form the part of DANIPS. Similarly, in Delhi Police, there are sanctioned post of ACP/Headquarters in each District/Unit which also constitute and form the part of ministerial in nature and hence, it is supposed that these posts preferably be hold by an officer from ministerial cadre. Therefore, the claim/contention adduced by the applicants that the duties of ACP (DANIPS) are only of executive in nature, is not tenable.

4.15 They also stated that in support of their version, the applicants have enclosed copies of cadre-wise sanctioned strength of Delhi Police as on 1.2.2006, 1.12.2007 and 1.9.2016 as Annexure A-2 (Colly.) of the OA. It is submitted that the posts of ACP (DANIPS) are not bifurcated duties-wise such as Male (Executive), Women (Executive) and Ministerial etc. They all constitute and form a single service called as DANIPS and as such for administrative reasons and maintenance of record of sanctioned strength of Delhi Police, all the posts of ACP (DANIPS) are shown against executive cadre being major constituent of the service. Had there been any bifurcation, these posts could have been shown separately against the respective cadre.

4.16 They further stated that in the year 1998, 31 Male Inspectors (Executive) of Delhi Police filed OA 1454/1998 before this Tribunal challenging the concept of official respondents in publishing common/combined seniority lists of Inspectors of Executive, Women (Executive), Ministerial, Stenographer and Junior Research Officer on various grounds and claimed that separate seniority list of Inspectors of different cadres should be prepared instead of interposing them in a common/combined seniority lists. The said OA was dismissed by this Tribunal vide Judgment dated 11.5.2001. The said Inspectors being aggrieved by the said decision of this Tribunal approached the Hon"ble High Court of Delhi by way of a Writ Petition No.7721/2001 (S.S. Yadav and others vs. Commission of Police and others) and the Hon"ble High Court did not find any merit in the case and affirmed this Tribunal"s judgment by dismissing the said Writ Petition vide Order dated 24.1.2002 (Annexure A-6 to the OA).

4.17 They further stated that order dated 30.9.2016 is an order assigning the looking after charge of the rank of ACP in the interest of Govt. work and they will exercise the powers/duties of ACP till further orders. The said order has been issued strictly in accordance with the integrated seniority list. The averment of the applicants that private respondents are junior to them is absolutely wrong and denied.

4.18 They also submitted that the applicants have not challenged the Integrated Seniority List of Inspectors circulated by the official respondents vide UO dated 14.7.2017 (Annexure A-5 of the OA) in the present OA. They further stated that respondent nos.4 to 28 are not junior to the applicants and that the provisional integrated seniority list of Inspectors of Delhi Police as on 1.7.2017 vide UO dated 14.7.2017 determines the seniority of the rank of Inspector and not determines the seniority of the rank of Sub-Inspector or below. The relative seniority of the promotee officer is reckoned from the date of regular promotion in the rank/grade. The date of promotion to the post of Inspector in respect of all the Private respondents and of the applicant is given below:-

Sl.

No.

Seniority Sl. No. in Annexure

A-5

Name of the Officer

(Applicant/Res pondent)

Date of promotion as Inspector

1.

40

Girish Kumar

Respondent No.4

01.08.2005

2.

42

Anil Chhatwal

Respondent No.5

02.02.2006

3.

43

Pancham Chand

Respondent No.6

02.02.2006

4.

50

Bharat Bhushan

Respondent No.7

24.02.2006

5.

51

Ritambra Prakash

Respondent No.8

24.02.2006

6.

52

Prem Ballabh

Respondent No.9

24.02.2006

7.

53

Suresh Chand

Respondent No.10

01.03.2006

8.

54

Yugal Kishore

Respondent No.11

01.05.2006

9.

234

Manju Lata

Respondent No.12

03.07.2006

10.

242

Sudesh Kumari

Respondent No.13

04.09.2006

11.

243

Promodini Minz

Respondent No.14

04.09.2006

12.

244

Neeraj Tokas

Respondent No.15

04.09.2006

13.

277

Parveen Kumari

Respondent No.16

19.12.2006

14.

278

Rajni Dhobhal

Respondent No.17

19.12.2006

15.

279

Usha Kumari

Respondent No.18

19.12.2006

16.

281

Asha Thakur

Respondent No.19

01.10.2007

17.

282

Sanjita

Respondent No.20

01.10.2007

18.

283

Rakha

Respondent No.21

01.10.2007

19.

289

Surender Singh

Applicant No.1

01.12.2007

20.

294

Kusum Pal Singh

Applicant No.2

01.12.2007

21.

307

Deepak Chandra

Applicant No.3

01.12.2007

22.

317

Tilak Chand

Applicant No.4

01.12.2007

23.

339

Atul Sood

Applicant No.5

01.12.2007

24.

386

Ashwani Kumar

Applicant No.6

01.12.2007

25.

397

Vijay Kumar Vats

Applicant No.7

01.12.2007

26.

430

Kusum Mandola

Respondent No.22

03.01.2008

27.

440

Sapna Duggal

Respondent No.23

18.03.2008

28.

441

Pawanjeet Kaur

Respondent No.24

18.03.2008

29.

442

Shashi

Respondent No.25

05.08.2008

30.

443

Sukarma Sharma

Respondent No.26

05.08.2008

31.

444

Sanghmitra

Respondent No.27

05.08.2008

32.

484

Pradeep Kumar Paliwal

Applicant No.8

04.11.2008

33.

485

Sajjan Singh

Applicant No.9

04.11.2008

34.

500

Sunil Kumari

Respondent No.28

04.11.2008

35.

521

Sanjay Kumar Nagpal

Applicant No.10

16.01.2009

4.19 They also stated that the relevant factor to determine the seniority position in the integrated seniority list of Inspectors is the date of regular promotion in the rank of Inspectors is the date of regular promotion in the rank of Inspector irrespective of their position in substantive rank of Sub-Inspector or below. The official respondents further stated that the issue of inter se seniority has already been adjudicated by this Tribunal which was upheld by the Hon"ble High Court in the year 2002 and therefore, the same cannot be re-opened after a lapse of 15 years.

4.20 The respondent nos.1 and 2 by placing reliance on the observations made by the Hon"ble Tribunal in its Order dated 11.5.2001 in OA 1454/1998, stated that the official respondents are fully empowered to prepare integrated seniority

list of Inspectors of Delhi Police for the purpose of promotion to the post of ACP (DANIPS) and the said judgment of this Tribunal has also been upheld by the Hon"ble High Court of Delhi vide its judgment dated 24.1.2002. Therefore, there is no ground to re-open the same issue which has already been adjudicated a way back.

4.21 Lastly they stated that in view of the facts and circumstances as stated in the counter affidavit, the instant OA is liable to be dismissed by this Tribunal.

5. The applicants have also filed their rejoinder affidavit to the counter affidavit filed by official respondents refuting the contentions raised by the official respondents in their counter affidavit and reiterated the averments made by the applicants in the OA. In the rejoinder, the applicants have replied to the preliminary objection raised by the official respondents in their counter affidavit. The applicants stated that the applicants have made only those persons as private respondents, who under the rules, have no right or stake in further promotion as ACP (Entry Grade DANIPS) as the respondent nos.4 to 11 are Inspectors belonging to the cadre of Ministerial and Stenographers, having no claim/stake/right to promotion/look after charge to the post of ACP (Entry Grade DANIPS) as there is no post of ACP in their cadre as per the cadre-wise sanctioned strength of Delhi Police. 9 Inspectors belonging to Ministerial/Stenographer cadre were assigned the look after charge of ACP vide impugned order dated 30.09.2016. Shri Surender Kumar Ahuja No.D-I/99 of Ministerial Cadre, shown at serial no.56 of the impugned order dated 30.9.2016, had retired from service and thus not shown in the Integrated Seniority List of Inspectors circulated on 14.7.2017. The rest of the Inspectors belonged to the Executive/Woman cadre having post of ACP (DANIPS) as per the sanctioned strength of Delhi Police and thus were entitled for promotion. Therefore, they are not impleaded as respondents in the present OA. Further, the respondent nos.12 to 28 are again those Inspectors belonging to Ministerial/Stenographer/women cadre, who were junior to the applicants as sub-Inspectors in their respective cadres. The private respondents 4 to 11 have been assigned the look after charge of ACP vide impugned order dated 30.9.2016 and private respondent nos.12 to 28, who have been juniors to the applicant in the substantive posts, have been placed above the applicants in the Provisional Integrated Seniority list circulated on 14.7.2017 and as such, the applicants apprehend that official respondents would promote and confirm these private respondents and they would march above the applicants for further promotion in complete violation of their fixed quota for the post of ACP.

5.1 Applicant further stated that their main contention is that the rationale behind preparation of a common seniority list has been misinterpreted and mislead by the official respondent nos.1 and 2, as the purpose of preparing an integrated seniority list of a particular post is only that the incumbents of the said list are eligible for the next promotion under the rules and that there is no exception/relaxation. Admittedly, the Ministerial/Stenographer cadre does not

have sanctioned post of ACP (Entry Grade DANIPS) should not be a part of the common seniority list meant for further promotion to the post of ACP (Entry Grade DANIPS).

5.2 The applicants further stated that the present OA is not hit by res judicata as the subject matter of OA 1454/1998 and that of the present OA is entirely different. Further, it is the contention of the applicants that respondent nos.1 and 2 deliberately concealed the material information from the courts and they have been arbitrarily promoting ineligible persons by including their names in the Integrated Seniority List of Inspectors meant for promotion to the post of ACP (Entry Grade DANIPS).

6. Counsel appearing for private respondents submitted that they are adopting the reply submitted by the official respondents and they have orally argued the matter.

7. We have heard learned counsel for the applicant and learned counsel for the respondents.

8. Before adjudicating this case on merit, we would like to deal first with the preliminary objections raised by the official respondents. Contention of the official respondents that the instant OA is not maintainable on the ground of mis-joinder and non-joinder of necessary parties in this OA, is not acceptable in view of the fact that applicants have challenged the order dated 30.9.2016 (Annexure A-1) in respect of respondent nos.4 to 11, who have been assigned the look after charge of the posts of ACP by the official respondents as also in respect of respondent nos.12 to 28, who have been placed above the applicants in the Integrated Seniority list of Inspectors circulated on 14.7.2017. Qua the respondent nos.4 to 11, the grievance of the applicants is that these private respondents belong to the cadre of Ministerial and Stenographers, having no claim/stake/right to promotion/look after charge of the post of ACP (Entry Grade DANIPS) and qua respondent nos.12 to 28, the grievance of the applicants is that these private respondents also belong to ministerial/Stenographer/Women cadre and were also junior to the applicant as Sub-Inspectors in their respective cadres.

9. Having regard to the pleadings of the parties, we feel that it is incumbent upon us to see that whether the issues involved in the instant OA are squarely covered by the earlier decision of this Tribunal in OA No.1454/1998 decided on 11. 5.2011, which was upheld by Hon"ble High Court of Delhi in Writ Petition (Civil) No.7721/2001 vide Order dated 24.1.2002. In the said OA 1454/1998, the applicants therein have challenged the Integrated seniority list of confirmed Inspectors of Delhi Police issued by order dated 26.12.1997 as the applicants therein had alleged that they were shown juniors to some Inspectors belonging to different units like Women, Technical, Ministerial etc. For proper appreciation of this aspect, we quote the complete Order of this Tribunal passed in OA 1454/998, which reads as under:-

"This O.A. has been listed for hearing in pursuance of the order passed in Review Application 10/2000, which was allowed on 11.2.2000. By this order, the judgment/order dated 30.11.1999 in OA 1454/98 was recalled and the O.A. was restored to file. We have heard Shri M.K. Gupta, learned counsel for the applicant and Smt. Meera Chhibber, learned counsel for the respondents in O.A.

2. In this application, the main contention of Shri M.K. Gupta, learned counsel for the applicants is that Respondent 1 could not have issued an "Integrated" seniority list of confirmed Inspectors of Delhi Police by the impugned order dated 26.12.1997. Learned counsel has submitted that as the Inspectors belong to different disciplines and units, they cannot be clubbed together in one common seniority list of Inspectors belong to different categories like Women, Technical, Ministerial, Executive and so on and each of these categories is eligible for promotion to the post of Assistant Commissioner of Police (ACP) in the particular category or discipline. He has contended that right from 1965 till 1995, the respondents have not shown any provision contained in the Rules relied upon by them, empowering them to prepare an "Integrated" seniority list. He has, therefore, submitted that in the absence of any such Rule, no long standing practice can be continued against the law. He has relied on the judgments of the Supreme Court in Suraj Prakash Gupta and Ors. vs. State of J&K and Ors. (000(7) SCC 561) and Molar Mal vs. Kay Iron Works(P) Ltd. (2000(4) SCC 285). He has also relied on Rule 4 of the Delhi Police (Promotion and Confirmation) Rules, 1980 (hereinafter referred to as "The 1980 Rules") which defines "Cadre" to mean the strength of service or a part of service sanctioned as a separate Unit. He has submitted that Rule 5 of the 1980 Rules gives the general principles of promotion from one rank to another. Under these Rules, he has contended that there is no rule for preparation of an "Integrated" seniority list. According to the learned counsel for the applicants, unless and until there is a rule made under Section 147 of the Delhi Police Act, 1978, no such power is vested in the respondents to act in the manner they have done and there is no need to refer to the Rules relied upon by the respondents.

3. Shri M.K. Gupta, learned counsel has submitted that in the Delhi, Himachal Pradesh and Andaman and Nicobar Islands Police Service Rules, 1965 (hereinafter referred to as "the 1965 Rules"). Rule 17 refers to the initial appointment of persons to the Service. Rule 3 (d) defines a "Member of the Service" which means the Delhi, Himachal Pradesh and Andaman and Nicobar Islands Police Service. Learned counsel has submitted that Rule 18 deals with appointments to the service. Similarly, he has referred to the another Rules, namely, the Delhi and Andaman and Nicobar Islands Police Service Rules, 1971 (hereinafter referred to as the 1971 Rules), the National Capital Territory of Delhi, Andaman and Nicobar Islands, Lakshadweep, Daman and Diu and Dadra and Nagar Haveli Police Service Rules, 1995 (hereinafter referred to as the 1995 Rules) and has submitted that in none of these Rules, there is any provision empowering the respondents to issue an "Integrated" seniority list. He has also relied on page 80 of the O.A. which is a Statement prepared by the respondents

showing the sanctioned strength of the Delhi Police "cadre-wise" as on 31.12.1997. This statement, according to the learned counsel clearly shows that the respondents have always considered the strength of Delhi Police and any statement of the respondents to the contrary based on no rule but only on long standing practice is unacceptable. Under the 1995 Rules which were issued in supersession of the 1971 Rules, Inspectors of Delhi Police and other persons mentioned in Schedule-II were eligible for induction into Grade-II of the service, that is for promotion to ACP. The 1995 Rules were again superseded by the National Capital Territory of Delhi, Andaman and Nicobar, Islands, Lakshadweep, Daman and Diu and Dadra and Nagar Haveli Police Service Rules, 1998 (hereinafter referred to as "The 1998 Rules") by Notification dated 14.8.1998.

4. Another contention of the learned counsel for the applicants is that no seniority list was issued prior to the impugned seniority list issued by the impugned Circular dated 26.12.1997. He has submitted that the respondents merely informed the concerned persons their serial number in the Seniority List and never published the Seniority List at any time earlier.

5. The respondents have controverted the above submissions of the applicants counsel and we have also heard Mrs. Meera Chhibber, learned counsel. The respondents in their reply have submitted that they have issued combined seniority lists of Inspectors in Delhi Police on 26.4.1994, 20.9.1996 and 26.12.1997. They have also submitted that the applicants had filed representations against the seniority list published in 1997 which had been rejected and they had not filed any representations against the earlier combined seniority list. Mrs. Meera Chhibber, learned counsel, has submitted that the Inspectors in Delhi Police contain the names of Inspectors of various cadre, namely, Inspectors (Executive), Inspectors (Ministerial), Inspectors (Women) and Inspectors (Stenographers) which have no separate Recruitment Rules for promotion to the rank of ACPs. She has also submitted that the 1980 Rules relied upon by the applicants counsel refer only to promotion upto the level of Inspectors, that is the "Lower Subordinates" and "Upper Subordinates" and not to higher ranks. She has drawn our attention to Notification dated 17.12.1980 issued under Section 5 of the Delhi Police Act, 1978 by the Administrator, which also applied to all Subordinates and other class of employees of Delhi Police. Learned counsel has, therefore, submitted that the Rules made under the Delhi Police Act, including the 1980 Rules, apply only upto the level of "Subordinates" and not for the next level of promotion from Inspectors to ACPs. This promotion to the level of ACPs is also done by the Ministry of Home Affairs. She has submitted that as per the 1965 Rules which have been notified by the President under the proviso to Article 309 of the Constitution, the seniority list has to be prepared of a "Member of the Service" which means the officers who are substantively borne on the cadre of Inspectors of Police and other officers without any further distinction of Women, Executive, etc. She has also referred to the 1971 Rules, 1995 Rules and the 1998 Rules and has submitted that the Inspectors of Delhi Police and other Police Forces mentioned in the Rules are

eligible for induction into Grade-II, that is ACP without any further distinction. She has particularly drawn the attention to Schedule-II of the 1995 Rules under which the present impugned seniority list has been issued.

6. Mrs. Meera Chhibber, learned counsel has submitted that in respect of ACPs in 5 Technical Cadres, which have separate Recruitment Rules, they are dealt with separately for promotions to that post. These Rules pertain to the appointments to the post of ACP (Programmer) in the Crime Records office in Delhi Police under the Notification dated 29.9.1980; ACP (Motor Transport) under the Notification dated 31.1.1987; ACP (Finger-Print Bureau) in Delhi Police under the Notification dated 15.11.1988 and ACP (Communications) in Delhi Police under the Notification dated 22.8.1988. She has submitted that in the case of all other Inspectors in Delhi Police, where there are no separate Recruitment Rules for promotion to the next higher rank of ACPs, an "Integrated" seniority list has to be prepared for promotion to Grade-II of the Service, as contained in the 1995 Rules. She has, therefore, submitted that there is nothing wrong or illegal in the respondents preparing a combined seniority list, which practice has also been followed for a number of years from 1972 onwards or all other Inspectors in Delhi Police, other than the aforesaid five Technical cadres. She has also submitted that there is no sanctioned strength as such for ACPs (Women) or (Executive) as they form part of the general category of ACPs who come from the general stream of Inspectors.

7. Regarding the contention of Shri M.K. Gupta, learned counsel, based on the statement showing the sanctioned strength of Delhi Police (cadre-wise) (page 80 of the paper book), learned counsel for the respondents has submitted that this statement is an Inter-Departmental communication showing sanctioned strength of Delhi Police (cadre-wise) as on 31.12.1997 containing several annexures, she has submitted that in any case the "Integrated" seniority list has been prepared in accordance with the relevant Rules, as mentioned above and the Statement relied upon by the applicants for another purpose, cannot supersede it.

8. We have carefully considered the records and the submissions made by the learned counsel for the parties. It is most relevant to note that it was only after the order dated 30.11.1999 was passed by the Tribunal (in which one of us. Smt. Lakshmi Swaminathan was also a Member) the respondents have filed copies of the aforesaid Rules of 1965, 1971, 1995 and 1998 Rules on 6.1.2000, along with copies of the common seniority lists of Inspectors issued by them from 1972. It has been very vehemently submitted by Shri M.K. Gupta, learned counsel that the applicants were never aware of the common seniority lists as only their serial numbers were informed to them. Even if that was so, it was open to the applicants to obtain a copy of the relevant seniority list. In the circumstances of the case, the contention of the applicants that the respondents had never issued seniority lists earlier, is accordingly rejected.

9. The 1995 Rules will be the relevant Rules for preparation of the impugned common seniority list of Inspectors in 1997. In those Rules, a duty post has been

defined as any post included in Schedule-I. Service is defined under Rule 2(1) as meaning the National Capital Territory of Delhi, Andaman and Nicobar, Lakshadweep, Daman and Diu and Dadra and Nagar Haveli, Islands Police Service, constituted under Rule 3. Rule 3 (2) further provides that the service shall have two Grades as specified in Schedule-I. The sanctioned strength of the duty posts in NCT, Delhi is given as 255. The future maintenance of the service is provided in Rule 7 which provides that 50% of the vacancies in Grade-II of the Service shall be filled by direct recruitment and 50% by selection from amongst officers holding posts in the grade. Rule 7 read with Schedule-II provides as follows:-

"Posts/grade/service eligible for induction into Grade-II Inspectors of Delhi Police, Andaman and Nicobar Islands Police Force, Lakshadweep Police, Daman and Diu Police and Dadra and Nagar Haveli Police."

(emphasis added)

It is seen from the above provisions of the 1995 Rules that all Inspectors of Delhi Police, Andaman and Nicobar Islands Police Force, Lakshadweep Police, Daman and Diu Police and Dadra and Nagar Haveli Police are eligible for induction into Grade-II of the Service. During the hearing, both the learned counsel have submitted that the promotion is to the post of ACPs which is the "Service" referred to in the 1995 Rules. Therefore, for promotion of Inspectors to the rank of ACPs, a seniority list has to be prepared. As these Rules do not provide for further categorization of Inspectors in Delhi Police into Women, Executive and so on, the seniority list would have to be a common seniority list of Inspectors of Delhi Police, as mentioned above.

10. On the other hand, the 1980 Rules notified under the Delhi Police Act, 1978 refers to "Lower Subordinates" and "Upper Subordinates" which means police personnel below the rank of Inspectors and sub-Inspector and above the rank of Head Constable. No doubt, Rule 6 of these Rules provides that each member of "Subordinate rank" shall earn promotion in his/her cadre in accordance with the Rules applicable to the cadre. However, as pointed out by the learned counsel for the respondents, the 1980 Rules do not deal with police officers who are above the rank of "Upper Subordinates", that is, the rank of Inspectors. The issue in the present case is with regard to the further promotion from the post of Inspectors to the next higher rank of ACPs. In this view of the matter, the 1980 Rules will not have any application to the preparation of the Seniority List for the purposes of promotion to ACPs.

11. We also note that as regards the five Technical Cadres of ACPs, that is Programmer, Motor Transport, Finger Print Bureau, Transport Engineer and Communications, separate Rules exist regarding the mode of recruitment and qualifications necessary for the post of ACPs as referred to in Para 6 above. For other Inspectors of Delhi Police, for example, Executive, Ministerial, Women, etc. no such special rules exist for their promotion in that category only. In the

circumstances, the principles applicable to them for promotion up to the level of Inspectors, as provided in the 1980 Rules, cannot necessarily be imported into the method of recruitment for promotion to the next higher grade of ACPs. It is for the respondents to decide which of the categories is to be considered as a Technical cadre for which eligibility condition should be prescribed with experience in that cadre only, for example, ACP (Finger Print Bureau), for whom the eligibility condition for promotion is prescribed as Inspector with three years regular service in that grade. The learned counsel for the applicants has placed much emphasis on the statement prepared by the respondents showing the sanctioned strength of Delhi Police (cadre-wise) as on 31.12.1997. But this statement cannot form the basis that each one of the personnel must be promoted separately as ACPs only in that particular cadre, as this was the position in the lower ranks under the 1980 Rules. These Rules have no relevance as far as promotion from Inspectors to ACPs is concerned which is the main issue here. This Statement cannot, therefore, assist the applicants which is contrary to the rule position. It is also not the case of the applicants that they belong to any of the Five Technical cadres for whom separate Rules exist.

12. It was very vehemently contended by the learned counsel for the applicants that neither the 1995 Rules or the other Rules now brought on record by the respondents can permit them to prepare an "Integrated Seniority List of Inspectors of Delhi Police for purpose of promotion to the rank of ACPs. As seen from the provisions of Schedule-II of the 1995 Rules, "Inspectors of Delhi Police" and other places have been mentioned with respect to considering them for promotion in Grade II of the service from amongst officers who have three years regular service in the Grade which can only mean the grade of Inspectors of Delhi Police, without further classification. It is also relevant to note that the respondents have submitted that right from 1972 they have prepared common seniority lists of Inspectors of Delhi Police.

In the circumstances, considering the relevant provisions of the 1995 Rules, it cannot be held that the preparation of the "Integrated" seniority list of Inspectors by the respondents by the impugned order is de hors the Rules. By necessary implication and interpretation of these Rules, the Inspectors of Delhi Police will, therefore, have to be considered together for promotion to the rank of ACPs which is not contrary to the Rules. In the facts and circumstances of the case, the long standing practice followed by the Respondents to prepare an "Integrated" seniority list of Inspectors of Delhi Police from 1972 is not contrary to any statutory provision of the Rules.

13. In the circumstances of the case, the judgments relied upon by the applicants counsel will not assist the applicants. The judgment in Suraj Parkash Gupta's case (*supra*) which deals with ad hoc/stop gap promotion in excess of promotes quota and where it was held on facts that lethargy and delay on the part of the State Government to ask PCS to make direct recruitment does not lead to an inference that quota rule had broken down, will not be applicable to

the facts in the present case. Similarly, the facts in Molar Mal's case (supra) are also distinguishable from the facts in the present case and that case will also not assist the applicants. In that case, while dealing with Haryana Urban (Control of Rent and Eviction) Act, 1973, it has been stated that "The courts will have to follow the rule of literal construction. But, there is an exception to this rule. That exception comes into play when application of literal construction of the words in the statute leads to absurdity, inconsistency or when it is shown that the legal context in which the words are used or by reading the statute as a whole, it requires a different meaning.... it would defeat the very object for which the legislature has incorporated that proviso in the Act..." In the present case, the contention of the respondents is that for a number of years, they have always been following the practice of preparing an "Integrated seniority list of inspectors in Delhi Police excepting in the case of those Inspectors where special rules exist for them regarding promotions in their own particular stream.

14. In the result, for the reasons given above, the application fails and is dismissed. No order as to costs."

(emphasis supplied)

It is also essential to refer the judgment of the Hon"ble Delhi High Court in Writ Petition (Civil) No.7721/2001 dated 24.1.2002, which reads as under:-

"This writ petition is directed against a Judgment/order dated 11th May 2001 passed by the Central Administrative Tribunal (in short the "Tribunal") in OA No.1454 of 1998, whereby and whereunder, the Original Application filed by the petitioners, inter alia, questioned the right of the first respondent herein to prepare an integrated seniority list of Inspectors of Delhi Police for the purpose of promotion to the post of Assistant Commissioner of Police (in short "ACP").

It is not in dispute that there does not exist any statutory rule. In absence of any rule such an integrated seniority list is being prepared for a long time atleast from 1972. Learned Tribunal in its impugned judgment, inter alia, held as under:

"In the circumstances, considering the relevant provisions of the 1995 Rules, it cannot be held that the preparation of the "Integrated" seniority list of Inspectors by the respondents by the impugned order is de hors the Rules. By necessary implication and interpretation of these Rules, the Inspectors of Delhi Police will, therefore, have to be considered together for promotion to the rank of ACPs which is not contrary to the Rules. In the facts and circumstances of the case, the long standing practice followed by the Respondents to prepare an "Integrated" seniority list of Inspectors of Delhi Police from 1972 is not contrary to any statutory provision of the Rules."

Learned Tribunal considered the question in great detail and came to the conclusion that no illegality has been committed by the first respondent in preparing such integrated seniority list.

Learned counsel appearing on behalf of the petitioner would raise two

contentions before us. Firstly, the learned counsel would contend that in absence of any rule the first respondent cannot prepare such integrated seniority list. In any event, the learned counsel would contend that no criteria had been laid down for fixation of such seniority, our attention has been drawn to the fact that some persons, who were appointed in the year 1987 as Constable, had been placed above the petitioners in the such integrated seniority list although some of them had been appointed as Sub Inspector much prior to them.

So far as the first contention of the petitioner is concerned, in our opinion, the same has no merit. In absence of any rule, the past practice of preparation of integrated seniority list, in our opinion, cannot be said to be illegal so as to declare the same ultra vires. So far as the second contention of the petitioner is concerned, it stands admitted at the bar that the said question has not been raised before the learned Tribunal.

Having regard to the fact that the placement of some respondents in the integrated seniority list above the petitioner have not been specifically questioned by the petitioners before the Tribunal such a question cannot be permitted to be raised for the first time in this writ petition. Inasmuch as the respondents must be given proper opportunity to agitate the said allegation before the Tribunal itself.

For the reasons afore-mentioned, we do not find any reason to interfere with the impugned judgment of the Tribunal, which is accordingly dismissed."

10. Now having regard to the aforesaid order of the Tribunal as well as the Hon"ble Delhi High Court (supra), we have to deal with the contentions of the learned counsel for the applicants. First contention of the learned counsel for the applicants is that the rationale behind preparation of a common seniority list has been misinterpreted and mislead by the official respondent nos.1 and 2, as the purpose of preparing an integrated seniority list of a particular post is only that the incumbents of the said list are eligible for the next promotion under the rules and that there is exception/relaxation and admittedly, the Ministerial/ Stenographer cadre does not have sanctioned post of ACP (Entry Grade DANIPS) should not be a part of the common seniority list meant for further promotion to the post of ACP (Entry Grade DANIPS). To this contention, the official respondents contended that this issue has already been dealt with by this Tribunal while deciding the OA 1454/1998 in which this Tribunal specifically held that "It is also relevant to note that the respondents have submitted that right from 1972 they have prepared common seniority lists of Inspectors of Delhi Police. In the circumstances, considering the relevant provisions of the 1995 Rules, it cannot be held that the preparation of the "Integrated" seniority list of Inspectors by the respondents by the impugned order is de hors the Rules. By necessary implication and interpretation of these Rules, the Inspectors of Delhi Police will, therefore, have to be considered together for promotion to the rank of ACPs which is not contrary to the Rules. In the facts and circumstances of the case, the long standing practice followed by the Respondents to prepare an

"Integrated" seniority list of Inspectors of Delhi Police from 1972 is not contrary to any statutory provision of the Rules." The above quoted observation of this Tribunal has been affirmed by the Hon"ble Delhi High Court while deciding the said Writ Petition preferred by the applicants therein by observing that "In absence of any rule, the past practice of preparation of integrated seniority list, in our opinion, cannot be said to be illegal so as to declare the same ultra vires." From the above, it is clear that the issue of "Integrated Seniority List of Inspectors" in Delhi Police had been adjudicated in great detail by this Tribunal and it came to the conclusion that no illegality has been committed by the official respondents in preparing such integrated seniority list. Further the said Integrated Seniority List of Inspectors circulated by the official respondents on 14.7.2017 is not challenged by the respondents in this OA as they have only challenged the order dated 30.9.2016 (Annexure A-1) in the instant OA, qua to private respondent nos.4 to 11, vide which the official respondents have assigned the look after charge of ACP to the Inspectors, whose names have been mentioned in the said order, in the interest of Govt. work and will exercise the powers/duties of ACP till further orders and the same is also subject to the condition that no financial benefits of the higher post will be conferred and the seniority in the rank of ACP will not accrue. The contention of the applicants is that private respondent nos.4 to 11 belong to Ministerial/Stenographer cadre, having no claim/stake/right to promotion/look after charge of the post of ACP (Entry Grade DANIPS) and qua respondent nos.12 to 28, the grievance of the applicants is that these private respondents also belong to ministerial/Stenographer/Women cadre and were also junior to the applicants as Sub-Inspectors in their respective cadres

11. So far as the contention of the applicants that private respondent nos.4 to 11 should not have been assigned the look after charge of ACP (Entry Grade DANIPS) vide impugned order dated 30.9.2016 is concerned, the same is not sustainable in the eyes of law as this issue of inclusion of Inspectors of Ministerial and Stenographer cadres had already been adjudicated by this Tribunal while deciding the OA 1454/1998 in paras 10 to 13 in the said Order as quoted above. . In other words, in this case, the main challenge has been written in different language but purport of this OA is same as that of OA 1454/1998.

12. Further having regard to the chart prepared by the official respondents as quoted in para 4.18 above, it is evidently clear that private respondent nos.4 to 11 are senior to the applicants in the integrated seniority list and, therefore, assignment of look after charge of post of ACP to these private respondents cannot be said to be illegal.

13. So far as further grievance of the applicants that private respondent nos.12 to 28 also belong to ministerial/ Stenographer/Women cadre and were also junior to the applicants as Sub-Inspectors in their respective cadres is concerned, the applicants have already filed their objections to the said Integrated Seniority List of Inspectors as on 1. 7.2017 circulated on 14.7.2017 and the applicants have

also stated that the same have not yet been decided by the respondents. The instant OA has been filed on 28.9.2017. As such it is clear that applicants have not waited for at least six months from the date of submissions of their representations against the said Integrated Seniority List of Inspectors circulated on 14.7.2017. Therefore, we are of the considered view that this grievance of the applicants cannot be adjudicated at this stage being pre-mature. However, we would like to say that it is the duty of the official respondents to decide the said representations of the applicants and decision on the same shall be communicated to the applicants, if the same have not yet been decided by them.

14. The reliance placed by the learned counsel for the applicants on the judgments of the Apex Court in the cases of Gurudev datta Vksss Maryadit and others vs. State of Maharashtra and others, (2001) 4 SCC 534, Bhavnagar University vs. Palitana Sugar Mill Pvt. Ltd., AIR 2003 SC 511, and of the Hon"ble High Court of Karnataka in the case of Triveni Engineering and Industries Ltd. vs. The State of Karnataka and others (decided on 21.2.2014 Writ Petition Nos.31266-267/2013), are not applicable to the facts of the case as the same are not relevant to the issues involved in this case.

15. It is also relevant to refer to the Hon"ble Supreme Court's judgment in the case of P.U. Joshi & Others Vs. Accountant General 2003 (2) SCC 632, the relevant portion of the same reads as under:

"10. We have carefully considered the submissions made on behalf of both parties.

Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/substruction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding

rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service".

(emphasis supplied)

16. In the result, for the foregoing reasons, we do not find any merit in the instant OA and the same is accordingly dismissed. There shall be no order as to costs.

17. All the pending Misc. Applications are also accordingly disposed of.