
(2019) 01 J&K CK 0004

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1280 Of 2015, IA No. 1 Of 2015, 1 Of 2017

**Sikander Hussain And Ors @APPELLANT@Hash State Th. Forest Deptt.
And Ors**

Date of Decision : 31-01-2019

Acts Referred:

Constitution Of Jammu and Kashmir, 1956 — Section 124
Jammu and Kashmir Forest Protection Rules, 2012 — Rule 38
Jammu And Kashmir Civil Service (Classification, Control and Appeal) Rules, 1956 — Rule 24
Andhra Pradesh Police Service Rules, 1966 — Rule 15<I>>Jammu And Kashmir Forest Protection Force (Subordinate) Service Recruitment Rules, 2017 — 10, 13

Citation : (2019) 01 J&K CK 0004

Hon'ble Judges : Dhiraj Singh Thakur, J

Bench : Single Bench

Advocate : M. K. Bhardwaj, Vasu Dubey, H. A. Saddiqui, Rahul Pant, S. S. Ahmed, Sheikh Najeeb

Final Decision : Allowed

Judgement

1. In this petition, the petitioners seek a writ of Certiorari for quashing seniority list dated 31.03.2015 and seek a further command to re-draw the seniority list of Forest Protection Guards of Jammu province on the basis of Jammu and Kashmir Forest Protection Rules, 2012 after considering the inter se merit of the candidates who had undergone training vide orders dated 30.10.1998 and 15.10.1999 by considering them as candidates belonging to the same batch.

The material facts are as under:

2. J&K Service Selection Recruitment Board (SSRB) issued Advertisement Notice No. 3 of 1996 dated 24.12.1996 seeking applications for the posts of Forest Guards/Forest Protection Guards. Petitioners being eligible applied and got selected. It is pertinent to mention the break-up of the posts which were advertised for various districts in the Jammu province for the posts of Forest Protection Guards:

S. No.

Name of the District

Number of posts.

1.

Jammu

79

2.

Kathua

52

3

Udhampur

104

4.

Rajouri

52

5.

Poonch

27

3. Although the vacancies advertised by virtue of the aforementioned advertisement notice pertained to various districts in Jammu province, yet the process of selection was common. Based upon the merit list so prepared and depending upon the merit of candidates, who had applied for posts in regard to their respective districts, appointments were made. All the petitioners are then stated to have been appointed and joined on the same date i.e. 16.03.1998.

4. Another important fact that needs to be noticed is that on the date of the appointment of the petitioners as Forest Protection Guards, there were no rules governing their service. Subsequently, however, in the year 2001, vide SRO. 264 of 2012 dated 09.08.2012, the J&K Forest (Protection) Force Rules, 2012 (for short, the Rules of 2012) came to be promulgated. By virtue of SRO 422 dated 15.03.2017, the J&K State Forest Protection Force (Subordinate) Service Recruitment Rules, 2017 (for short, the Rules of 2017) were promulgated. Rule 10 of the Rules of 2017 envisages maintaining of seniority list and prescribed as under:

"10. Maintenance of seniority lists:- (1) Seniority of the Members of the Service

(Executive Staff) shall be regulated in order of merit obtained at the examination held at the end of training period before being posted against working posts. The members shall be deputed for compulsory training strictly as per the seniority/merit obtained during the selection:

Provided that in case a member has failed to qualify the compulsory training in two attempts, he shall lose his seniority position to the member below him who has qualified the said training.

(2) Seniority of the members of Service (Ministerial) shall be regulated as per Rule 24 of the Jammu and Kashmir Civil Service (Classification, Control and Appeal) Rules, 1956.

(3) Head of Department shall maintain an up-to-date and final seniority list of members of the service."

5. In terms of rule 13, all rules corresponding to the Rules of 2017 and in force immediately before the commencement of these rules were repealed.

6. Since the controversy involved in this petition revolves around the fixation of seniority, therefore, it becomes to reproduce rule 38 of the Rules of 2012 which envisages as under:

"38. Seniority of directly recruited candidates (Enrolled members) The seniority of enrolled candidates directly recruited shall be determined as under:

(1) Candidates who are sent for initial training to a training school shall rank in seniority in the relevant grade, according to the order of merit obtained at the examination held at the end of training period before being posted against working posts and those who pass examination in the second attempt shall rank junior to those who passed in the first attempt but shall rank senior to those who pass in the next or subsequent batches and where candidates secure equal marks, the seniority shall be determined by the date of birth-the elder candidate being senior;

(2) In case of candidates who are not required to undergo any training the seniority shall be determined on the basis of their order of selection.

(3) When two or more candidates are of equal merit at one and the same examination or selection, their relative seniority shall be determined by the date of birth-the elder candidate being the senior;

(4) When a candidate whose seniority has been fixed under the above rules cannot join duty within three months from the receipt of order of appointment, his seniority among the candidates selected at the same examination or selection shall be reckoned from a date to be determined by the appointing authority.

(5) Candidates selected for appointment at an earlier selection shall be senior to those selected later irrespective of the date of joining."

7. The grievance of the petitioners in the present petition is that their placement

in the seniority list impugned has been determined contrary to the spirit of Rule 38.

It was urged the objections to the tentative seniority list had been rejected summarily. It was contended that all the candidates selected pursuant to advertisement notice No. 3/1996 were required to be sent for training simultaneously, which, however, did not happen. It was urged that the Joint Director, Forest Protection Force, Jammu vide his order dated 30.10.1998 deputed along with the Forest Protection Guards, even the Forest Protection Inspectors, for six months police Training in the Police Academy at Phillour, Punjab.

It was urged that there were as many as 191 Forest Guards so deputed for the said course. The candidates so sent were from Districts of Jammu, Kathua, Udhampur, Rajouri and Poonch.

The names of the petitioners, however, did not figure in the first batch of candidates deputed for training. Their names figured in the second list issued by the Joint Director, Forest Protection Force vide its communication dated 15.10.1999 whereby as many as 54 Forest Protection Guards including the petitioners were so sent.

8. It is necessary to note the material part of the communication dated 15.10.1999 which envisages thus:

"The following FPF Guards of Jammu region could not get training in first batch of Police Training at PPA, Phillour (Punjab). Since the second batch is going to be trained from 1st Nov'99 at PPA, Phillour (Punjab), so necessary order may be issued in this regard please:"

9. As against the total number of vacancies so advertised, only 191 selected candidates were sent for police training from the aforementioned districts. The district-wise distribution of candidates sent for training has also been reproduced in body of the writ petition which is as under:

S. No.

Name of the District

Total No. of candidates selected

Serial No. of candidates sent for training to Phillour

Serial No. of candidates sent for training to Dumi, Akhnoor

Remarks

Kathua

51

1 to 36

37 to 42

The rest of the candidates, who were selected pursuant to

43 to 49

Udhampur

104

1 to 30

31 to 35

advertisement Notice No. 3 of 1996 were sent for training vide order dated 15.10.1999 including the petitioners.

Jammu

52

1 to 18

19 to 21

22 to 34

Rajouri

52

41

Nil

Poonch

27

12

Nil

10. Petitioners are stated to have successfully undergone the training course which lasted over about 6½ months and the merit obtained by each of the candidates during the course of training has duly been reflected in the seniority list impugned. Grievance of the petitioners is that all those candidates selected along with the petitioners who were sent earlier in point of time for training to Phillour (Punjab) and other training Colleges had en masse been shown senior to the petitioners irrespective of the merit obtained by the petitioners during the course of training. It is in these circumstances highlighted that by showing the entire batch of candidates deputed for training earlier than the petitioners as senior, provisions of the rule 38 of the Rules of 2012 have been violated. It was also urged that the official respondents were under an obligation to frame a common seniority list of the entire batch, who were selected pursuant to

Advertisement Notice No. 3 of 1996 after analyzing their respective merit obtained in the training course and that the bifurcation of the petitioners batch wise was illegal.

11. With a view to highlight the comparative merit position obtained during the training, learned counsel for the petitioners has prepared the following chart to show that those shown senior to the petitioners had obtained lesser merit in the training programme:

S.

Name of the

Marks obtained

S. No. in the

Remarks

No.

Petitioner/

in the initial

seniority issued

Respondent

training

vide Order No.

344-DFPF of 2015

dated: 31-03-

2015 by

Respondent No.2

1

Shamsher Singh

708.50 out of 1115

1

Respondent

2

Kulbhushan

704.50 out of 1115

2

Respondent

Chander

3

Chain Singh

702.50 out of 1115

3

Respondent

4

Vikram Mahajan

699.50 out of 1115

4

Respondent

5

Anil Kumar

698.00 out of 1115

5

Respondent

6

Krishan Chand

697.50 out of 1115

6

Respondent

7

Mohd Mashooq

697.50 out of 1115

7

Respondent

Khan

8

Subhash

696.00 out of 1115

8

Respondent

Chander

9

Surinder Kumar

694.00 out of 1115

9

Respondent

10

Satish Kumar

693.50 out of 1115

10

Respondent

11

Deepak Singh

692.00 out of 1115

11

Respondent

Sambyal

12

Sandeep

690.00 out of 1115

12

Respondent

Khajuria

13

Ravi Shankar

689.50 out of 1115

13

Respondent

14

Subhash

688.50 out of 1115

14

Respondent

Chander

15

Sikander

702.00 out of

164

Petitioner

Hussain

1140

16

Balram Singh

686.50 out of 1115

15

Respondent

17

Vinod Kumar

686.00 out of 1115

16

Respondent

18

Rajinder Singh

685.00 out of 1115

17

Respondent

19

Rajiv

683.50 out of 1115

18

Respondent

20

Sanjay Kumar

682.50 out of 1115

19

Respondent

21

Des Raj

682.00 out of 1115

20

Respondent

22

Parveen Kumar

682.00 out of 1115

21

Respondent

23

Brij Bhushan

682.00 out of 1115

22

Respondent

24

Rajesh Kumar

681.00 out of 1115

23

Respondent

Luthra

25

Rakesh Singh

681.00 out of 1115

24

Respondent

26

Kartar Chand

681.00 out of 1115

25

Respondent

27

Deepak Singh

680.00 out of 1115

26

Respondent

28

Janak Raj

678.50 out of 1115

27

Respondent

29

Bikramjeet

678.00 out of 1115

28

Respondent

Singh

30

Naresh Kumar

678.00 out of 1115

29

Respondent

31

Yash Pal

693.00 out of

166

Petitioner

Sharma

1140

32

Rattan Lal

677.50 out of 1115

30

Respondent

33

Rakesh Kumar

692.00 out of

167

Petitioner

1140

34

Ravi Kumar

676.50 out of 1115

31

Respondent

35

Durgesh

676.00 out of 1115

32

Respondent

Chander

36

Raj Kumar

675.00 out of 1115

33

Respondent

37

Janam Jeet

675.00 out of 1115

34

Respondent

38

Hans Raj

674.50 out of 1115

35

Respondent

39

Pardeep Singh

674.50 out of 1115

36

Respondent

40

Gurpal singh

674.00 out of 1115

37

Respondent

41

Surveshwar

674.00 out of 1115

38

Respondent

42

Vijay Kumar

674.00 out of 1115

39

Respondent

43

Raj Kumar

672.00 out of 1115

40

Respondent

44

Deepak Singh

671.50 out of 1115

41

Respondent

45

Chain Singh

670.50 out of 1115

42

Respondent

46

Subhash

670.50 out of 1115

43

Respondent

Chander

47

Dhavinder

670.50 out of 1115

44

Respondent

Singh

48

Arun Kumar

669.50 out of 1115

45

Respondent

49

Rameshwer

669.50 out of 1115

46

Respondent

Verma

50

Suresh Kumar

669.00 out of 1115

47

Respondent

51

Romesh Kumar

668.50 out of 1115

48

Respondent

52

Mohammad

668.50 out of 1115

49

Respondent

Rehman

53

Ravi Kant

683.50 out of

168

Petitioner

Sharma

1140

54

Shakti Singh

668.00 out of 1115

50

Respondent

55

Ram Singh

668.00 out of 1115

51

Respondent

Manhas

56

Rakesh Khajuria

668.00 out of 1115

52

Respondent

57

Anil Kumar

682.50 out of

169

Petitioner

Khajuria

1140

58

Vijay Kumar

682.50 out of

170

Petitioner

1140

59

Sukhdev Singh

667.00 out of 1115

53

Respondent

60

Ravinder

666.50 out of 1115

54

Respondent

Sharma

61

Rakesh Sharma

666.50 out of 1115

55

Respondent

62

Ajay Kumar

666.50 out of 1115

56

Respondent

63

Atiq-ul-Rehman

665.50 out of 1115

57

Respondent

64

Sahil Sharma

680.50 out of

171

Petitioner

1140

65

Rajesh Chib

665.50 out of 1115

58

Respondent

66

Satish Sharma

664.50 out of 1115

59

Respondent

67

Narayan Dutt

664.00 out of 1115

60

Respondent

68

Vijay Singh

663.50 out of 1115

61

Respondent

69

Shashpal Singh

663.50 out of 1115

62

Respondent

70

Ilam Din

663.00 out of 1115

63

Respondent

71

Mulkh Raj

677.50 out of

173

Petitioner

Khajuria

1140

72

Vijay Kumar

662.50 out of 1115

64

Respondent

Sharma

73

Puran Chand

662.00 out of 1115

65

Respondent

74

Ajay Sharma

661.50 out of 1115

66

Respondent

75

Abdul Qayoom

661.00 out of 1115

67

Respondent

76

Sham Lal

660.00 out of 1115

68

Respondent

77

Mohammad

659.50 out of 1115

69

Respondent

Latif

78

Sandeep Kumar

658.50 out of 1115

70

Respondent

Sharma

79

Aman Deep

658.50 out of 1115

71

Respondent

Bamotra

80

Kartar Chand

657.50 out of 1115

72

Respondent

81

Amjad Iqbal

657.50 out of 1115

73

Respondent

82

Daljit Singh

657.50 out of 1115

74

Respondent

83

Abdul Hamid

657.00 out of 1115

75

Respondent

84

Sham Singh

656.50 out of 1115

76

Respondent

Jasrotia

85

Ravinder Bali

656.50 out of 1115

77

Respondent

86

Daler Singh

656.50 out of 1115

78

Respondent

87

Pardeep Kumar

656.00 out of 1115

79

Respondent

88

Vinod Kumar

655.50 out of 1115

80

Respondent

89

Naresh Kumar

655.00 out of 1115

81

Respondent

90

Manoj Kumar

654.50 out of 1115

82

Respondent

91

Daljeet Singh

654.50 out of 1115

83

Respondent

92

Sanjeev Kumar

654.50 out of 1115

84

Respondent

Sharma

93

Sanjeet Padha

669.00 out of

178

Petitioner

1140

94

Waqar Ahmed

653.50 out of 1115

85

Respondent

95

Sanjay Kumar

653.00 out of 1115

86

Respondent

96

Suram Chand

653.00 out of 1115

87

Respondent

97

Mukhtar Ahmed

653.00 out of 1115

88

Respondent

98

Dayal Singh

653.00 out of 1115

89

Respondent

99

Arun Kumar

652.00 out of 1115

90

Respondent

100

Rajesh Kumar

666.50 out of

180

Petitioner

Gupta

1140

101

Romesh

666.50 out of

181

Petitioner

Kumar

1140

102

Mohd Manzoor

666.00 out of

183

Petitioner

1140

103

Ashok Kumar

651.00 out of 1115

91

Respondent

104

Som Lal

651.00 out of 1115

92

Respondent

105

Gopal Dass

649.50 out of 1115

93

Respondent

106

Mohammad

649.00 out of 1115

94

Respondent

Farooq

107

Khajoor Singh

648.50 out of 1115

95

Respondent

108

Sham Lal

648.00 out of 1115

96

Respondent

109

Rakesh Bhalla

648.00 out of 1115

97

Respondent

110

Varinder Kumar

648.00 out of 1115

98

Respondent

111

Munir Hussain

647.50 out of 1115

99

Respondent

112

Sunil Kumar

647.50 out of 1115

100

Respondent

113

Shamas-ud-Din

647.00 out of 1115

101

Respondent

114

Gandharb Singh

647.00 out of 1115

102

Respondent

115

Noor-ur-

647.00 out of 1115

103

Respondent

Rehman

116

Darshan Kumar

646.50 out of 1115

104

Respondent

117

Suresh Kumar

646.50 out of 1115

105

Respondent

118

Kamal Nain

645.50 out of 1115

106

Respondent

119

Mohinder

659.50 out of

185

Petitioner

Kumar

1140

120

Ashok Kumar

659.50 out of

186

Petitioner

1140

121

Parraiz Hussain

644.00 out of 1115

107

Respondent

122

Mohammad

643.50 out of 1115

108

Respondent

Mohsin

123

Ajit Kumar

643.00 out of 1115

109

Respondent

124

Chandan Bhalla

643.00 out of 1115

110

Respondent

125

Mohammad

642.50 out of 1115

111

Respondent

Iqbal

126

Mohinder Singh

642.00 out of 1115

112

Respondent

127

Showkat Ali

641.50 out of 1115

113

Respondent

128

Anil Sharma

641.00 out of 1115

114

Respondent

129

Devinder Kumar

640.50 out of 1115

115

Respondent

130

Rayaz Ahmad

640.00 out of 1115

116

Respondent

131

Narotam

653.50 out of

190

Petitioner

Kumar

1140

132

Narinder Kumar

638.00 out of 1115

117

Respondent

133

Shafiq Ahmad

638.00 out of 1115

118

Respondent

134

Ram Paul

636.50 out of 1115

119

Respondent

135

Avtar Singh

636.50 out of 1115

120

Respondent

136

Shakoor Ahmad

636.00 out of 1115

121

Respondent

137

Birender Singh

634.00 out of 1115

122

Respondent

Jasrotia

138

Iqbal Ahmad

633.50 out of 1115

123

Respondent

139

Jalal Din

632.50 out of 1115

124

Respondent

140

Wajahat

632.50 out of 1115

125

Respondent

Hussain

141

Mohammad

632.50 out of 1115

126

Respondent

Munshi

142

Riaz Ahmad

632.50 out of 1115

127

Respondent

142

Ashok Kumar

632.00 out of 1115

128

Respondent

144

Javaid Ahmad

630.50 out of 1115

129

Respondent

145

Joginder Singh

630.50 out of 1115

130

Respondent

146

Som Raj

629.50 out of 1115

131

Respondent

147

Narinder Singh

628.00 out of 1115

132

Respondent

148

Ajit Singh

627.00 out of 1115

133

Respondent

149

Mohammad

627.00 out of 1115

134

Respondent

Qaider

150

Ranjit Singh

626.00 out of 1115

135

Respondent

151

Mohd Ashraf

640 out of 1140

197

Petitioner

152

Mohammad

624.50 out of 1115

136

Respondent

Razak

153

Liyaqat Hussain

324.50 out of 1115

137

Respondent

154

Bashir Ahmad

624.00 out of 1115

138

Respondent

155

RajeshKumar

622.50 out of 1115

139

Respondent

156

Mahroof Ahmad

621.50 out of 1115

140

Respondent

Khan

157

Mohammad

617.50 out of 1115

141

Respondent

Younis

158

Shakil Ahmad

617.50 out of 1115

142

Respondent

159

Ranbir Singh

612.50 out of 1115

143

Respondent

160

Naseer Ahmad

612.50 out of 1115

144

Respondent

161

Noor Hussain

612.50 out of 1115

145

Respondent

162

Mohammad

610.50 out of 1115

146

Respondent

Aslam

163

Abdul Rashid

610.00 out of 1115

147

Respondent

164

Mohammad Dil

609.00 out of 1115

148

Respondent

Pazeer

165

Shabir Ahmad

608.00 out of 1115

149

Respondent

166

Mohammad

602.00 out of 1115

150

Respondent

Shaffi

167

Gyaneshwar

Passed in Second

151

Respondent

Singh

attempt

168

Javed Nazir

152

Respondent

169

Kuldip Singh

153

Respondent

170

Jai Paul

154

Respondent

171

Nazir Ahmed

155

Respondent

Qureshi

172

Rajesh Kumar

156

Respondent

173

Jamil Ahmad

157

Respondent

174

Farman Ali

158

Respondent

175

Uttam Kumar

159

Respondent

176

Lakhvinder

160

Respondent

Singh

177

Suran Singh

161

Respondent

178

Chander Shekar

162

Respondent

179

Mohammad

163

Respondent

Farooq

12. Learned counsel next contended that failure on the part of the respondents to depute the petitioners for training along with those who had been so deputed in the year 1998 could not at all be attributed to the petitioners and the same should not have come in the way of the petitioners for being shown at their appropriate places in the seniority list based upon their merit position obtained during the training course.

13. Reliance was placed upon the Apex Court judgment in the case of A. Raghu v. Government of Andhra Pradesh and ors. connected with Vasam Surender and ors. v. Government of Andhra Pradesh and ors., 2015 (14) SCC 221 to emphasize the point that seniority of candidates, who were selected from a common process of selection is to be determined on the basis of the final aggregate marks obtained by them during the course of their training irrespective of the dates on which they are deputed for training.

14. Per contra, Mr. Rahul Pant, learned counsel appearing for the some of the private respondents contended that the writ petition was not maintainable, inasmuch as, the petitioners had not challenged Rule 38 of the Rules of 2012. It was further contended that rule 38 of the Rules of 2012 itself envisages seniority to be maintained batch wise and, therefore, since the petitioners were deputed for undergoing training in a subsequent batch in the year 1999, they were bound to figure below the respondents in the seniority list who were deputed earlier in the year 1998.

15. Reliance was also placed upon the Rules of 2017 framed in accordance with the powers vested with the Governor by virtue of proviso to Section 124 of the Constitution of the Jammu & Kashmir to highlight that members of the force were to be deputed for compulsory training strictly as per the seniority/merit obtained during the selection. It was also urged that members from various districts were, in fact, deputed in accordance with the merit and, therefore, the batch wise seniority framed by the Government could not be said to be illegal and untenable.

16. Mr. H. A. Saddiqui, learned counsel appearing for the State, in fact, reiterated the aforementioned arguments. It was also stated that in an earlier round of litigation this Bench had upheld the Rules of 2012 and, in fact, issued a direction that seniority be framed strictly in terms thereof. Reliance was placed in this regard to a judgment of this Bench in SWP No. 1895/ 2012 connected with SWP No. 2416/2012 titled Rajesh Chib and ors. v. State of J&K and ors. which was subsequently upheld by a Division Bench of this Court in LPASW No. 149/2014. It was thus urged that it was not open to the petitioners to question the seniority list so framed.

17. Heard learned counsel for the parties.

18. Admittedly, pursuant to notification No. 03/1996 a select list was prepared for Forest Protection Guards for various Districts inter alia for the Jammu province. It appears that the merit was determined district wise for purposes of making appointment at the district level. The appointments of the petitioners as also the private respondents were made in the year 1998. However, the first batch of candidates that were sent for training to Phillour and other colleges consisted of approximately 163 candidates. List of 163 candidates was not prepared on the basis of an overall list based upon their merit in the selection process but the candidates were drawn from various districts perhaps in accordance with the merit position obtained by them in their respective districts.

19. In the select list that was prepared for various districts, learned counsel for the parties agree that no merit was disclosed as was prepared by the Service Selection Recruitment Board. Yet the case of the petitioners is that since their names figured higher in the select list prepared for district Kathua as also district Udhampur, then some of the candidates who are deputed in the first batch, it must be presumed that they were more meritorious than some of the respondents, who had been deputed in the first batch. Whether the deputation occurred on the basis of merit even with regard to the candidates in the same district has not been specifically projected by the learned counsel appearing for the State. It was urged that a presumption was attached that the list obtained from the SSRB was prepared in accordance with the merit as was the requirement under rules.

20. Notwithstanding the above, one thing is clear that there was no overall merit list prepared of all the candidates selected in various Districts in connection with advertisement notice No. 3 of 1996 and that candidates were deputed for undergoing training from various Districts at random.

21. A necessary consequence of this would be that a candidate who was more meritorious say in the District of Jammu could have been ignored for purposes of such a deputation as compared to a candidate from a neighboring district Udhampur or Kathua. Therefore, merit was certainly compromised for purposes of sending such candidates for training.

22. It was precisely to plug such a loophole that in the year 2017, the Rules of

2017 were promulgated. Rule 10 strictly mandated that members would be deputed for compulsory training strictly as per seniority/merit obtained during the selection process. If an overall merit list was prepared in the year 1998, then even if the candidates were sent batch wise, it would not have affected their seniority. The merit of candidates inter se within a particular batch would then be determined on the basis of the result in the training programme.

23. However, in the present case, the situation is not so. Since there was no effort made to prepare an overall merit list of candidates from all the districts in the Jammu province, a candidate, who was otherwise eligible to be sent for training in the first batch, was for reasons beyond his control and subject to the whims and fancies of the authorities deputed later. This was notwithstanding his better merit qua candidates like some of the respondents who were inferior in merit.

24. A lot of emphasis had been laid by learned counsel appearing for the respondent-State as well as the private respondents that rule 38 of the rules of 2012 envisages preparation of seniority list batch wise.

25. All that, rule 38 envisages is that those candidates who fail to pass the training course examination in the first attempt would rank junior to those who have passed the said exam in the first attempt and further that they would rank senior to those who pass in the next or subsequent batches. The phrase "next or subsequent batches" has relevance for the purposes of determining the seniority of those candidates who failed to pass the examination in the first attempt, but who would rank senior to those who pass in the next or subsequent batches.

26. Rule 38, however, does not envisage preparation of seniority list, based only upon the batches ignoring the overall merit of the candidates obtained by them in the process of selection. If seniority was to be determined only on the basis of having been deputed in a particular batch, then there would be no need for the State to promulgate the Rules of 2017 which specifically envisaged deputation as per merit obtained by the candidates during the process of selection.

27. I am also supported in principle by the Apex Court Judgment in A. Raghu's case (supra) which was cited by Mr. M. K. Bhardwaj. This was a case where one Munnu Swami, who was selected as a Sub Inspector, was originally deputed for police training in the year 1991, but could not complete his training on account of the fact that he did not participate in the examination conducted at the end of the training on account of some personal reasons. He was allowed to complete his training along with the batch of the candidates deputed for training in the succeeding batch on 14.06.1992.

28. According to proviso to Rule 15 of the Andhra Pradesh Police (Civil) Subordinate Service Rules, in that case, the inter se seniority of Sub Inspector was to be fixed on completion of the training of the police in the police training College in accordance with merit obtained in the examination conducted during the training course. The Apex Court held that Munnu Swami's seniority had to be

reckoned along with the candidates of the 1991 batch for the simple reason his name existed in the list of the names for the said batch. What was held in paragraph 16 can beneficially be reproduced hereunder:

"16. From the factual position depicted hereinabove, it is not possible for us to accept, that the candidates, who were deputed for training on 15.7.1991, and those deputed for training on 14.6.1992 to fulfill the deficiency, can be described as two different batches. The selection process having been joint, and in furtherance of the same notification dated 22.1.1991 (issued by the Recruitment Board), it is inevitable for us to conclude, that the candidates deputed to the two different courses of training (on 15.7.1991 and 14.6.1992) were essentially candidates belonging to a singular batch, who were selected through a common process of selection. In fact, the instant inference, insofar as the issue of inter se seniority is concerned, is inevitable, as the dates on which the candidates were deputed for training, are inconsequential, so far as rule 15 is concerned....."

29. In the present case also, since the process of selection in which the petitioners and the private respondents were selected was one and the dates of appointments of the petitioners was also one, for all practical purposes, they must be considered to be belonging to the same batch. With a view to give full effect of rule 38 of the Rules of 2012, the overall seniority list has to be framed based upon the merit obtained by the candidates in the training programme. Any other interpretation would lead to violating rule 38 of the Rules of 2012 in the present case besides violating rule 10 of the Rules of the 2017.

30. Be that as it may, this petition is allowed. Impugned seniority list dated 31.03.2015 is quashed. The official respondents shall proceed to frame the seniority list afresh treating the candidates, who had been deputed in the year 1998-99 as belonging to the same batch. The merit list shall be prepared on the basis of merit obtained by the candidates which include the petitioners and the private respondents strictly in accordance with merit obtained by them during the course of training.