

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.974 /2023.


SI Saeed Jan of CCP Peshawar..... **Appellant.**

VERSUS

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others. . **Respondents.**

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* DSP/Legal,
CCP, Peshawar.

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.974 /2023.

SI Saeed Jan of CCP Peshawar..... **Appellant.**

VERSUS

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others. . **Respondents.**

REPLY BY RESPONDENTS NO. 1 to 5.

Respectfully Sheweth:-

PRELIMINARY OBJECTIONS:-

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 8307

Dated 16-10-23

1. That the appeal is badly barred by law & limitation.
2. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
3. That the appellant has not come to Hon'ble Tribunal with clean hands.
4. That the appellant has no cause of action and locus standi to file instant appeal.
5. That the appellant is estopped by his own conduct to file the instant appeal.
6. That the appellant has concealed the material facts from this Hon'ble Tribunal.
7. That the appeal is not maintainable being devoid of any merit.

REPLY ON FACTS:-

1. Correct to the extent of appointment of appellant, but confirmation of appellant w.e.f. date of appointment after probation period is misreading of Rule 12.8, 13.18 and 19.25 of Police Rules, 1934. The Apex Court of Pakistan declared that date of appointment and date of confirmation are two different and separate events which is conceived to be the same is strongly dispelled in the following terms:

“The Supreme Court of Pakistan underlined the difference between the date of appointment and date of confirmation in Mushtaq Waraich vs IG Punjab (PLD 1985 SC 159). In a recent judgment (dated 2nd November 2022 in Civil Appeal No. 1172 to 1178 of 2020 and Civil Petition No. 3789 to 3896, 2260-L to 2262-L and CP 3137-L) the apex Court, has held that “reliance on Qayyum Nawaz [a judgment of the Apex Court reported as 1999 SCMR 1594] that there is no difference between that date of appointment and date of confirmation under the Police Rules is absolutely misconceived and strongly dispelled.”

The Apex court has further explained PR 12.3(3) of Police Rules 1934 and declared that the final seniority of officers will be reckoned from the date of confirmation of the officers not from the date of appointment. The Honorable Court further held that “the practice of antedated confirmation and promotion have been put down in Raza Safdar Kazmi” (a judgment of the Punjab Service Tribunal dated 15.08.2006, passed in Appeal No. 239/2006 and upheld by the Supreme Court vide order dated 29.02.2008, passed in Civil Appeals No. 2017 to 2031 of 2006 and other connected matters).

2. Pertains to record.
3. Incorrect, each probationer officer appointment is subject to mandatory training for one year period who on return to the parent District further undergoes two years practical training

under rule 19.25. Thus, his total probation period after appointment is three years and on completion of that probation period, he is confirmed in that appointment under Rule 12.8 and 13.18 of Police Rules with immediate effect not from the date of appointment. The same issue has been addressed by the Apex Court and Esta Code in the following manner:-

The two rules (12.8 and 19.25(5) of the Police Rules 1934) clearly state that PASIs (ASIs appointed direct) shall be on probation for a period of three years after their appointment as such and they may be confirmed in their appointments (appointment of being an ASI) on the termination of the prescribed period of probation for three years with immediate effect NOT with retrospective effect i.e. from the date of their appointment by the Range Deputy Inspector General of Police on the report of their respective District Police Officers provided that they have completed the period of their probation of three years successfully in terms of the condition laid down in the PR 19.25(5) of the Police Rules 1934.

Moreover, under paragraph VI of the promotion policy, provided in the ESTA Code Khyber Pakhtunkhwa (Revised Edition) 2011, "promotion will always be notified with immediate effect." Drawing analogy from this rule, all PASIs might be so confirmed on conclusion of probationary period of three years with immediate effect (the date on which order of their confirmation is issued).

4. Incorrect and misleading, In fact admission to List "E of the confirmed ASIs is governed by Rule 12.8 and 13.18 of Police Rules, wherein certain principles have been set for bringing the confirmed ASIs of probationer officers and promoted (Ranker ASIs) Officers and the difference has been clearly mentioned therein. The same is reproduced for clarification below:-

PR 12.8 Probationary nature of appointments. (1) Inspectors, sergeants, Sub-Inspector and Assistant Sub Inspectors who are directly appointed will be considered to be on probation for three years and are liable to discharged at any time during or on the expiry of the period of their probation if they fail to pass the prescribed examination including the riding test, or are guilty of grave misconduct or are deemed, for sufficient reason, to be unsuitable for service in the police. A upper Subordinates by Range Deputy Inspector General, Assistant Inspector General, Government Railway Police, Assistant Inspector General, Provincial Additional Police (designated as Commandant, Provincial Additional Police). No appeal lies against an order of discharge. (2) The pay admissible to a probationary Inspector, Sergeant, Sub-Inspector or Assistant Sub Inspector is shown in Appendix table 10.64, Table A.

PR 19.25 training of Upper Subordinates (1). "Inspector, Sub-Inspectors, and Assistant Sub Inspectors, who are directly appointed, shall be deputed to the police Training School to undergo the course of training laid down for such officers in the Police Training Schools Manual and are liable to discharge if they fail to pass the prescribed examination or are badly reported on."

- (5) On the termination of the prescribed period of probation Superintendent shall submit to the Deputy Inspector General for final orders the full report required by form 19.25(5) on the probationer's working and general conduct, with a recommendation as to whether he

should not be confirmed in his appointment. In the case of inspectors such reports shall be forwarded to the Inspector General.

1. Furthermore, the Apex Court of Pakistan set a principle of confirmation for Rule 13.18 in the case reported as 2016 SCMR 1254 case titled Gul Hassan Jatoy etc Vs Faqir Muhammad Jatoy etc. The relevant para of the judgment is reproduced as under:-

74. It has been observed that in many cases the Police personnel have completed their statutory period of probation but they were not confirmed for want of notification, and as result of which such officials have suffered in terms of delayed promotion or loss of seniority, which is a sheer negligence and abuse of power on the part of competent authorities concerned. Hence, we are of the view that this practices must be brought to an effective end so that injustice may not be perpetrated against such officials. Therefore, in future those police personnel who have completed their statutory period of probation, whether it is three years or two years, they shall be confirmed whether or not a notification to that effect is issued.

The same principle has been applied by the department vide letter No. 63/CPO/CPB, dated 13.02.2023 uniformly to bring purity and eradicate anomalies in confirmation and seniorities of all upper subordinates. Due to this procedure certain officers (rankers as well as probationers) who were deprived of confirmation in compliance of Rule 13-18 and Apex Court judgment above, got their due confirmations and become senior than appellant and others which is pure application of the rules in compliance of Apex Court above order. Hence, appellant claim is denied of Rules and principles set by the Apex Court of Pakistan.(Copy of judgment is annexed as A)

5. Incorrect and misleading as explained in above para 4 in detail.
6. Incorrect. The committee report dated 31-08-2017 was misreading of Rules 12-8, 13-18 and against the spirit of Apex Court of Pakistan. Hence, was devoid of law and merits, created anomalies and deformed the seniority lists. That's why the same could not be implemented rather it needed correction and modification in light of Rules & Apex Court Principles.
7. First portion of the para is incorrect and misleading as explained in above paras while to the extent of filing Writ Petition No. 3720/2018, it is correct that some probationer officers insisted sticking to an illegal committee report.
8. Correct to the extent of implementation of the said illegal committee report through judicial push and pressure by the PASIs and the same was later on withdrawn/modified or corrected in light of Rules 12-8, 13-18, 19-25 and Apex Court directions which are explained in detailed in the above paras.
9. Correct to the extent of provisional seniority list dated 08.10.2020, but as explained in above paras, the same was issued under judicial compulsion which created serious anomalies and ranker ASIs were deprived of their due rights of seniorities and placement.
10. Correct to the extent of DPC minutes dated 27.06.2021 but the same was devoid of merits, rules and Apex Court principles, hence, required correction/modification for the sake of justice and rights of rankers/promoted ASIs.

11. Incorrect, misleading and misconceived. The impugned seniority list dated 02.11.2022 was issued in accordance with Rules and Apex Court judgments. Respondent department is under obligation to safeguard the rights of all Police Officers whether probationer or ranker in accordance with Rules and in light of principles set by the Apex Court of Pakistan. Any anomaly or deformity created by a wrong procedure or application of rule within the seniorities, disturbs the whole service structure of Police department which is void ab-initio and correctable.
12. Incorrect. No departmental appeal against the Rules and Apex Court Judgments is entertainable after surgery of the whole structure in light of Rules and Apex Court Judgments.
13. Incorrect. The appellant has no cause of action and locus standi to file the instant appeal being devoid of merits. As per rules and apex court principles his appeal may be dismissed inter alia on the following grounds.

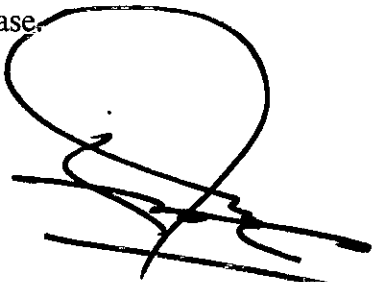
REPLY ON GROUNDS:-

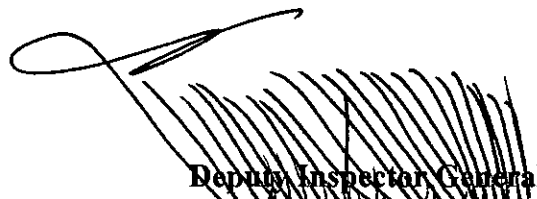
- A. Incorrect and denied on the ground that appellant has been treated strictly in accordance with law/rules and no legal and fundamental right has ever been violated by the respondents.
- B. Incorrect. The seniority list was prepared in the spirit of Police Rules 1934 and in the light of Hon'ble Supreme Court judgments.
- C. Incorrect. As replied above.
- D. Incorrect. The respondent department acted in accordance with law/rules and Apex court judgments.
- E. Incorrect. Para already explained in the preceding paras. Furthermore, the appellant was treated as per law/rules and Apex court judgments.
- F. Incorrect. The principle of confirmation from the date of initial appointment is put down by the august Apex court in case titled Mushtaq Waracich Vs IG Punjab (PLD 1985 SC 159) by underlining the difference between the date of appointment and date of confirmation. In a recent judgment dated 02.11.2022 in civil Appeal NO.1172 to 1178 of 2020 and Civil Petition No.3789 to 3896, 2260-L to 2262-L and CP 3137-L the august apex court has held that "reliance on Qayyum Nawaz a judgment of the Apex court, reported as 1999 SCMR 1594 that there is no difference between the date of appointment and date of confirmation under the Police Rules is absolutely misconceived and strongly dispelled". The august Apex court has further explained rule 12.2 (3) of Police Rules,1934 and declared that the final seniority of officers will be reckoned from the date of confirmation of the officers not from the date of appointment.
- G. Para already explained in the above para.
- H. Incorrect. The objections raised in the Para by the appellant are denied, having no legal footing and against the norms of law as the replying respondents have always followed the law/rules in its true letter & spirit.
- I. Incorrect. Para already explained in the above paras.
- J. Incorrect and already explained in the preceding paras. Furthermore, the seniority list E was prepared as per spirit of Police Rules 1934 and in the light of Apex Court judgments.


- K. Incorrect. The appellant was treated as per law/rules and Apex court judgments.
- L. Incorrect and misleading. As per Police Rules 1934, Apex Court Judgments & ESTA Code promotion will be reckoned from the date of confirmation not from the date of appointment. Drawing analogy from this rule & judgments, all PASIs might be so confirmed on conclusion of probationary period of three years with immediate effect (the date on which order of their confirmation is issued).
- M. Incorrect. Appellant has never been deprived of his due right nor treated with discrimination. However it is worth to clarify that promotion and confirmation amongst employees of respondent department have been made in accordance with law/rules and no pick and choose formula is followed.
- N. Incorrect. The replying respondents acted in accordance with law/rules.
- O. Incorrect. The objections raised in the para by the appellant are denied, having no legal footing and against the norms of law as the replying respondents have well known always followed the law/rules in its true letter & spirit.
- P. Incorrect. Para already explained in the above paras. However, the appellant has never been deprived of his due right.
- Q. Incorrect. The appellant has been treated as per law/rules and no Article of Constitution of Pakistan has been violated by the replying respondents.
- R. Incorrect. Replying respondents has acted in accordance with law/rules and as per the spirit of the judgment of the Apex court. Therefore, its acts are liable to be upheld.


PRAYERS:-


It is therefore most humbly prayed that in light of above facts and submissions, the appeal of the appellant being devoid of merit and legal footing, may kindly be dismissed with cost please.


Capital City Police Officer,
Peshawar.


Deputy Inspector General of Police,
HQrs: Khyber Pakhtunkhwa,
Peshawar.


Additional Inspector General of Police,
HQrs: Khyber Pakhtunkhwa,
Peshawar.


Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.


Chief Secretary, ACS
Government of Khyber Pakhtunkhwa,
Peshawar.

(6)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.974 /2023.

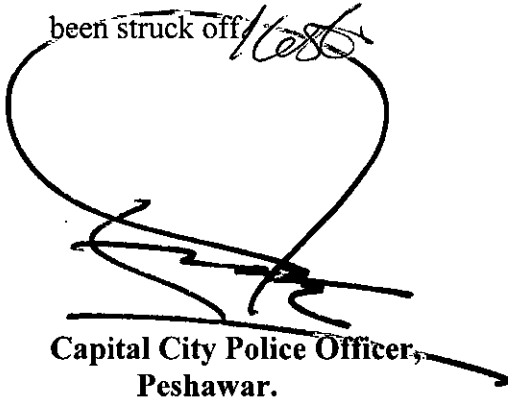
SI Saeed Jan of CCP Peshawar..... **Appellant.**

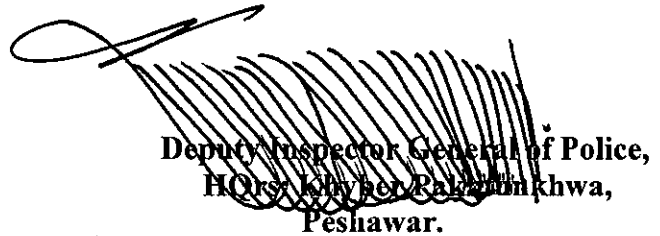
VERSUS

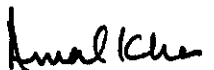
Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others. . **Respondents.**

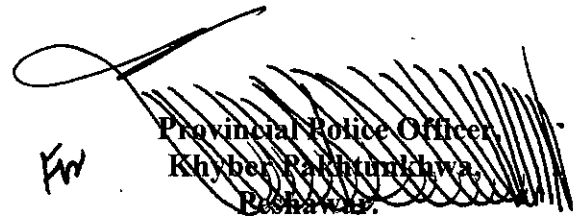
AFFIDAVIT


We respondents No. 1 ,2, 3, 4 & 5 do hereby solemnly affirm and declare that the contents of the written reply are true and correct to the best of our knowledge and belief and nothing has concealed/kept secret from this Hon'ble Tribunal. It is further stated on oath that in this appeal, the answering respondents have neither been placed ex-parte nor their defense have been struck off.

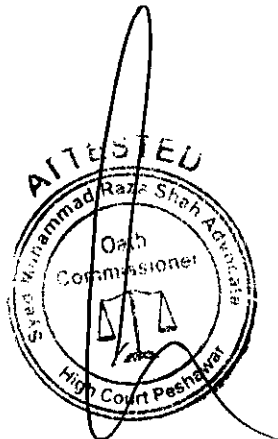

Capital City Police Officer,
Peshawar.


Deputy Inspector General of Police,
HQrs: Khyber Pakhtunkhwa,
Peshawar.


Additional Inspector General of Police,
HQrs: Khyber Pakhtunkhwa,
Peshawar.


Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.


Chief Secretary,
Government of Khyber Pakhtunkhwa,
Peshawar.



16 OCT 2023

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.974 /2023.

SI Saeed Jan of CCP Peshawar..... **Appellant.**

VERSUS

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others. . **Respondents.**

AUTHORITY.

I, **Capital City Police Officer, Peshawar**, hereby authorize **Mr.Inam Ullah** DSP legal of Capital City Police, Peshawar to attend the Hon'ble Court and submit written reply, statement and affidavit required for the defense of above service appeal on behalf of respondent department.


**Capital City Police Officer,
Peshawar.**

(A) (8)

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE ANWAR ZAHEER JAMALI, HCJ.
MR. JUSTICE AMIR HANI MUSLIM
MR. JUSTICE UMAR ATA BANDIAL

CIVIL PETITIONS NO.493, 494, 505 TO 508,
529 TO 532, 533, 601, 906 AND 911 TO 917 OF 2015.

(On appeal against the judgment dated 13.3.2015 passed
by the Sindh Service Tribunal, Karachi, in Appeals No.130-
134/2014, 2, 237& 238/2015)

Gul Hassan Jatoi (CPs.493,494,505&506/15)
Abdul Razzak Bugti (CPs.507&508/15)
Faqir Muhammad Jatoi (CP.529/15)
Masroor Ahmed Jatoi (CP.530/15)
Sohrab Ali Meo (CP.531/15)
Yar Muhammad Rind (CP.532/15)
Lal Bux Solangi (CP.533/15)
Abdullah and another (CP.601/15)
Province of Sindh thr. (CPs.906 & 911-917/15)
Chief Secy. Sindh ... **Petitioner(s)**

VERSUS

Faqir Muhammad Jatoi (CPs.493,508,911/15)
Aijaz Ali Memon & others (CP.494,916/15)
Sohrab Ali Meo & others (CP.505, 913/15)
Ins. M. Azam Khan (CP.506,601,917/15)
Yar Muhammad Rind etc (CP.507,906/15)
Province of Sindh & others (CPs.529-532/15)
Masroor Ahmed Jatoi etc (CP.912/15)
Lal Bux Solangi etc (CP.914/15)
Rafique Ahmed Abbasi (CP.915/15)
... **Respondent(s)**

For the Petitioners : Mr. Shahid Anwar Bajwa, ASC
(in CPs.493, 494, 505-506, Mr. Zulfiqar Khalid Maluka, ASC
906 & 911-917/15) Mr. M. Munir Peracha, ASC
Syed Iftikhar Hussain Gillani, Sr. ASC
Syed Razaqat Hussain Shah, AOR

For the Respondents : Mr. M. M. Aqil Awan, ASC
(1-4) in CP.494/15
(1-22) in CP.506/15

For Govt. of Sindh : Mr. Abdul Fateh Malik, AG Sindh,
Mr. Adnan Karim, Addl. AG Sindh
Ghulam Ali Barhman, Addl. Secy
(Services)

*Attested
How*

Dr. Amin Yousafzai, DIG
 Naeem Ahmed Shaikh, AIG (Establishment)
 Dr. Mazhar Ali Shah, AIG (Legal)
 Aman Ullah Zardai, Focal Person, HD

Others Respondents (in all cases) : Not represented.
 Date of hearing : 29-10-2015, 3-11-2015 & 4-11-2015

JUDGMENT

AMIR HANI MUSLIM, J.- These Petitions for leave to Appeal are directed against judgment dated 13.3.2005, of the Sindh Service Tribunal, Karachi, whereby 08 Service Appeals filed by the Petitioners/Respondents were disposed of, vide impugned judgment in the following terms:-

- i. Sindh Reserve Police and all other branches of Police Force such as Rapid Respondent Force (RRF), Sindh Reserve Police (SRP), Prosecution Branch, Telecommunication Branch, Female Police, Special Branch (Crime Branch) are separate cadres other than the District Police/Regular Police, although all of them are one Police Force which is an attached department of the Home Department under the Sindh Government Rules of Business, 1986 and Inspector General of Police is head of attached department.
- ii. Since all branches of Police Force are assigned with different and separate functions they are different cadres, therefore, the Provincial Government shall frame recruitment rules and the terms and conditions of their service separately for each cadre, except for those cadres in respect of which separate rules are already there such as Women Police and Prosecution Branch etc.
- iii. After framing of rules pertaining to recruitment and other terms and conditions of service as required

Attested


under section 2 of Police Act 1861, separate seniority list of each cadre and in each scale/rank shall be issued as required under rule 9 of the Sindh Civil Servants (Probation, Confirmation and Seniority) Rules, 1975 wherein it is provided that in each cadre in a department there shall be a separate seniority list of a group of civil servants doing similar duties and performing similar functions and for whose appointment same qualifications and experience have been laid down.

- iv. There is no provision in law for transfer of officers/officials from one cadre to another cadre, therefore, all the transfers made from Sindh Reserve Police to District Police in violation of law and in pursuance of various Standing Orders are hereby nullified and all such officers are directed to be repatriated to their parent branch i.e. Sindh Reserve Police.
- v. All the Standing Orders issued from time to time by different Inspector Generals of Police/Provincial Police Officers without approval of Provincial Government are declared to be illegal and void to the extent of prescribing the recruitment rules, terms and conditions of service of the officers/men in Sindh Reserve Police including devising of transfer policy and pertaining to the assignment of seniority in violation of rules.
- vi. The Inspector General of Police Sindh is directed not to issue any Standing Order under section 12 of the Police Act, 1861 without approval of Provincial Government and even with the approval of Provincial Government no orders can be issued by Inspector General of Police pertaining to the recruitment and terms and conditions of service of the members of the Police Force in different branches and cadre, as such powers can be exercised by Provincial Government only by virtue of section 2 of Police Act, 1861.

Attest
Nawaz

- vii. The Inspector General of Police Sindh is directed to ensure that all the training courses prescribed in the Police Rules 1934, are duly imparted and the rules pertaining to the maintaining of various promotion lists are observed and the seniority lists are prepared strictly in accordance with the provisions contained in Police Rules, 1934, after due observation of Police Rules, by the District Superintendents of Police, Deputy Inspector Generals and the Inspector General himself. It is further directed that promotion list 'E' shall be published in Police Gazette as required under rule 13.11.
- viii. The Inspector General of Police is further directed to ensure that no officiating promotion shall be made as a matter of normal course and such orders shall be made strictly in accordance with the Police Rules and merely for the purpose of deciding fitness and ability of officers concerned.
- ix. The Inspector General of Police is further directed to ensure that no officer is confirmed in any rank while serving in officiating capacity, without promotion in the substantive rank.
- x. The Inspector General of Police Sindh is further directed to ensure that no antedated confirmations and promotions shall be made and the dates of confirmations and promotions shall not be revised by any officer or Committee of the officers.
- xi. The impugned seniority list dated 7.2.2014, is set aside and no promotion shall be made on the basis thereof. The officers who were transferred from Sindh Reserve Police to Regular Police shall be promoted on preparation of their seniority list in SRP, after framing of rules by the Provincial Government in respect of Sindh Reserve Police Fresh seniority list shall be prepared for the District Police, Initially provisional and after filing of objections the final seniority list and thereafter the promotion in the rank of Deputy Superintendent of

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J. J. J.*

Police shall be considered by Departmental Promotion Committee.

- xii. The Provincial Government is further directed to provide reasonable quotas of promotion for each branch of Police Force/Cadre in accordance with their strength. In this behalf the direction of Supreme Court of India in the case of Raghunath Parsad Sing vs. Secretary Home (Police) Department, Government Bihar, 1989 MLD 2153, should be kept in view. It has been directed by the Supreme Court of India that "reasonable promotional opportunities should be available in every wing of public service. That generates efficiency in service and fosters the appropriate attitude to grow for achieving excellence in service. In the absence of promotional prospects, the service is bound to degenerate and stagnation kills the desire to serve properly."

2. Originally, Petitioners Messrs Faqir Muhammad Jatoi, Masroor Ahmad Jatoi, Sohrab Ali Meo, Lal Bux Solangi, Yar Muhammad Rind filed Service Appeals before the Tribunal, impugning the final seniority list dated 07.02.2014. Rafiq Ahmed Abbasi Respondent No.1 in Civil Petition No.915 of 2015 was also one of the Appellants before the Sindh Service Appeal.

3. Inspectors Ijaz Ali Memon and Muhammad Azam Khan also filed Appeals before the Tribunal, being aggrieved of the transfer of personnel of the Sindh Reserve Police to the Regular Police Force, due to which their seniority was adversely affected. They also impugned the seniority list dated 07.02.2014. They prayed that the Sindh Reserve Police be declared as a separate cadre.

*Attested
R.M.*

4. Brief facts of the case of each of the Petitioners who filed Appeals before the Sindh Service Tribunal are as under:-

C.P.No.529 of 2015.

Faqir Muhammad Jatoi vs. Province of Sindh

5. On 1.1.1987, the Petitioner was appointed as Assistant Sub-Inspector in the Sindh Reserve Police, through competitive process. On 25.5.1989, he was promoted to the rank of Sub-Inspector and then promoted as Inspector vide order dated 20.9.2004 w.e.f 12.1.1998. On 30.6.2006, the Inspector General of Police, Sindh, issued a tentative seniority list of Inspectors of Sindh Police, whereafter, on 20.12.2008 another tentative seniority list of Inspector was issued by the Inspector General of Police, Sindh. This list was withdrawn and a revised seniority list was issued on 20.1.2009. On 20.4.2010, yet another seniority list was issued and the Petitioner was placed at serial No.403 of the said list. The Petitioner raised objections to the said tentative seniority list, which were never responded to. On 23.10.2013, without finalizing the tentative seniority list issued on 20.4.2010, yet another tentative seniority list was issued wherein the Petitioner was placed at serial No.254. Ultimately, a final seniority list was issued on 7.2.2014, on the basis of which a meeting of the Departmental Promotion Committee was convened and more than 80 Inspectors were promoted to the rank of the Deputy Superintendent of Police. The Petitioner filed a departmental Appeal, which was not decided within the statutory period, therefore, he preferred a Service Appeal before the Sindh Service Tribunal, challenging the seniority list dated 7.2.2014 with the prayer to assign

A. Elshad
[Signature]

him proper seniority. The Appeal of the Petitioner was disposed of, vide impugned judgment.

C.P.No.530 of 2015.

Masroor Ahmed Jatoi vs. Province of Sindh.

6. On 1.1.1987, the Petitioner was appointed as Assistant Sub-Inspector in the Sindh Reserve Police after qualifying the requisite examination. On 25.1.1990, he was promoted as Sub-Inspector and on 8.7.1998, he was promoted as Inspector. On his representation, the Petitioner was allowed *inter se* seniority with his batch-mates w.e.f. 11.1.1996, and he was confirmed as Inspector w.e.f. 11.1.1996, vide order dated 20.9.2004. On 22.9.2005, the Petitioner was promoted as Deputy Superintendent of Police out of turn on gallantry basis and was relegated to the post of Inspector in the advent of judgment of this Court in the year 2013.

7. Two or three seniority lists were issued in the interregnum, whereafter on 7.2.2014, a final seniority list was issued on the basis of which more than 80 Inspectors were promoted as Deputy Superintendents of Police. After exhausting the departmental remedy, ultimately, the Petitioner filed an Appeal before the Sindh Service Tribunal, challenging the final seniority list dated 7.2.2014, which was disposed of by the impugned judgment.

Civil Petition No.531 of 2015.

Sohrab Ali Mao vs. Province of Sindh

8. On 1.1.1987, the Petitioner was appointed as Assistant Sub-Inspector in the Sindh Reserve Police, through competitive

Attested
JMS

process. On 22.5.1989, he was promoted as Sub-Inspector and on 8.7.1998, was further promoted as Inspector. On his representation, the Petitioner was allowed *inter se* seniority with his batch-mates w.e.f. 11.1.1996, and was confirmed as Inspector w.e.f 11.1.1996, vide order dated 20.9.2004, a series of tentative seniority lists of Inspectors were issued and, lastly, on 7.2.2014, a final seniority list of Inspectors was issued on the basis of which 80 Inspectors were promoted as Deputy Superintendents of Police. The Petitioner challenged the said seniority list before the Sindh Service Tribunal, by filing an Appeal, which was disposed of by the impugned judgment.

Civil Petition No.532 of 2015.

Yar Muhammad Rind vs. Province of Sindh and others.

9. On 1.1.1987, the Petitioner was appointed as Assistant Sub-Inspector in the Sindh Reserve Police, through competitive process. On 25.1.1990, he was promoted as Sub-Inspector and on 8.7.1998, he was further promoted as Inspector. On 8.7.2000, he was confirmed as Inspector, on acceptance of his representation, whereby, he was allowed seniority with his batch-mates w.e.f. 11.1.1996. Many seniority lists were issued in the intervening period and ultimately on 7.2.2014, a final seniority list of Inspectors was issued on the basis of which more than 80 Inspectors were promoted as Deputy Superintendents of Police. The Petitioner challenged the final seniority list dated 7.2.2014, by way of an Appeal before the Sindh Service Tribunal, which was disposed of by the impugned judgment.

Attested
Yar Muhammad Rind

Civil Petition No.533 of 2015.

Lal Bux Solangi vs. Province of Sindh

10. On 1.1.1987, the Petitioner was appointed as Assistant Sub-Inspector in the Sindh Reserve Police, through competitive process. On 22.5.1989, he was promoted to the rank of Sub-Inspector and on 8.7.1998 was further promoted as Inspector. On his representation to the Competent Authority, the Petitioner was allowed seniority with his batch-mates w.e.f 11.1.1996 and was confirmed as Inspector w.e.f 12.1.1998, vide order dated 20.9.2004.

11. After a series of tentative seniority lists, on 7.2.2014, a final seniority list was issued, on the basis of which more than 80 Inspectors were promoted as Deputy Superintendents of Police. The Petitioner challenged the said seniority list by filing a Service Appeal before the Sindh Service Tribunal, which was disposed of by the impugned judgment.

Civil Petition No.494 of 2015

Gul Hassan Jatoi vs. Aijaz Ali Memon and others

12. On 1.1.1987, the Petitioner was appointed as Assistant Sub-Inspector in the Sindh Reserve Police and on 8.7.1989, he was promoted as Sub-Inspector on officiating basis. On 20.9.2004, he was confirmed as Sub-Inspector. He was finally promoted as Deputy Superintendent of Police, vide Notification dated 24.3.2014. He was one of the Respondents before the Sindh Service Tribunal, in Service Appeals filed by the Petitioners Faqir Muhammad Jatoi and others, which were disposed of by the Tribunal, vide impugned judgment.

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Civil Petition No.507 of 2015.

Abdul Razzak Bugti vs. Yar Muhammad Rind

13. On 1.1.1987, the Petitioner was appointed as Assistant Sub-Inspector in the Sindh Reserve Police. On 25.5.1989, he was promoted as Sub-Inspector and transferred to the District Police. In the year 2001, he was promoted as Inspector. His name was included in the seniority list of Inspectors dated 7.2.2014, which was forwarded to the Home Department. On 25.1.2015, a meeting of the DPC was convened in which 155 Inspectors were considered for promotion, however, they were not notified due to restraining orders passed by the Service Tribunal in Service Appeal 134 of 2014 filed by Lal Bux Solangi. He was one of the Respondents in the Service Appeals filed by Faqir Muhammad Jatoi and others, which were disposed of by the Tribunal, vide impugned judgment.

Civil Petitions No.906 & 911 to 917 of 2015.

Government of Sindh vs. Yar Muhammad Rind and others.

14. The Government of Sindh has filed the above-said Petitions against the impugned judgment, pleading that the Respondents in the Petitions were appointed as A.S.I in the Sindh Reserve Police on various dates. After issuance of the provisional seniority lists of the Respondents, objections were called and upon receipt of the objections, a Committee was constituted to finalize the seniority list, which was issued on 07.02.2014. It has been further pleaded that on 20th September, 1972, an order was issued by the Sindh Government, creating vacancies for a Special Striking Force in

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the Sindh Police, which has been wrongly construed as a special cadre; that in the aftermath of separation of East Pakistan, language riots disrupted in the Province Sindh and certain other parts of the country, due to which it was deemed necessary to have Police Force available to supplement the existing Police Force in Police Stations and Districts in the advent of dire need. This force was created for three months but the same continued thereafter; that vide notification dated 11.07.1973, the nomenclature of the Special Striking Force was changed to the Sindh Constabulary and designations of the officers of the Force were also changed. In the said notification it was further provided:-

"The force shall be administered as one provincial reserve and its disposition will be decided by the I.G.P from time to time according to necessity.

The Force shall be administered as a part of the Police Force and provisions of Police Act, the Police Rules and other relevant law shall apply. The officers of this constabulary shall exercise such powers of command, control, punishment and appeals etc. are exercisable by the officers of equivalent rank."

15. It has been further pleaded that, thereafter, a Provincial Armed Reserve (PAR) was also created, which was subsequently merged in the Sindh Constabulary; that finally on 30.04.1985, the Sindh Constabulary and Anti-Dacoit Force was re-designated as the Sindh Reserve Police and designations of the officers of the force were also changed; that thereafter various administrative and standing orders were issued by the Inspector General of Police and concerned

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Deputy Inspector Generals of Police, without approval of the Sindh Government, which were merely administrative orders, for efficient organization and guidance of the officers; that during the years 1984 to 1987, all appointments were made in the Sindh Reserve Police and no appointment was made in the Districts, due to administrative reasons and after the year 1987, no new recruitment had taken place in the Sindh Reserve Police; that Assistant Sub-Inspectors and Constables were recruited, from time to time and assigned to work in the Sindh Reserve Police, which arrangement was also adopted in the Province of Punjab; that the Respondents claiming seniority filed Appeals before the Sindh Service Tribunal, which were disposed of vide impugned judgment.

16. The Appellants before the Tribunal have filed Civil Petitions No.529, 530, 531, 532, 533 of 2015, against the impugned judgment. One of the Petitioners in Civil Petitions No.493, 494, 505 and 506 of 2015, is Gul Hassan Jatoi, who was one of the Respondents before the Tribunal. Civil Petitions No.507 and 508 were filed by Abdul Razzaq Bugti, who was also Respondent before the Tribunal. Civil Petition No.601 of 2015 is filed by Abdullah, against the impugned judgment. The Province of Sindh has challenged the impugned judgment of the Sindh Service Tribunal, before this Court in Civil Petitions No.906 and 911 to 917 of 2015.

17. The learned ASC Shahid Anwar Bajwa, Counsel for the Inspector General of Police, Sindh, and for the Petitioner Gul Hassan Jatoi in C.P.L.A. Nos. 493, 494, 505 and 506 of 2015, has contended

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that the Police Order 2002 was repealed through the Sindh (Repeal of the Police Order 2002 and Revival of the Police Act 1861) 2011 and it was the Police Act of 1861 which is currently in force. He made reference to various provisions of the Police Act 1861. He stated that under Section 2 of the Police Act, 1861, the entire Police Establishment shall be one force; whereas, Section 4 of the Act provides that the Inspector General of Police is the Administrator of the Police force, Section 5 defines the powers of the Inspector General of Police and Section 12 empowers the Inspector General of Police to frame rules and pass orders, subject to approval of the Provincial Government.

18. The learned ASC Mr. Bajwa has contended that Rule 12 of Chapter XII of the Police Rules 1934, deals with the appointments and enrolments in the Police Force. Rule 12.1 deals with the general recruitment, Rule 12.3 relates to recruitment to the Prosecution service and Rule 12.3(B) pertains to appointment in Technical service. He further submits that Rules 17 Chapter XVII of the Police Rules pertains to the Reserve Police. The Sub Rules of Rule 17 provide permanent reserve, a second reserve mobilized under the orders of Inspector General of Police, and a third reserve mobilized on the orders of the Government. He has further contended that there was no order by the Provincial Government creating the Sindh Reserve Police as a separate cadre. He then relied upon Rules 13.18 and 12.3 contending that these rules are relevant with reference to determining the seniority of the Police Personnels.

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19. The learned Counsel contended that Rule 9(4) of the Fundamental Rules 1922 and Rule 9 of the Sindh Civil Service Rules 1950, define "Cadre". In support of his submission that the Sindh Reserve Police is not a separate cadre, Mr. Bajwa placed reliance on Muhammad Bachal Memon and others vs. Syed Tanveer Hussain Shah and others (2014 SCMR 1539), PIAC thr. its Chairman and others vs. Samina Masood and others (PLD 2005 SC 831) (Para 11), Dr. Ahmad Salman Waris, Assistant Professor, Services Hospital, Lahore vs. Dr. Naeem Akhtar and five others (PLD 1997 SC) 382 (Para 11, pg.90). He submitted that other provinces are treating their Reserve Police as part of their regular police and in support of the aforesaid contention he has relied upon Sardar Khursheedul Hassan vs. IGP and others 1991 PLC (C.S.) 208, Muhammad Ali Qureshi and 18 others vs. Secretary, Home Department, Govt. of Punjab, Lahore and others 1994 PLC (C.S.) 449. He states that in light of the law laid down by this Court in the case of Tariq Azizuddin and others, (2010 SCMR 1301), every employee ought to be considered for promotion, subject to the Rules. He submitted that wings created in the Police Force by the Inspector General of Police under Section 12 of the Police Act 1861, with the sole purpose of improving the efficiency of the Police Force as a whole.

20. The learned ASC Mr. Bajwa submitted that C.P.L.A Nos. 916 to 917 of 2015 and 454 and 506 of 2015 also arise out of the impugned judgment of the Tribunal. He states that the Respondents Aijaz Ali Memon and Muhammad Azam Khan had originally filed

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Writ Petitions before the Sindh High Court, which were later transferred / converted as appeals before the Sindh Service Tribunal at Karachi and disposed of. The contention in the said service appeals, which were originally Writ Petitions, was that the Sindh Reserve Police was a different cadre. He submitted that on the other hand, C.P.L.A Nos. 906, 911 to 914, 493 and 505 of 2015, pertain to persons who were recruited in the Sindh Reserve Police along with other Private Respondents. He drew our attention to para 4, at pg. 80 of the impugned judgment (Pg.102 of C.P.L.A. No.493/2015) to press the point that one of the Appellants before the Tribunal, namely Yar Muhammad Rind, was unable to show from the record, as to when he was confirmed or promoted and that the onus lay on him to prove his own case.

21. The learned ASC Mr. Bajwa, then drew our attention to pg.216 of C.P.L.A. No.493 of 2015, submitting that one of the Appellants before the Tribunal namely Lal Bux Solangi filed an application to withdraw his Appeal, which was not decided. He states that under Rule 1, Order 23 of the Code of Civil Procedure, 1908, if a party applies for withdrawal of its Appeal, it ought to have been accepted. Mr Bajwa contended that it was only Lal Bux Solangi who had filed an Application for grant of interim injunction, which was granted by the Tribunal and, as such, if his Application to withdraw the Appeal was decided, the stay granted on his Application in Appeal would automatically stand vacated on withdrawal of his Appeal.

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22. Mr. Bajwa further contended that Rafique Ahmed Abbasi (one of the Appellants before the Service Tribunal and the Respondent in C.P.L.A. No.915 / 2015) had no service record at all.

23. The learned Advocate General Sindh, Mr. Abdul Fateh Malik, commenced his arguments by responding to one of our queries as to how many Ranges were there in the Sindh Police. He has referred to Rule 1.3 of the Police Rules 1934 and states that each District under the Police Rules is divided into an administrative establishment. He states that Rule 1.4 of the Police Rules 1934, pertains to Ranges and further relied upon Rule 2.1 of the said Rules. He submitted that Rule 1.3 of the Police Rules 1934, was amended on 22.08.1998, vide notification issued by the Government of Sindh, under Section 46 of the Police Act 1861.

24. The learned Advocate General submitted that by virtue of Section 2 of the Police Act 1861, the entire police establishment was one force and to substantiate his contention relied upon Rule 1.5 of the Police Rules 1934. He then read out Rule 17.9 of the Police Rules 1934, contending that the Rule pertains to the First Armed Reserve. He, with some noticeable hesitation, stated that there were in all 5 Ranges in the Sindh Police. He conceded that Standing Orders issued by the Inspector General of Police at times were without prior sanction of the Government.

25. One of us (Amir Hani Muslim, J) inquired from the learned Advocate General Sindh, that if the Police, as per his own contentions, was one force, then why was the seniority of a police

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officer disturbed upon his transfer from one Range to another? In response, the learned Advocate General Sindh, very candidly conceded that the issue of seniority in the aforesaid situation is something that needs to be attended to. On further enquiry as to how seniority of a Police Officer on transfer is affected, the Advocate General Sindh has relied upon Rule 12.2 of the Police Rules 1934.


26. The Advocate General was asked to pin point the Police Rule under which an Officer's seniority on his transfer from one District to another District or from one Range to another Range is required to be placed at the bottom of the seniority list maintained by the District or the Range to which he is transferred. At this juncture, a representative of the Home Department Sindh intervened and submitted that, although there was no provision in the Police Rules 1934, which provides for placing the seniority of a Police Personnel at the bottom on his transfer to another District or Range, recourse in this respect could be made to the Civil Servant Seniority Rules 1975, which do provide such mechanism. The Advocate General Sindh, however, unequivocally submitted that there should be one seniority list. The Advocate General Sindh further contended that there are a large number of cases where officers were not confirmed after lapse of 2 years.

27. The learned Advocate General Sindh, concluded his arguments by submitting that the learned tribunal erred in law in holding (at para 72(i) of the impugned judgment) that all branches of the Police are separate cadres and contended that it was only the

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Prosecution Branch, the Telecom Branch and the Female Police which could be categorized separately as cadres and prayed that the said finding of the Tribunal should be set aside. He further submitted that para 72 (ii) of the impugned judgment may also be set aside. The learned Advocate General Sindh placed reliance on the case reported as IGP, Punjab, Lahore and others vs. Mushtaq Ahmed Warraich and others (PLD 1985 SC 159) (Pg.161) and Muhammad Nadeem Arif and others vs. IGP, Punjab, Lahore and others (2011 SCMR 408) (Pg.415).

28. In regard to the confirmation of Police Officers, Mr. Naeem Sheikh, AIG (Establishment) Sindh Police, contended that under Rule 12.8 of the Police Rules 1934, the probation period for persons appointed directly as Assistant Sub-Inspectors was 3 years whereas, under Rule 13.18 period of probation of a Assistant Sub-Inspector appointed by promotion was 2 years. He submitted that there was wisdom in the said Rule, as someone who had been promoted to the post of Assistant Sub-Inspector, would naturally have accumulated more experience than compared to persons directly appointed as Assistant Sub-Inspectors and as such the probation period for directly appointed Assistant Sub-Inspectors should in principle be longer. The AIG (Establishment) states that the probation period provided in the Police Rules is followed. The AIG further stated that all cases with respect to seniority etc. should be reverted back to the date of appointment. He concluded by stating

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that Rule 1.3 to 1.6 of the Police Rules 1934, should be implemented in letter and spirit.

29. On a query of the Court as to whether there was any training or examinations prescribed for persons appointed in the Sindh Reserve Police, Mr. Naeem Sheikh, AIG (Establishment) Sindh Police, apprised us that under Rule 19.25 of the Police Rules, 1934, persons appointed to the Regular Police were required to undergo training for a period of one year at Police Training School and 2 years of practical training. However, he frankly conceded that none of these requirements were complied with for the induction of persons to the Sindh Reserve Police, as the same was not an investigative force. He however, submitted that when the Sindh Reserve Police was transferred to the districts, it became apparent that they were not adequately trained and as a consequence thereof, Standing Order No.125 of 1994, was issued mandating certain training courses for persons belonging to the Sindh Reserve Police. He further made an unequivocal statement that all officers appointed to the Sindh Reserve Police, subsequent to 1994, have undergone the requisite training courses and as of today, the training for induction into both the Sindh Reserve Police and the Regular Police is similar.

30. At the very outset, Mr. Iftikhar Gillani, Counsel for the Petitioner in C.P.No.601 of 2015, stated that his client was not a party to the proceeding before the Tribunal but was adversely affected by the impugned judgment and has therefore filed the instant Petition. He

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contended that his arguments would be confined to whether the Tribunal was vested with the jurisdiction to dispose of the Service Appeals in the manner it has done so.

31. He contended that Section 5 of the Sindh Service Tribunal Act and Section 5 of the Federal Service Tribunal Act 1973, are in *Pari Materia* and the said provision is to be read in conjunction with Article 175(2) of the Constitution. He contended that directions of the nature, which had been given by the Tribunal in the impugned judgment, may only be given by the Honorable Superior Courts whilst exercising their Constitutional Jurisdiction under Article 184(3) and 199 of the Constitution. He further submitted that the Tribunal can only give directions in *personam* and not directions in *rem* and that the Tribunal has gone beyond its jurisdiction and given directions which only this Court can give under Article 187 of the Constitution i.e. directions which are not prayed for.

32. He submitted that even the Honorable High Courts cannot give directions which are not prayed for but, on the contrary, may only mould the relief. Mr. Iftikhar Hussain Gillani, learned Senior ASC contended that the Tribunal has proceeded to do complete justice, a power that is only vested with this Court under Article 187 of the Constitution. In support of his submissions, he placed reliance on the case reported as Dossani Travels Pvt. Ltd and others Vs. M/s Travels Shop Pvt Ltd. and others (PLD 2014 SC 1) (Para 4, Pg.39).

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33. Mr. Iftikhar Hussain Gillani, learned Senior ASC, in rebuttal to Mr. Aqil Awan's submission that, by virtue of Article 212 of the Constitution, the Tribunal was vested with powers much wider in scope than those exercised by the Superior Courts of this Country, submitted that this might be true, but only with respect to an individual and not to entire cadre or Police Force.

34. Mr. Zulfikar Khalid Maluka, learned ASC for the Petitioner in C.P.Nos.507 to 508 of 2015, submitted that he adopts the arguments of Mr. Iftikhar Hussain Gillani, learned Senior ASC for the Petitioner in C.P.No.601 of 2015.

35. Mr. Muhammad Munir Paracha, learned ASC for the Petitioners in C.P. Nos.529 to 533 of 2015, contended that the learned Tribunal had erred by holding that Sindh Reserve Police was a different cadre. He submitted that Section 2 of the Police Act 1861, was clear that the entire Police Establishment shall deemed to be one force. With reference to seniority, he contended that Range wise seniority was clearly creating problems.

36. Mr. M. M. Aqil Awan, learned ASC for the Respondents in C.P.Nos.494 and 506 of 2015, contended that there were two issues before the Tribunal. The first issue was whether the Sindh Reserve Police was a separate cadre, which the Tribunal answered in the affirmative by holding that it was a separate cadre. The second issue before the Tribunal, was whether the standing orders issued by the Inspector General of Police, Sindh, were legal or not. On this count,

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the Tribunal was of the view that they were illegal. The learned Counsel submitted that there was no dispute with respect to the legality of the Standing Orders and it was agreed that they were illegal, therefore, the only point that remained to be answered was whether the Sindh Reserve Police was a separate cadre or not.

37. Mr. M. M. Aqil Awan, learned ASC, contended that persons ranging from Head Constable to the level of Inspector fell within the category of Upper Subordinates and that the seniority for such Upper Subordinates was to be maintained under Rule 12.2(3) of the Police Rules 1934. In support of his submissions, he placed reliance on IGP, Punjab, Lahore and others vs. Mushtaq Ahmed Warraich and others (PLD 1985 SC 159) (Pg.177) and Neimat Ali Goraya and others vs. Jaffar Abbas, Inspector/Sergeant Traffic etc (1996 SCMR 826). He submitted that the prevalent practice was that the tentative seniority list was being made the basis of promotion.

38. With respect to the Sindh Reserve Police being a separate cadre, Mr. M. M. Aqil Awan, learned ASC, contended that the Sindh Reserve Police maintained a different seniority list, which indicates that it is a separate cadre. He further contended that absorption does not take place within the same cadre and as such, the fact that persons are absorbed into the Regular Police from the Sindh Reserve Police, in itself implies that the Sindh Reserve Police is a separate cadre. He contended that the Inspector General of Police has referred to the Sindh Reserve Police as a separate cadre in his Standing Orders, in addition to it being consistently treated as a separate cadre at the

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departmental level. In this behalf he drew our attention to para 46 of the impugned judgment.

39. To an observation of this Court that the Police should have a centralized seniority mechanism in place, Mr. M.M.Aqil Awan, ASC, submitted that the duration of training and courses for persons inducted and appointed to the Sindh Reserve Police and the Regular Police are different. The Regular / District Police is required to complete courses A, B and C as prescribed under Rule 19.25 of the Police Rules 1934, and there is no such requirement for the Sindh Reserve Police. The learned Counsel further submitted that although under Section 2 of the Police Act 1861, the Police Establishment is one Police Force, the IT, Prosecution and Women Branch are different cadres, each having their own recruitment rules within that one Police Force. The factum of there being multiple cadres within one Police Force is not a departure from Section 2 of the Police Act 1861.

40. In order to draw a distinction between a wing of the Police and a cadre, Mr. M.M.Aqil Awan, ASC, stated that Traffic Police and the Anti Terrorist Squad were wings of the Police and they shared the same seniority list with the Regular Police and as such were part of the same. He submitted that the Sindh Reserve Police, on the contrary, maintained its own seniority list and therefore this was further proof of its being a separate cadre and not a wing of the Regular Police.

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41. Mr. M.M. Aqil Awan, learned ASC for the Respondents, submitted that all the irregularities in the preparation of the seniority list by the Police are brought to light upon a reading of paras' 41 to 45 of the impugned judgment and that these findings have not been controverted either before the Tribunal or before this Court. He submitted that the Inspector General of Police has unbridled and blind powers. He contended that it was the Inspector General of Police who sanctioned horizontal movement and it was he, who made wings within the Police. He further submitted that, if there was a clog or fetter on the unbridled powers of the Inspector General of Police, it was under Section 12 of the Police Act 1861, which mandates the prior approval of the Provincial Government. In this behalf Mr. M. M. Aqil Awan, learned ASC placed reliance on Khalil-ur-Rehman Khan, D.S.P. and others Vs. Province of Punjab through Home Secretary and others (PLD 1985 SC 195) at pg.204. He stated that the aforesaid judicial pronouncement has laid down the scope of Section 12 of the Police Act 1861, and the same has been continuously violated by the Inspector General of Police. He submitted that it was the Inspector General of Police who made the Sindh Reserve Police and it was he, who had been transferring Assistant Sub-Inspectors back and forth. The learned Counsel submitted that the question that begged to be answered was how the continuous violation of Section 12 of the Police Act 1861, may be stopped. He stated that one way to stop the said violation had been laid down by the Tribunal through the impugned judgment.

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42. Mr. M. M. Aqil Awan, learned ASC submitted that the Tribunal while deciding the Appeals pending before it had not ignored Section 2 of the Police Act 1861. He stated that Section 2 of the Act does not stipulate that there shall be one cadre, but that there shall be one Police Force. His contention was that Section 2 of the Act was to be read with Rule 1.3 of the Police Rules 1934, and it was through this Rule that cadres had been created. He further contended that the word "Cadre" and "Administrative Unit" have not been defined, either in the Police Act 1861, or in the Police Rules 1934. He submitted that if the Police Rules were silent on a subject, the Civil Service Laws would hold the field, as long as the latter were not inconsistent with the former. Mr. M. M. Aqil Awan, learned ASC, submitted that "Cadre" has been defined under Rule 9(4) of the Fundamental Rules 1922, as well as under Rule 9(8) of the Sindh Civil Services Rules 1950, with the latter definition also having been adopted by the Tribunal in the impugned judgment. He placed reliance on a recent judgment of this Court, reported as Muhammad Bachal Memon and others vs. Syed Tanveer Hussain Shah and others (2014 SCMR 1539) (Pg.1549) wherein "Cadre" has been defined and submitted that on the touchstone of the aforesaid judgment, the said definition would also apply to the Police Act 1861, and the Police Rules 1934.

43. The learned ASC, further contended that *ipso facto*, the Police Rules 1934, did not apply to the Sindh Reserve Police, as it came into being through a Standing Order issued in 1970. He submitted that persons appointed to the Sindh Reserve Police had

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undergone only a year of training which was in clear contravention of Rule 12.8 of the Police Rules 1934. He, with great force and fervor, contended that the Sindh Reserve Police cannot be a part of the Regular Police Force as it had not seen the rigors of Rule 12.8 of the Police Rules 1934. With reference to confirmation, Mr. M. M. Aqil Awan, learned ASC, contended that Rule 19.25 had to be read with Rule 13.18 of the Police Rules 1934. He next contended that the Inspector General of Police's unfettered powers ought to be curtailed with respect to transfers and the creation of wings etc. He submitted that one way of achieving the aforesaid objectives is that recruitment rules should be made, thereby channelizing the Inspector General of Police's unbridled powers. He submitted that even otherwise, the Inspector General of Police cannot alter the conditions of service of persons in the Police Force. He submitted that, on the touchstone of Article 240(b) of the Constitution, the same was within the sole competence and exclusive domain of the provincial legislature.

44. Replying to the arguments of Mr. Iftikhar Hussain Gillani, learned Senior ASC for the Petitioner in C.P.No.601 of 2015, on the question of the jurisdiction of the Tribunal to issue directions as it had whilst disposing of the Appeals, Mr. M. M. Aqil Awan submitted that by virtue of Article 212 of the Constitution there was a bar on the High Court, and on this Court as well, to issue directions of the like that can be issued by the Service Tribunal. He submitted that the Tribunal's powers, whilst adjudicating upon a *lis* before it, were wide ranging in scope and in support of his submission he relied upon

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Pakistan Railways thr. its GM Vs. Ghulam Rasul (1997 SCMR 1581) (1587) and Ali Muhammad Vs. Commissioner Afghan Refuges NWFP etc (1995 SCMR 1675). Mr. M. M. Aqil Awan, learned ASC concluded his arguments by submitting that, on the question of the Sindh Reserve Police being a different cadre than the Regular Police Force, the Tribunal dealt with the said question in a comprehensive manner and referred to paras' 52 to 53, 56, 64, 66 and 68 of the impugned judgment.

45. We have heard the learned Counsel for the Appellants, the learned Advocate General, Sindh, and the Counsels representing the Respondents at length and with their assistance have perused the record.

46. Before we could travel into the scheme of the Police Act and the Rules framed thereunder, it has been conceded by the learned Advocate General, Sindh, that the Standing Orders issued at times by the different I.G Police were without the approval of the Provincial Government and, therefore, did not have any legal status. In view of this conceding statement of the Advocate General, no argument was advanced by either party to the validity or otherwise of the Standing Orders issued by the I.Gs Police at times.

47. On the examination of the scheme of the Police Act 1861, we have noticed that Section 2 of the Police Act speaks of the constitution of the police force. Section 2 is reproduced hereunder:-

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"The entire police establishment under a Provincial Government shall, for the purposes of this Act, be deemed to be one police force and shall be formally enrolled and shall consist of such number of officers and men, and shall be constituted in such manner, as shall from time to time be ordered by the Provincial Government."

Section 3 confers powers on the Provincial Government to supersede or control any police functionary. Section 4 confers powers upon the Inspector General of Police as its administrative head. Section 7 speaks of appointments within the police force. Section 12 confers powers on the I.G.P to frame such orders and rules from time to time, subject to the approval of the Provincial Government, relative to the organization, classification and distribution of the police force, the places at which the members of the force shall reside, and the particular services to be performed by them.

48. On scanning the Police Rules, 1934, we have noticed that Chapter-I of the Rules relates to departmental organization of the police. Rule 1.1 defines General Police District with further clarification that all ranks of police employed in the province are appointed or enrolled under section 2 of the Act. Rule 1.2 confers powers on the I.G.P which are in the nature of command, discipline and administration. Rule 1.3 defines General Police District Division, which provides the structure of the Sindh Police categorized in different establishments:-

- i. Training Schools (including Provincial Finger Print Bureau)
- ii. Special Branch.

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- iii. Crimes Branch.
- iv. District Police.
- v. Reserve Police Establishment (inserted through Government notification dated 22.09.1998, by amending the Rules).

49. Rule 1.4 defines the administration of the aforesaid establishments.

- a. The district of the province as grouped in range headed by the Officer of the rank of Deputy Inspector General of Police.
- b. The affairs of Police Training Centre, Sihala, initially was headed by the Officer of the rank of the Deputy Inspector General of Police. In Sindh subsequently different Police Training Centers were established, which now are under the command of Deputy Inspector General of Police Training Branch.
- c. Crime Branch is headed by the officer of the rank of Deputy Inspector General of Police.
- d. Special Branch is headed by the officer of the rank of Deputy Inspector General of Police.
- e. The reserve police establishment now styled as Sindh Reserve Police is headed by Deputy Inspector General of Police.

50. Rule 1.5 prescribes the limits of jurisdiction and liability to transfer, which for the sake of convenience is reproduced hereunder:-

"All police officers appointed or enrolled in Pakistan general police district constitute one police force and are liable to, and legally empowered for, police duty anywhere within the province. No sub-division of the force territorially or by classes, such as mounted and foot police, affects this principle."

51. Rule 1.6 defines the administration and functions of D.I.G Police appointed in different establishments specified in Rule 1.3, which is reproduced hereunder:-

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"Deputy Inspectors-General—Duties and functions of.- The Deputy Inspector-General of Police Crime, Special Branch and Crime Branch and Special Branch.

The Deputy Inspector-General, Crime Branch is responsible, through the staff of his department, for the intelligence organization of the criminal administration; in this capacity he is called upon to assist both the Provincial Government and the district authorities. He is also authorized to call upon the district or railway police for action in such matters, whether in respect of crime or intelligence as may, from time to time, be considered to his charge. In respect of crime, Department of Police Crime Branch will keep the Deputy Inspectors General of Police a Special Branch, a Crime Branch the ranges concerned fully informed of all action which his department is taking within the sphere of their jurisdiction.

The Deputy Inspector-General of a range is responsible to the Inspector General for the administration, training and discipline of the police of his range and for the efficiency of their organization and operations for the prevention and detection of crime. In the exercise of this responsibility a Deputy Inspector General will interfere as little as possible with the executive authority of the Superintendents under him, and will permit such modifications of practice and organization to suit local conditions as he may consider advisable, and as the law and these rules allow. He will use his powers of control to secure a uniform standard of efficiency and the fullest co-operation between districts and branches of the force in the circulation of information and in action against criminals.

To ensure that efficiency shall not be impaired by undue variation in methods or practice in different parts of the province, Deputy Inspector-General of Ranges and of the Crime Branch shall maintain close touch with each other by informal meetings and formal conferences. They shall freely exchange information relating to the criminal administration, and shall ensure that co-operation between ranges and branches of the force is as close as that between the district within a range. Before issuing any circular order having the effect of altering in principle any matter of departmental practice or affecting the administration of the law, Deputy Inspector General shall obtain the approval of the Inspector General. Copies of all such circular orders and of instructions of general importance whether previously approved by the Inspector General or not,

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shall be sent to the Inspector-General and other Deputy Inspectors-General for information."

52. The rule defines the parameters of the powers of all the Deputy Inspector General of Police in the Police Force with the distinction that the Range Deputy Inspector General of Police has the power of administration, training and discipline of the forces within his statutory Range, which shall include all the Police personnel initially in his range and transferred to any other establishment under the Police Rules. The aforesaid arrangement under Rule 1.6 further has to be read with Rule 1.5, which provides that all police officers appointed or enrolled in any establishment shall be construed as one police force of the District and is obliged to and legally empowered for Police duty anywhere within the province. This Rule even restricts the sub-division in Police territorially by creating class such as mounted and foot police, which may otherwise militate the scheme of the Police Act.

53. The appointments and enrollments of the Police Personnel are regulated by Rule 12 of the Police Rules, 1934 of Chapter XII, which deals with three different sets of recruitment processes described thereunder: -

- a. Recruitment in prosecution (Legal Branch), Rule 12.6(3)(C).
- b. Recruitment of Technical District, Rule 12.3 (B)
- c. Recruitment of upper subordinate in Police, Rule 12.6.

There is a difference in the training courses of the personnel appointed in the aforementioned units as prescribed in the Police Rules.

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- a. Training of personnel: -
 - i. Constables, Rule 19.2
 - ii. Upper subordinate, Rule 19.25
- b. Training of officers in prosecution (Legal Branch), Rule 19.26.
- c. Training of the officers in Technical District, Rule 12.3 (B) (2).

Rules 12.6 (3) (e) suggests that:

“(e) After recruitment no Inspector (Legal) shall be allowed change of cadre from Inspector (Legal) to the Executive of any other Branch in the Police Department.”

54. On the basis of the aforementioned criteria of recruitment and training in terms of the Rules referred to hereinabove, it can be easily concluded that the Sindh Police force has three independent units i.e. Executive, Technical District and Prosecution (Legal). On scanning of the rules, it can be further concluded that the Police personnel appointed in terms of the aforesaid recruitment process cannot horizontally travel to any other unit referred to hereinabove either by way of transfer or otherwise.

55. We may, however, observe that Rule 12.8 of the Police Rules, 1934 provides recruitment process and training program from Constable to Inspector in the Police Establishment (Executive Unit) is common.

56. There are six (06) promotion lists maintained in the Police Department as per seniority and qualification (Trainings and Promotional Courses) of the personnel in various ranks i.e.: -

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- i. List-A, maintained in the District for Constables having 3 years' successful completion of probationary period and found fit for promotion to the List-B. (Rule 13.6).
- ii. List-B, maintained in the District for Constables, who are present in List-A and found eligible to be sent to Lower School Course, which is a promotional training for promotion to the rank of HC. (Rule 13.7)
- iii. List-C, maintained in the District for Constables, who have qualified Lower School Course and are eligible for promotion to the rank of Head Constable. (Rule 13.8).
- iv. List-D, prepared in the District and forwarded to the Range DIGP for approval and maintenance of seniority list. This list includes Head Constables eligible for the promotion to the rank of ASI after successful completion of Intermediate School Course. (Rule 13.9)
- v. List-E, maintained by the Range DIGPs, containing confirmed ASIs, who are eligible for promotion to the rank of Sub-Inspectors. (Rule 13.10)
- vi. List-F, prepared by CPO on the recommendation of Range DIGPs and maintained by Central Police Office (CPO) on centralized basis, containing confirmed Sub-Inspectors, who have qualified Upper School Course and are eligible for the promotion to the rank of Inspectors. (Rules 13.15).

57. Under the Police Rules, 1934, the seniority of the Constable and Head Constable is maintained in the District, whereas seniority of ASI and SI is maintained by the Range DIG. The seniority of the Inspector in Police is maintained by the Central Police Office. The training and examination of the Executive Unit is provided in Chapter XIX of the Police Rules.

58. Now with this background, we feel that we should also examine as to how Sindh Reserve Police was raised. In order to understand the establishment of Sindh Reserve Police, we have gone through Chapter XVII, which deals with the Head Quarters

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Establishments and Reserves in Police Force. It appears that under the aforesaid Chapter reserves are created in the following chronology.

59. Rule 17.9 (1) of the Police Rules, 1934 spells out the first armed reserve, Rule 17.10 speaks of mobilization of the second reserve and Rule 17.11 defines the mobilization of third reserve. In the aforesaid rules, the first armed reserve is the Regular Police in District maintained by the Superintendent of Police or Senior Superintendent of Police of the District and is moved under the orders of the respective range DIG of Police or Inspector General of Police. The mobilization of second reserve takes place under the orders of the Inspector General of Police, whereas mobilization of third reserve is under the orders of the Provincial Government (Chief Minister through Inspector General of Police).

60. The aforesaid three "Provincial Reserves", by a Notification dated 01.7.1980 were combined together and made part of Sindh Constabulary Force with effect from 01.7.1980. The "Provincial Armed Reserves" on its merger became the Sindh Constabulary; before the merger of the aforesaid unit, it was regulated by the District Police under Rule 17.9, 17.10 and 17.11 of the Police Rules, 1934. By another Notification dated 03.4.1985 of the Sindh Government, the 'Sindh Constabulary' was renamed as 'Sindh Reserve Police' and was given under the command of DIG, Training and Sindh Reserve Police.

61. We were informed during the hearing that the recruitment process adopted for the aforesaid personnel of Sindh Reserve Police was common to that of a District Police in terms of the Police Rules as

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initially they were given the training through Police Training Centers. There is an additional requirement of acquiring practical training in terms of Rule 19.25, which the Sindh Reserve Police personnel did not acquire till 1992.

62. The issue cropped up when on 30.6.2010, a Standing Order No.243 of 2010 was issued by the then Inspector General of Police declaring Training Branch Establishment as a Range. On account of this Standing Order, the DIG, training branch establishment was unauthorizedly conferred administrative powers of DIG range. The DIG training branch started recruitment of the Police Constables as provided under the Police Rules. He also started maintaining the seniority of all the Police personnel serving in the training branch establishment against the language of the Police Rules. The Standing Order referred to hereinabove was admittedly issued without the approval of the government, which is a mandatory requirement. Even otherwise aforementioned Standing Order is beyond the authority of the Inspector General of Police as the Rules do not confer upon him powers to alter the terms and conditions of any of the establishment within the Police Force. The situation further aggravated when the then DIG, Sindh Reserve Police usurped the administrative powers of the range DIG unilaterally. He started recruiting the Police personnel in the manner provided under the Police Rules, which was beyond his authority. The seniority of the Police personnel serving within the Sindh Reserve Police establishment, which ought to have been maintained in their

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respective Ranges, was also maintained by him illegally. Neither any Standing Order nor any other instrument authorized the DIG, Sindh Reserve Police to exercise administrative powers of the nature. Likewise, the Special Branch also recruited the Police personnel and maintained their seniority within their establishment through the DIG heading the establishment. However, the DIG Crime Branch establishment neither exercised the administrative powers of the Range DIG nor recruited any Police personnel, even the seniority of the Police personnel serving in the establishment was not maintained by him. In other words, the very Standing Order of 30.6.2010 declaring training branch establishment as a Range ex-facie was in violation of Section 2 of the Police Act, 1861 read with Rule 1.5 of the Police Rules, 1934, whereas the administrative powers unilaterally exercised by the DIG, Sindh Reserve Police establishment and Special Branch establishment were against the spirit of the Police Act and Rules.

63. In the aforesaid events, when these three establishments usurped the powers of the range DIG without any sanction of law, the entire purpose of the Police Act and the Rules of 1934 was defeated. Under the Police Rules all foot Constables appointed by this establishment were given the training as provided to the Executive Police Force, however, the Sindh Reserve Police establishment also recruited ASIs in the same manner as is being done by the other establishments, but they were not given the practical training as provided under Police Rule 19.25. Subsequent thereto, after the

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issuance of Standing Order 1992, the practical training under Rule 19.25 was made mandatory for the Police personnel of Sindh Reserve Police establishment.

64. During hearing of the appeals, the AIG (Establishment) informed us that some Police personnel of the Sindh Reserve Police sought their transfer from Sindh Reserve Police establishment to executive Police establishment. Upon this request, a Standing Order No.119 of 1992 dated 08.9.1992 was issued by the Inspector General of Police acceding to their request subject to their obtaining practical training provided under the Police Rules. Since the issuance of the Standing Order all the Police personnel recruited in the Sindh Reserve Police establishment were made to undertake practical training and at present within the establishments all the personnel of the Police have obtained practical training in terms of Chapter XIX of the Police Rules, 1934.

65. We are disturbed in the manner the powers were being exercised by the DIGs heading different establishments under the nose of the government, which was not only against the Police Rules but such practice has actually divided the Police Force. The establishments, were created to facilitate the smooth working of the Police. There is no concept of cadre within the Police, which is one indivisible force. However, as referred to hereinabove the Police Rules prescribe three modes in recruiting the Police personnel. The first recruitment mode is appointment of the Executive Police, the second recruitment mode, which has a different set of Rules refers to

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appointment of technical District Police and the third mode brings the recruitment of the Inspectors / Sub-Inspectors Prosecution (Legal). There can be employees in the Police Department, which are non-uniformed like ministerial staff and / or I.T. Department but they are recruited and regulated by the Sindh Civil Servants Act, 1973 and the Rules framed thereunder.

66. The learned Service Tribunal has misconstrued Rule 1.3 of the Police Rules, under which different establishments were made in the Police Force to facilitate the smooth working. By erroneous assumption of the powers under the Standing Order or otherwise, the DIGs, who were heading the establishments construed the establishment as Ranges. Additionally, all the administrative powers conferred on the Range DIG, i.e who heads the Executive Police Range, were encroached on by the heads of these establishments created under the Rule 1.4. The said DIGs of the establishments also started maintaining seniority and making recruitments to these establishments, in negation of the clear language of the Police Rules. These actions of the heads of the establishments ex-facie militate the provisions of Police Act and Rules which provide the Police Force as one indivisible Force. The learned Service Tribunal loosing sight of the fact that these establishments cannot be construed as Ranges in the first place had directed the government to give them the status of cadres, *inter alia*, on the ground of their respective functions performed by the personnel in these establishments. The concept of cadre has neither been defined in the Police Act nor by the rules

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framed thereunder. Though the term 'Cadre', has been used in Police Rule 12.6(3)(e). Even in the Sindh Civil Servants Act, 1973 or the rules framed thereunder, the cadre has not been defined. However, the term 'Cadre' has been defined in Rule 9(4) of the Fundamental Rules, 1992. The said Rule defines "Cadre" means the strength of a service or a part of a service sanctioned as a separate unit."

67. We have further noticed that the concept of 'Cadre' within the Police service could only be introduced if it is established that the recruitment process, the training and practical training of the members of Police Force is distinct. Under the Police Rules, entry point of all the Police personnel in Executive Police is common. They have common recruitment process, police training and practical training as prescribed under the Rules and once these trainings after their appointments are completed, they are transferred to the different establishments under the Rules. The posting and transfer to an establishment of a member of Police Force is permissible under Police Rule 1.5 would not change the Cadre of a police personnel. The Rule 1.5 allows the police personnel to progress vertically by the rules prescribed and could be transferred to any of the establishment. There is no restriction placed on a police official for transfer from one establishment to other.

68. Moreover, section 12 of the Police Act, 1861 leaves no doubt or ambiguity as to the fact that the Police Force is an indivisible entity that is commanded by Inspector General of Police, who has vast powers; subject to the approval of the government, he can frame

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orders or rules with regard to the organization, classification and distribution of police force. In other words, the aforesaid provision enables the IG Police to cater to the situation, where it is expedient for him to issue such orders and make such rules, with the approval of the government, as are required to meet the contingencies related to, inter alia, prevention and detection of crimes.

69. The learned Tribunal has erred in treating the different establishments created under the Police rules, 1934 as various Cadres classified on functional basis; whereas the overall scheme of Police Act, 1861 and the rules 1934 envisage the police forces one indivisible body possessing various establishments performing the assigned functions such as District Police, Police Training Center, Crime Branch, Special Branch, Reserve Police and so on. Each of these establishments are in fact integral parts of the police force, and under no rules of construction they can be construed as separate or independent Cadres.

70. Therefore, the directions of the learned Tribunal to the government to create Cadres in substitution of the establishments is neither warranted by the Act nor by the Rules and will lead to anomalies as has happened in the case in hand, where the DIGs of different establishments started exercising the administrative powers of the Range DIGs.

71. We are clear in our mind that there should be common seniority of Police Personnel serving in all the establishments to be maintained by District Police, the Range DIG and Central Police Office (C.P.O.)

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strictly as provided by the Rules in Chapter XIII, as discussed in Para 56 supra. Therefore, the Sindh Government and the competent authority under the Police Rules shall prepare the common seniority list of the Police Personnel serving in different establishments within three (03) months of the date of this judgment in terms of Police Rules and report compliance.

72. Likewise, we are clear in our mind that all the establishments, other than the executive police establishment, i.e., in-charge District police and Range DIG, are barred from making direct or indirect recruitment or promotion.

73. Being the custodian of the service record etc. of the Police personnel, the District police/Range DIG, shall make selection for Police personnel for police training and practical training, and no other establishment shall be authorized to make such selection. By way of clarification it may be observed that the matters related to seniority, promotion or trainings in respect of Police Inspector, the competent authority is Inspector General of Police, as provided in the rules 1934.

74. It has been observed that in many cases the Police personnel have completed their statutory period of probation but they were not confirmed for want of notification, and as result of which such officials have suffered in terms of delayed promotion or loss of seniority, which is a sheer negligence and abuse of power on the part of the competent authorities concerned. Hence, we are of the view that this practice must be brought to an effective end so that injustice may

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not be perpetrated against such officials. Therefore, in future those Police Personnel who have completed their statutory period of probation, whether it is three years or two years, they shall stand confirmed whether or not a notification to that effect is issued.

75. We have further observed that a cherry picking is made in the case of selection of Police personnel for police training or practical training despite the fact they have completed their required period to be eligible for such trainings, which amounts to denying them of timely promotion for the next scale; hence, we direct that in future, competent authority shall ensure that the Police personnel who have completed their required period to be eligible for trainings shall be forthwith sent for the training; and in case such police officials are bypassed for such trainings on account of default by the department, or to extend a favor to the junior, or negligence by the authority concerned, their inter-se seniority and the accompanying financial entitlements shall not be effected on account of their late joining or completion of training.

76. For the reason stated hereinabove, we allow all these appeals and set aside the judgment of the learned Sindh Service Tribunal. It is expected from the Sindh Government and the Inspector General of Police, Sindh that the directives contained in this judgment shall be implemented in its letter and spirit without any undue delay and the seniority list of all the Police personnel belonging to any of the establishment created in terms of Rule 1.4 of the Police Rules, 1934 shall be prepared within the time stipulated in the judgment.

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77. Copies of this judgment be sent through fax and otherwise to the Sindh Chief Secretary, Home Secretary, Sindh, Inspector General of Police, Sindh and Advocate General, Sindh, for their information and compliance.

CHIEF JUSTICE

JUDGE

JUDGE

Islamabad, the

Approved for reporting

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