

*Order Sheet*  
IN THE HIGH COURT OF SINDH KARACHI  
**Constitutional Petition No.D –2511 of 2021**

Date	Order with Signature of Judge
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Direction:  
For order on Report dated 18.11.2021.

**02.02.2022** :

Khawaja Shams ul Islam and Mr. Shahzad and Mr. Khalid Iqbal, advocates for the petitioners.  
Mr. Ali Safdar Depar, AAG along with Raza Mian, DSP (Legal).

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**ORDER**

This Court vide order dated 14.09.2021 disposed of the instant petition with the following directions:

*“At this juncture, learned counsel for the petitioners, contends that in another inquiry competent authority opined that the case of Gul Hassan Jatoi (supra) is not applicable to them with regard to promotion, suffice to say that Police Rules are binding upon authorities, however, interpretation of the apex Court and guidelines provided in judgment, particularly paragraph 56 and 71, shall be examined as afresh and earlier opinion shall not come in the way of promotion.”*

Khawaja Shams-ul-Islam, learned counsel for the petitioners, has contended *inter alia* that after the lapse of many years, the respondent-Police Department has not considered their case for promotion to the next rank and playing with delaying tactics by hook and crook, therefore, they have suffered a lot, which act negates the judgment rendered by the Hon'ble Supreme Court in the case of Gul Hassan Jatoi v. Faqeer Muhammad Jatoi (2016 SCMR 1254), which explicitly provides preparation of seniority list of Inspectors from the date of their admission in list-F, which is now centralized and the same is required to be prepared accordingly. Per learned counsel, the act of respondents violates Police Rule 13.15(4) of Police Rules, 1934. Learned counsel emphasized that the petitioners are entitled to their promotion to the post of Deputy/ Superintendent of Police (BPS-17&18). Learned counsel relied upon the purported report submitted by respondent-Police Department and submitted that this report is an eyewash and negates the dicta laid down by the Hon'ble Supreme Court of Pakistan in the cases of Gul Hassan Jatoi supra and Ali Azhar Khan Baloch v. Province of Sindh and others (2015 SCMR 456). He asserts that the respondent-Police Department is required to implement the ratio of the judgment of the Hon'ble Supreme Court in the case of Gul Hassan Jatoi supra in its letter and spirit. He prayed for a direction to the respondents to prepare the seniority list of the petitioners under dicta laid down by the Hon'ble Supreme Court and thereafter the promotion cases of the petitioners and their colleagues be placed before the Departmental Promotion Committee for further promotion.

To the aforesaid proposition, the learned AAG has referred to the order dated 14.9.2021 passed by this Court and submitted that since the report has already been

submitted, therefore, no further action is required on the part of the Police Department. He prayed for consigning the matter to record.

To this assertion, learned counsel for the petitioners has raised his voice of concern that without placing the petitioners at the proper place in their seniority list no further action on promotion could take place.

We have gone through the report dated 18.11.2021 filed by AIGP/Legal-III for Inspector General of Police. The perusal of report shows the following position:

*“4. That the Committee’s meeting was held on 15.10.2021, perused all relevant rules of Police Rules -1934, Judgments passed by the Honorable High Court of Sindh and Honorable Supreme Court of Pakistan. The Committee also extended opportunity of hearing to the petitioners through letter No.6486-91/E-II/Insp, dated 13.10.2021.*

*5. That the seniority claims of the petitioners have been considered by the Departmental Committee in the light of judgments passed by the Honorable Supreme Court of Pakistan in CMA 354/2015 and C.P No.493 & others and disposed of the petitioners cases on the grounds that rule 13.15(4) of Police Rule 1934 has been interpreted by them that the seniority may be settled on the basis of said Police Rule 1934 has been interpreted by them that the seniority may be settled on the basis of said police Rule. This rule pertains to the maintaining of list “F” which contains the names of those Sub-Inspectors who have completed their requisite qualifications and experience and are eligible for the promotion to the rank of Inspector. Entry into such list by a junior officer earlier to a senior who had attained requisite qualification later cannot be claimed as seniority. Seniority is a vested right of a Government servant and the same is reckoned from the date of first appointment and finally settled on the basis of date of confirmation as envisaged in Rule 12.2(3) read with Rule 12.8 and 13.8 of Police Rules 1934.*

*6. That in the judgment passed by the Honorable Supreme Court of Pakistan in CMA 354/2015 filed by Mr. Munir Ahmed Khoro of Sindh Police, the Apex Court accepted that the seniority of the upper subordinate should be determined from the initial date of appointment and finally settled from the date of confirmation as ASI after completion of probationary period as per rules 12.8 and 13.18 of Police Rules 1934.*

*7. That the Seniority on the basis of date of confirmation in the rank of Sub-Inspector or Inspector is not supported by any of the Rules or Judgments of the learned Sindh Service Tribunal and Honorable Supreme Court of Pakistan. Such claims of the petitioners have already been declined by the department and judicial forums.”*

In principle, the Regular / District Police is required to complete courses A, B, and C as prescribed under Rule 19.25 of the Police Rules 1934, as there are six (06) promotion lists maintained in the Police Department as per seniority and qualification (Training and Promotional Courses) of the personnel in various ranks i.e.:

- 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).

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 are provided in Chapter XIX of the Police Rule. The judgment rendered by the Honorable Supreme Court in the case of Ghul Hassan Jatoi (supra) and Order dated 29.9.2016 passed in Review Petitions No.280 & 281 of 2016 filed in Civil Petition No.494 & 506/2005 which were dismissed; and, it was left open for the review petitioners that if upon implementation of the judgment under review they have any individual grievance as regards their right they may approach proper forum for redressal of their grievances, is providing guiding principle on the issue.

We have noticed that the learned Sindh Service Tribunal vide judgment dated 27.9.2017 passed in Service Appeal No.334/2017 has followed the judgment passed by the Hon'ble Supreme Court in Gul Hassan Jatoi's case as discussed supra. Para 71 of the judgment of the Hon'ble Supreme Court of Pakistan is reproduced hereunder:

*"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.) 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."*

As regards confirmation of police personnel, the Hon'ble Supreme Court of Pakistan in the aforesaid judgment at para 74 has declared that though who have completed their statutory period of probation shall stand confirm whether or not a notification to that effect is issued. Para 74 of the judgment of the Hon'ble Supreme Court of Pakistan 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 the competent authorities concerned. Hence, we are of the view that this practice 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 stand confirmed whether or not a notification to that effect is issued."*

As regards seniority of upper subordinate Assistant Sub Inspectors to Inspectors, Rule 12.2(3) of Police Rules, 1934 reads as under:

*"Seniority in the case of upper subordinates, will be reckoned in the first instance from date of first appointment, officers promoted from a lower rank being considered senior to persons appointed direct on the same date, and the seniority of officers appointed direct on the same date being reckoned according to age. Seniority shall, however, be finally settled by dates of confirmation, the seniority inter se of several officers confirmed on the same date being that allotted to them on first appointment. Provided that any officer whose promotion or confirmation is delayed by reason of his being on deputation outside his range or district shall, on being promoted or confirmed, regain the seniority which he originally held vis-à-vis any officers promoted or confirmed before him during his deputation."*

According to Rule 12.8 of the Police Rules, 1934 confirmation in case of directly appointed upper sub ordinate is made in the following manner:

*"12.8 . Probationary nature of appointments. – (1) Inspectors, Sergeants, Sub-Inspectors and Assistant Sub-Inspector who are directly appointed will be considered to be on probation for three years and are liable to be discharge at any time during or on the expiry of the period of their probation if they fail to pass the prescribed examinations including the riding test, or are guilty of grave misconduct or are deemed, for sufficient reason, to be unsuitable for service in the police."*

However, confirmation of police personnel promoted from the lower rank to the rank of the upper subordinate is given in Rule 13.18 of the Police Rules, 1934:

*"Rule 13.18 Probationary period of promotion - All police officers promoted in rank shall be on probation for two years, provided that the appointing authority may by a special order in each case, permit period of officiating service on count towards the period of probation."*

Per learned counsel, the petitioners are in list-F since 2005, therefore, are entitled to promotion from 2005 with all consequential benefits in terms of Police Rule 13.15(4):

*"13.15(4). Sub-Inspectors admitted to List 'F' will be placed in that list in order according to their date of permanent promotion to selection grade and, if the date of permanent promotion to selection grade is the same in the case of two or more Sub-Inspectors admitted a list 'F' on one and the same date, then according to date of permanent promotion to the time-scale. Sergeants will be shown in list 'F' according to the date of entry in the list. When, however to or more Sergeants are admitted to list 'F' on the same date, their names will be shown in order of seniority among themselves."*

Learned counsel for the petitioners further pointed out that the seniority of the petitioners shall be as follows:

S#	Name	D/o Birth	D/o Apptt: from AS ASI	D/O Conf. as ASI	D/O Prom as SI	D/O Conf as ASI	Adm to List (F)	D/O Prom as Insp	D/O Conf. as Insp
165	Syed Saeed Akhtar S/o Hamid Raza K-1455	4-Dec-61	23-May-90	24-May-93	30-May-96	31-May-98	10-Apr-03	10-Apr-03	11-Apr-05
109	Syed Abu Talha Umrao S/o Syed Umrao Ali K-1385	16-July-68	17-Mar-90	18-Mar-93	30-May-96	31-May-98	10-Apr-03	10-Apr-03	11-Apr-05
101	Syed Ahsan Zulfiqar S/o Syed Zulfiqar Hussain K-1384	22-Mar-65	17-Mar-90	18-Mar-93	30-May-96	31-May-98	10-Apr-03	10-Apr-03	11-Apr-05
90	Mohammad Nihal Akhtar S/o Mohammad Nazir K-1387	6-July-62	17-Mar-90	18-Mar-93	30-May-96	31-May-98	10-Apr-03	10-Apr-03	11-Apr-05
123	Syed Qaiser Ali Shah S/o Syed Sattar Ali K-1408	1-Jan-66	19-Mar-90	20-Mar-93	30-May-96	31-May-98	10-Apr-03	10-Apr-03	11-Apr-05
118	Asad Aleem S/o Muhammad Aleem Choudhary K-1399	1-Aug-68	18-Mar-90	19-Mar-93	30-May-96	31-May-98	10-Apr-03	10-Apr-03	11-Apr-05
158	Syed Muhammad Ghayyur S/o Syed Kamaluddin K-1444	15-May-66	11-Apr-90	12-Apr-93	30-May-96	31-May-98	10-Apr-03	10-Apr-03	11-Apr-05
130	Kanbho Khan Mari S/o Darya Khan M-148	1-Apr-69	20-Mar-90	21-Mr-93	29-May-96	31-May-98	10-Apr-03	10-Apr-03	11-Apr-05

Learned counsel for the petitioners further pointed out that as per Notification dated 15.11.2021, the respondent-Police Department has issued Final Seniority List of Inspectors BPS-16 of Executive Cadre of Sindh Police and the name of petitioner No.1 has been shown at Sr. No.334, whereas the name of petitioner No.2 has been shown at Sr. 235, petitioner No.3 at Sr. 224, petitioner No.4 at Sr. 219, petitioner No.5 at Sr.

252, petitioner No.6 at Sr. 246, petitioner No.7 at Sr. 318, petitioner No.8 has been shown at Sr. 261. Per learned counsel, the names of petitioners in the Final Seniority List ought to have appeared before the colleagues of the petitioners who were confirmed as Inspector after 2005, whereas there are several colleagues of the petitioners who have been shown senior to the petitioners whereas their confirmation as Inspector came after 2005, which act on the part of respondent-Police Department is illegal and against the law and dicta laid down by the Hon'ble Supreme Court of Pakistan at paragraph 71 & 74 of the Judgment rendered in the case of Gul Hassan Jatoi (supra). He lastly pointed out that the Department Promotion Committee is expected to meet within a few weeks, therefore, before the convening of DPC, the issue of seniority is settled in the light of Police Rules 1934 as discussed supra and the ratio of the judgment of the Hon'ble Supreme Court of Pakistan in the case of Gul Hassan Jatoi is implemented and the respondents should lay off their hands.

If this is the position of the case, prima facie, the petitioners have made out the case for enforcement of the judgment of the Hon'ble Supreme Court of Pakistan as provided under Article 187(2) of the Constitution. Therefore, we deem it appropriate to direct the Inspector General of Police Sindh to place the case of the petitioners for consideration of promotion in the next rank before the Departmental Promotion Committee (**DPC**). The DPC shall take a note of the ratio of the judgment of the Hon'ble Supreme Court of Pakistan rendered in the case of Gul Hassan Jatoi (supra) more particular, paragraphs 71 & 74 of the judgment while considering the candidature of the petitioners on the analogy as discussed in the preceding paragraphs. However, it is made clear that if the DPC takes a contrary view and defer the cases of the petitioners for promotion, they must assign valid reasons for such deviation, which shall be justifiable under the law; and, if the candidature of the petitioners is approved by the DPC their names must be properly placed in the Seniority List as per law.

The aforesaid exercise shall be undertaken within 15 days from the date of receipt of this order.

The order on the report dated 18.11.2021 is deferred for further orders till the aforesaid exercise is completed. Let report in this regard be submitted through MIT-II of this Court. Let a copy of this order be transmitted to the Inspector General of Police Sindh for compliance.

**JUDGE**

**JUDGE**