

Central Administrative Tribunal
Jammu Bench, Jammu

Transfer Application No.62/181/2020

This the 9th day of December, 2020

(Through Video Conferencing)

Hon'ble Mr. Rakesh Sagar Jain, Member (J)

Hon'ble Mr. Anand Mathur, Member (A)

1. Tajamul Islam Wani Age 37 years, S/o Abdul Rahman Wani R/o Old Barzula District Srinagar-109530/J&K. (deleted from array of applicants vide order dated 23.11.2020)
2. Mohd. Naseer age 35 years, S/o Mohd. Bashir, R/o DhandKote District, Rajouri-109588/J&K.
3. Khalid Aslam Shah age 35 years, S/o Mohd. Aslam Shah R/o MuskeenBaagh District Srinagar-109455/J&K.
4. Rahul Mahajan age 33 years, S/o Satish Mahajan, R/o 112, Lajpat Nagar Canal Road, Jammu-109562/J&K.
5. Vijay Sharma age 32 years, S/o Sudesh Kumar, R/o Bhor Camp Ward No. 2, Jammu-109546/J&K.
6. Sunil Singh age 37 years, S/o Harnam Singh R/o Akhnoor Pallanwala-109468/J&K.
7. SumitMagotra age 32 years, S/o Ram Lal Magotra, R/o PatoliMagotra Jammu -109484/J&K.
8. Karnail Singh age 38 years, S/o Nanak Chand R/o Sai Khurad R.S. Pura Jammu – 109484/J&K.
9. Vinod Kumar age 32 years, S/o Shanker Dass R/o Langer Tehsil Sunder Bani District Rajouri-109370/J&K.
10. Surinder Singh Age 37 years, S/o Late Chain Singh R/o Vijaypur Samba – 109594/J&K.
11. Vikas Hans age 32 years, S/o Hans Raj R/o Barnai Jammu – 109444/J&K.
12. Rakesh Sharma age 34 years, S/o Som Nath Sharma R/o Bhadore, Jammu-109448/J&K.

13. Sandeep Singh Bhau age 37 years, S/o Platon R/o ChakkoraAkhnoor District Jammu-109474/J&K.
14. Pawan Kumar Dogra age 35 years, S/o Waryam Chand R/o TrilokpurGoleGujral Jammu 066498/J&K (109598).
15. Vishal Dogra age 37 years, S/o Om Parkash R/o 646, Ashok Nagar Satwari Jammu-109535/J&K.
16. Yash Paul Sharma age 33 years, S/o belli Ram R/o RajwalAkhnoor Jammu-109491/J&k.
17. Suresh Sharma age 32 years, S/o Parshotam Kumar R/o Saharan Jammu-109449/J&K.
18. Jaipaul Singh age 33 years, S/o Naresh Kumar R/o Raipur Satwari Jammu-109545/J&K.
19. Jaswinder Choudhary age 36 years, S/o Sat Paul R/o Magowali RS Pura A/P 156/3 Sanjay Nagar Gangyal, Jammu-109497/J&K.
20. Varuneshwar Singh, Age 33 years, S/o Om Singh R/o Sainik Colony Jammu-109526/J&k.
21. Tajamul Islam Wani Age 37 years, S/o Abdul Rahman Wani R/o Old Barzula District Srinagar-109530/J&k.
22. Vikram Singh Age 33 years, S/o Ram Singh Manhas R/o Village Chagsoo Tehsil Thathari, District Doda-109408/J&K.

...Applicants

Advocate for the applicants: Mr. P.N.Raina, Sr. advocate with Mr. Jasbir Singh Jasrotia, advocate for applicants

V/s

1. State of J&K through Principal Secretary to Government, Home Department Civil Secretariat Jammu.
2. Director General of Police, Jammu.
3. Additional Director General of Police Executive Wing, J&K, Jammu.
4. Ranjeet Singh – EXJ066743
5. Mohd Ashraf – EXJ115712
6. Tariq Hussain – EXJ109543
7. OwaisGani Dar- EXK109345

8. Sunil Singh – EXJ109524
9. Zahoor Ahmed Wani-EXK109477
10. Ab Rashid Khan –EXK109162
11. Zaheer Mushtaq-EXJ109377
12. Sarafraz Ahmad Dar-EXK109304
13. Aijaz Ahmad Parray-EXK109480
14. Ali Imran Bhat-EXJ115659
15. Aijaz Ahmad –EXK109358
16. Mudasir Hamid-EXK109471
17. Showkat Ahmad Khan-EXK109481
18. Mehraj Ahmad Pader –EXK109233
19. Shariq Majeed –EXK109534
20. Ashwani Kumar-EXJ109567
21. Bal Ram Sharma-EXJ109522
22. Pawan Singh Randwal-EXJ115717
23. Javid Ahmad Dar-EXK109550
24. Khayti Man Khajuria-EXJ109552
25. Afaq Ahmad naik –EXK109523
26. Kumnal Singh Jamwal-EXJ109475
27. Stanzin Palzor-EXK109576
28. Nitan Khajuria-EXJ109496
29. Pankaj Singh-EXJ109386
30. Vishal Kumar-EXJ109465
31. Nazir Ahmad-EXK109401
32. VishavPartap Singh Katoch-EXJ109551
33. Mir Sajad Bashir-EXK109351
34. Yasir Rashid Bhat-EXK109540
35. Madan Lal –EXJ109407
36. Chetan Kumar-EXJ109590
37. Firdos Ahmad –EXJ109389
38. Ajaz Perwaiz-EXJ109371
39. Sohan Singh-EXJ109556
40. Khalid Karim Zargar-EXK109341
41. Abdul Rashid Sofi-EXK109511
42. Arun Sharma-EXJ109564
43. Yasar Mehmood-EXK109529
44. Mohan Lal-EXJ109592
45. Tariq Hassan –EXK109166
46. Manzoor Ahmad Ganiee-EXK109486
47. Malikzada Towfeeq-EXK115647
48. Mohd Shahnawaz Khan-EXK109159
49. Oawiser Bashir-EXK109476
50. Mohd Iqbal Sheikh-EXK109509

51. Rakesh Roshan-EXJ109405
52. Ajay Kumar Engotra-EXJ109505
53. Ab Manan Malik-EXK109282
54. Thakur Dutt-EXJ109378
55. Ravi Kumar-EXJ109545
56. Syed Junaid Showkat –EXK109289
57. Majid Hassan Khan-EXK109601
58. Anil Chowdhary –EXJ109571
59. Abdul Rahman Khan-EXK109393
60. Habib Ul Rehman Khan-EXJ109390
61. Atthar Ahmad Shah-EXK109340
62. Verinder Singh-EXJ109470
63. Dorjay Gyalchan-EXK109493
64. Ruzaid Yaseen Kachroo-EXK109439
65. NasseerMohmood Naik-EXK115711
66. Parvaiz Ahmed Khanday-EXJ109384
67. Younus Bashir Wani-EXK109231
68. Purshotam Kumar-EXJ109559
69. Purab Singh-EXJ109528
70. Vikas Jasrotia –EXJ109536
71. Asif Iqbal Misgar-EXK109478
72. Jatinder Singh-EXJ109376
73. Vinod Kumar-EXJ109370
74. Liyaqat Ali-EXK109375
75. Amit Pal Singh-EXK109163
76. Masood Rashid Masoodi-EXK109344
77. Wasim Mehraj –EXK109572
78. Manoj Kumar –EXJ109510
79. Achal Rana –EXJ109388
80. Sandeep Kumar- EXJ109373
81. Sunil Kumar Parihar-EXJ109392
82. Aga Asgar Ali-AXK109521
83. Mukesh Kumar SharmaEXJ109482
84. Shahnawaz Teeli-EXK109342
85. Vipin Bangotra-EXJ109473
86. Sudesh Kumar-EXJ016634
87. Gurupal Singh –EXJ109561
88. Javeed Ahmad Lone-EXK983086
89. Sajad Iqbal-EXJ109399
90. Vikram Singh Jasrotia-EXJ109582
91. Lateef Ahmad Dar-EXK109322
92. Mohd Abas Kumar-EXK109254
93. Sushil Chowdhary-EXJ109508

94. Ankuj Kumar-EXJ109589
95. Arun Slathia-EXJ109553
96. Mohd Rashad-EXJ109544
97. Tashi Gyaltzen-EXK109518
98. Tribhawan Khajuria-EXJ109533
99. Rajveer Singh-EXJ109457
100. Imtiyaz Ahmad Dar-EXK109400
101. Javaid Gulzar Bhat-EXK109485
102. MuddasirNazar –EXK109361
103. Sarjan Ahmad Dar-EXK109168
104. Meenu Sharma-EXJ109464
105. Ravinder Kumar-EXJ109403
106. Mohd. Abass Chak-EXK116417
107. Jai Paul Singh-EXJ109541
108. Bilal Ahmad Khanday-EXK115634
109. Syed Owais Geelani-EXK109161
110. Zaheer Iqbal-EXJ109387
111. H.M Shahnawaz Giri-EXJ109367
112. Sandeep Singh Chib-EXJ109577
113. Ab. Latief Shabnam –EXK115708
114. Naseer Ahmad Ahanger-EXK109501
115. Ashwani Kumar-EXJ109453
116. MuzamilShowkait Paray-EXK10955
117. Deepak Bharti-EXJ109548
118. Maninder Singh-EXJ109573
119. Lakhvir Singh –EXJ109506
120. Kamal Preet Singh-EXJ109549
121. Anil Kumar –EXJ109398
122. Mohd. Baqir-EXK109504
123. Adil Bashir –EXK109461
124. RayeesahmadGanai –EXK109357
125. Sandeep Charak-EXJ109566
126. Rigzin Gurmet –EXK109483
127. Sukhvir Singh-EXJ109379
128. Syed Iqbal Rashid –EXK109488
129. Rohit Kumar –EXJ109591
130. Imtiyaz Ahmad Wani-EXK115568
131. Tawseef Habib-EXK109164
132. Sheikh Sameer Altaf – EXK109565
133. Pardeep Singh-EXJ109555
134. Ranjeet Singh –EXJ109608
135. Youg Raj –EXJ115662
136. Mushtaq Ahmad Malik-EXK109302

137. Niku Ram-EXJ115710
138. Waseem Jehangir ShaH-EXK109272
139. Masroor Ahmad Ganie-EXK109445
140. Sandeep Kumar-EXJ109404
141. Bupesh Singh-EXJ115721
142. Sadat Ali-EXK109514
143. Gowhar Ahmad Bhat-EXK109472
144. Feroz Ahmed –EXK109513
145. Naseer Ahmed Malik-EXK109597
146. Tariq Ahmad Wani-EXK109443
147. Anil Sharma-EXJ109487
148. Shoket AminKhan-EXJ109394
149. Vishal Manhas-EXJ109382
150. Mohd Jamil-Ur-Rehman-EXK109554
151. Sameer Ahmed Batt-EXJ109380
152. Chander Bushan-EXJ109568
153. Javed Iqbal Chowdhary-EXJ109500
154. Afaq Majid Wani-EXK109321
155. Vikas Kumar-EXJ109516
156. Jaswinder Singh-EXJ109525
157. Shakil Ahmed Manhas-EXJ109391
158. Gh. Hussan Parray-EXK109547
159. Younis Khan-EXK109460
160. Ashaq Hussain –EXJ109381
161. TsewangStanzin –EXK109498
162. Arun Bhagat-EXJ109406
163. Sajad Ahmad Parray-EXK109167
164. Masood-UI-Hassan-EXK109260
165. Ashish Sagar-EXJ109593
166. Ravi kumar-EXJ109459
167. Askar Hussain –EXJ109492
168. Mohd. Iqbal Bhat-EXK116208
169. Adil Ashraf Bhat-EXK109538
170. Neeraj Ramotra-EXJ109570
171. Wasim Ahmad Shah-EXK109397
172. Hussain Ahmad Mughal-EXK115709
173. Mudasir Hussain Zaroo-EXK109456
174. Ashish Choudhary-EXJ109374
175. Reyaz Ahmad Khan-EXK109143
176. Saqib Bashir-EXK109574
177. Muhsin Ahmad Dar-EXK115584
178. Novneet Verma-EXJ109450
179. Deepak Thakur-EXJ109385

180. Suman Singh –EXJ115663
 181. Waseem Gull-EXK109237
 182. Tsering Angchok-EXK109499
 183. Fayaz Ahmad Chachie-EXK115648
 184. Parvaiz Ahmad Gogger –EXK109236
 185. Rajesh Kumar-EXJ109458
 186. Kapil Manhas-EXJ109495
 187. Vikram Kumar Panjgotra-EXJ109469
 188. Ved Parkash-EXJ109605
 189. James Kunsal Dechen –EXK109454
 190. Towseef Ahmad –EXK109314
 191. Altaf Rashid Kakroo'-EXK115612
 192. Rohit Kumar Bhagat-EXJ109466
 193. Amrit katoch-EXJ109395
 194. Rajinder Khajuria-EXJ109569
 195. Deepak Katoch-EXJ109580
 196. Ashok Bazar –EXJ109316
 197. MudasirNazar –EXK109156
 198. Sumeet Sharma-EXJ109490
 199. Sunil Kalsi-EXJ109451
 200. Mukhtair ali-EXJ109578
 201. Mohd. Shamin-EXK109579
 202. Jamyang Namgayal-EXK109502
 203. Abdullah –EXK109532
 204. Stanzin Otsal-EXK109519
 205. Gurvinder Singh-EXJ109489
 206. Rahul Dogra-EXJ109467
 207. Kali Charan-EXJ109447
 208. Khalid Aslam Shah-EXK109455
- All C/O Police Headquarter Jammu (J&K).

...Respondents

Advocate for the Respondents:- Mr. Sunil RP Sethi, Sr. Advocate with Ms. Sonica, advocate, Mr. Amit Gupta, AAG, Mr. Rahul Pant, advocate for respondents

O R D E R

Per Rakesh Sagar Jain, Member (J)

1. Initially, the above titled writ petition No. WP (C) No. 2805/2019 titled Tajamul Islam Wani and others v/s State of J&K and others was filed in the Hon'ble High Court of J&K. On creation of the Central Administrative Tribunal, the writ petition has been transferred to this Tribunal for disposal. During the pendency of the case, on application filed by applicant Tajamul Islam Wani, he was allowed to withdraw from the present T.A. Applicants are aggrieved by the final seniority list of Sub-Inspectors (hereinafter referred to as 'SIs') issued vide communication of PHQ No. 2678 of 2019 dated 12.07.2019 issued by respondent No. 2 (Director General of Police) whereby the juniors of applicants have been placed over the applicants in the seniority list. The applicants seek the following reliefs:

“(i) Allow the writ petition.

(ii) Issue appropriate writ, order or direction in the nature of:- Certiorari: Quashing the final seniority list of Sub-Inspector in Executive Wing of J&K Police issued by respondent no. 2 vide order no. PHQ order no. 2678 of 2019 dated 12.07.2019 to the extent that respondent no. 4 to 208 who were lower in the merit and juniors to the petitioners are placed over and above the petitioners in the said seniority list which is framed in totally illegal, arbitrary and contrary to the provisions of the law.

(iii) Mandamus:- Directing the respondents to prepare fresh seniority list after considering induction merit obtained by the

petitioners in the selection process as the same induction merit has been followed by the respondents while preparing the seniority of sub-inspectors of batch of 2000 & 2002.

(iv) Prohibition: Restraining the respondents not to act upon the final seniority issued by respondent no. 2 vide order no. PHQ order no. 2678 of 2019 dated 12.07.2019 as the same is not prepared as per the applicable rules and in the said final seniority list the juniors to the petitioners were placed over and above the petitioners in the said seniority list.

(v) Prohibition: Restraining the respondents from operating and making any promotion on the basis of the final seniority issued by the respondent no.2 vide order no. PHQ order no. 2678 of 2019 dated 12.07.2019.

(v) Any other appropriate order or direction which the Hon'ble Court deems fit and proper in the given facts and circumstances of the case may kindly be passed in favour of petitioners."

2. Case of applicants is that they were selected as SIs (Executive Wing), J&K Police vide selection list dated 20.01.2009 and were placed at rank number in the selection list, as per, the details given in the T.A. and are senior to respondents No. 4 to 208. During the Basic Induction Training Course (BITC)/Basic Recruitment Training Course (BRTC), some candidates like the private respondents secured more marks than the applicants. The applicants had secured more marks than the private respondents in the selection process but in order to give undue advantage to the private respondents, official respondents took the marks obtained in BITC course as the criteria for framing the inter se

seniority between the applicants and the private respondents. It is the case of applicants that the seniority is to be fixed as per Rule 24 of the J&K Civil Services(Classification Control and Appeal) Rules, 1956 (hereinafter referred to as 'CCA Rules') whereby the applicants would be assigned seniority on the basis of the marks obtained in the original selection of SIs and not on the basis of the marks obtained in the BITC course.

3. It has been further averred in the T.A. that official respondents had issued a tentative seniority list of SIs vide order dated 27.08.2016 regarding which, the applicants filed their objections (Annexure No. III-A) before respondent no. 2. The official respondents without properly considering the objections of the applicants, rejected the said objections and issued the final seniority list on the basis of the marks obtained in Basic Induction Training Course. The respondents while preparing the seniority list have not considered the merit obtained by the applicants in the selection process but based the seniority on the basis of marks obtained in BITC and therefore the applicants who were higher in merit on the basis of marks obtained in the selection process were placed lower to the private respondents in the final seniority list.
4. Applicants seek the quashing of the final seniority list of Sub-Inspector in Executive Wing of J&K Police issued by respondent no. 2 vide order no. PHQ order no. 2678 of 2019 dated 12.07.2019 to the extent that respondent no. 4 to 208 who were lower in the merit and juniors to the petitioners are placed over and above the applicants in the said seniority list which is framed in totally illegal, arbitrary and contrary to the provisions of the law and further direct

the respondents to prepare fresh seniority list after considering induction merit obtained by the petitioners in the selection process on the basis of Rule 24 of J&K Civil Services (Classification, Control and Appeal) Rules, 1956 and not on the basis of Rule 111 of J&K Police Rules, 1960.

5. The official respondents filed their reply wherein they have averred that the applicants are making an endeavor to mislead this Tribunal by suppressing the facts as the seniority of the directly recruited SIs has been fixed in terms of Police Rule 111 (2) on basis of merit obtained by them in the Basic Recruitment Training Course. Rule 24 has no application to the fixing of the seniority of the SIs and the T.A. deserves outright dismissal.
6. In the reply filed on behalf of respondents no. 4 to 6, 8 to 26, 28 to 30, 32 to 35, 37 to 56, 58 to 62, 64 and 65, it has been averred that the final seniority list of SIs dated 12.07.2019 has been rightly issued by the respondents after fixing the seniority in accordance with rule 111 (2) of the J&K Police Rules, 1960. The judgement of the Hon'ble High Court in Rohit Gupta vs Ajay Kumar, 2016 (2) JKJ 315 relied upon by the applicants is with regard to seniority of prosecuting officers having peculiar attending facts and circumstances and, in any case, the said judgement has been challenged in the Apex Court and therefore has not attained finality and therefore not applicable to the facts of the instant case. The case of the SIs is entirely different from the case of Rohit Gupta (supra). It has also been averred that the seniority of the police officers in J&K police Department is not determined, as per, Rule 24 of the J&K Civil Services (Classification, Control and Appeal)

Rules, 1956 but is determined by the Rule 111 (2) of the J&K Police Rule, 1960 and which police rule clearly specifies that candidates appointed on the same date who are required to pass any course or departmental examination as a necessary condition of their subsequent confirmation, their seniority is based on the order of merit in such course or examination. The reliance and reference of Rule 24 of the J&K Civil Services (Classification, Control and Appeal) Rules, 1956 made by the applicants is misplaced. Hence, the respondents seek dismissal of the T.A.

7. In their reply, respondents no. 66 and 175 have averred that merit for the purpose of selection is a different issue and fixation of seniority is a different issue. There is no such general rule that seniority has to be fixed on the basis of merit obtained during the selection process and it is a settled position of law that appointing authority by statutory rules or otherwise can prescribe any other rational mode of fixation of seniority. In the present case, perusal of Rule 111 of the police rules will show that merit obtained during the Basic Recruitment Training Course is the basis for fixation of seniority and such rule is followed in many other police forces in other states as well. It is relevant to state here that Basic Recruitment Training Course is a comprehensive course in which different kinds of trainings are provided to the police officer and finally examination is conducted and the merit list of such of the officers who qualify the Basic Recruitment Training Course is prepared and the said list then forms the basis for fixation of the seniority. It is a specific reply of respondents that the assigned positions in the seniority list are strictly, as per, the merits of applicants and private respondents in the BRTC. Seniority is

required to be fixed as per rules 111 of J&K Police Rules, 1960 and not Rule 24 of the CCA Rules. It has been further averred in the reply that the seniority is governed by the statutory rule i.e. J&K Police Rules, 1960 and that in the police force for the post of Sub Inspector, the merit in the selection process loses its significance after the appointments are made and thereafter the seniority is to be determined on the basis of the merit obtained by the appointees in the training course qualifying which is essential for confirmation against the post of sub inspector.

8. In the instant case, it would be pertinent to refer to objections preferred by the applicants to the tentative seniority list of SIs (Executives) wherein the applicants have taken the specific plea that the tentative seniority list is not in accordance with rule 24 of CCA Rules and the judgement of Hon'ble High Court titled Rohit Gupta Vs Ajay Kumar. Regarding the objection preferred by the applicants to the tentative seniority list, the official respondents in the final seniority list of SIs dated 12.07.2019 have rejected the objections of the applicants by observing that:

“Whereas, the ibid judgement has been assailed before the Hon'ble Supreme Court after Rule-111(2) was made redundant. The matter is still subjudice. However, the representations of these officers were examined with reference to the available records viz-a-viz Rule 111 J&K Police Manual sub-clause(2) which governs the seniority of candidates directly appointed on the same date, and required to pass any course or departmental examination as a necessary condition of their subsequent confirmation and

their seniority shall depend on their order of merit in such course or examination. As such, in light of the said rule position, the seniority of these officers is fixed in terms of Rule 111(2).”

9. The limited dispute between the parties to the present T.A is whether the inter se seniority of the applicants and private respondents on their appointment as Sub-Inspectors of J&K Police is governed by Rule 111 (2) or by the non obstante clause contained in Rule 111 of J&K Police Rules, 1960.
10. Applicants taking the stand that the seniority is governed by the non obstante clause of Rule 111 read with Rule 24 of CCA Rules and the respondents holding out the impugned seniority list assigning seniority inter se applicants and private respondents has been rightly prepared in terms of Rule 111 (2) of the J&K Police Rules, 1960.
11. We have heard and considered the arguments of the learned counsels for applicants and respondents including the learned AAG and gone through the material on record.
12. It has been submitted by learned counsel for applicants that inter se seniority of the applicants and the respondents has to be fixed, as per, the non obstante clause of Rule 111 of J&K Police Rules, 1960 and this issue has been laid to rest by the judgment of the Hon’ble High Court in Rohit Gupta v/s Shri Ajay Kumar, (2016) 2 JKJ 315. It has been argued by learned counsel for the applicants that the inter se seniority of applicants and private respondents has been fixed not on the basis of their merit secured

in the selection process/select list but on the merit secured by them during the BITC. It has been submitted by the learned counsel for applicants that seniority is to be assigned on the basis of the merit secured by them in the selection, namely written test and they having completed the probation within a period of three years by applying the non obstante clause of Rule 111 and not on the basis of Rule 111(2) of the J&K Police Rules, 1960.

13. On the other hand, it has been argued by learned counsel for respondents that the seniority of the police officers in J&K police Department is not to be determined, as per, the non obstante clause but to be determined by applying the Rule 111 (2) of the J&K Police Rule, 1960 and which police rule clearly specifies that candidates appointed on the same date who are required to pass any course or departmental examination and as a necessary condition of their subsequent confirmation, their seniority is based on the order of merit in such course or examination. It is argued by learned counsels for the respondents that the selection of Police officers is based on bearing physical qualification followed by a written test, appearing in the viva voce and thereafter formal appointment orders to be issued on completion of probation, their seniority will be fixed based on the merit possessed by them in the basic induction training course and after completion of the training they are examined along with others by the board of senior officers constituted by the Police Headquarters and confirmed thereafter.
14. It is further argued by the learned counsels for the respondents that (i) on successful completion of the basic training

and probation, for determining the seniority of the particular batch, merit secured by the candidates during the training course is contemplated; (ii) if different batches of Police Officers are promoted to any rank on the same date their seniority has to be determined by the date of confirmation in the rank; (iii) in the event of several officers being confirmed on the same date their seniority amongst themselves shall remain the same as during the period of probation. It is also contended the CCA Rules are General Rules, therefore, J&K Police Rules, 1960, being Special Rules will prevail in determining the seniority of the SIs and that reliance by applicants on *Rohit Gupta v/s Shri Ajay Kumar*, (2016) 2 JKJ 315 is misplaced since that judgment covered the case of Prosecuting Officers and has no application to the facts of the present case. Therefore, the seniority being rightly fixed in terms of Rule 111 of J&K Police Rules, 1960, the T.A. being meritless deserves dismissal.

15. In the case of *Rohit Gupta* (supra), the case before the Hon'ble Single Judge of the writ petitioners was that the Prosecuting Officers, who were selected through Police Recruitment Board were given seniority not on the basis of their merit secured in the selection process/select list but on the merit secured by them during the training. The merit position and the rank given, as per, Select List having been changed after the completion of probation based on Rule 111(2) of the Police Rules, 1960, the said action was challenged by the writ petitioners by contending that Police Rule 111(2) cannot be applied and seniority having been fixed already in terms of Rule 24 of the J&K Civil Services (Classification, Control and Appeal) Rules, 1956 cannot

be changed and which writ petitions were allowed by the Hon'ble Single Bench.

16. The appeal against the judgment of the Learned Single Judge was dismissed by the Hon'ble Division Bench in case of Rohit Gupta (Supra) and has been relied upon by the applicants in support of their case.

17. It was argued by learned counsels for the respondents that the judgment in case of Rohit Gupta (supra) is not applicable to the present case since the parties involved in the said case were prosecuting officers. The contention of respondents on the non-applicability of the judgment in case of Rohit Gupta (supra) cannot be accepted for the law laid down in the said case is applicable to the police personnel since the prosecuting officers were considered to be police officers. As held by the Hon'ble High Court in case of Rohit Gupta (supra) that:

“In the light of the said judgment of the Hon'ble Supreme Court, the private respondents in the writ petitions are not justified in contending that they are not Police personnel and Police Rules cannot be applied for selection, fixation of seniority and other service conditions.”

“Thus there is no shadow of doubt in our mind that the Prosecuting Officers post is one of the Wing of Police Department and Police Act as well as the Police Rules will apply to them.”

18. The Hon'ble High Court in Rohit Gupta v/s v/s Shri Ajay Kumar, (2016) 2 JKJ 315 while upholding the judgment of the Hon'ble Single Bench has held that the seniority is governed by

the non obstante clause of Rule 111 of the J&K Police Rules. In this regard, it would be fruitful to quote in detail from the judgment as below:

"21. Rule 111 of the Jammu and Kashmir Police Rules, 1960 reads thus:

" 111. Command and Precedence:

(1) Command and precedence among Police Officers shall be by seniority according to rule 24 of C.C.S. R. Officers holding officiating appointments take the rank and seniority of such appointment for the time that they hold it only, on reservation they taken seniority in accordance with their position in their substantive ranks.

(2) Officers appointed in or promoted to any rank will take seniority in the order which they are appointed or promoted and in the case of several being appointed or promoted on the same date, promoted officers will be placed first in order according to their previous seniority, and officers appointed direct will follow according to age; provided that the seniority of candidates directly appointed on the same date, who are required to pass any course or departmental examination as a necessary condition of their subsequent confirmation, shall depend on their order of merit in such course or examination. Notwithstanding the foregoing rules, the seniority of officers appointed or promoted on probation to any rank shall be finally determined by the date of confirmation in that rank and in the event of several officers being confirmed on the same date, their seniority as among themselves shall remain the same as during the probationary period."

Rule 24 of the Jammu and Kashmir Civil Services (Classification, Control & Appeal) Rules, 1956 reads thus:-

"24. Seniority.-(1) The seniority of a person who is subject to these rules has reference to the service, class, category or grade

with reference to which the question has arisen. Such seniority shall be determined by the date of his first appointment to such service, class, category or grade as the case may be.

Note 1.-The rule in this clause will not effect the seniority on the date on which these rules come into force of a member of any service, class, category or grade as fixed in accordance with the rules and orders in force before the date on which these rules come into force.

Interpretation.-The words "date of first appointment" occurring in the above rule will mean the date of first substantive appointment, meaning thereby the date of permanent appointment or the date of first appointment on probation on a clear vacancy, confirmation in the latter case being subject to good work and conduct and/or passing of any examination or examinations and/or tests:

Provided that the inter se seniority of two or more persons appointed to the same service, class, category or grade simultaneously will, notwithstanding the fact that they may assume the duties of their appointments on different dates by reason of being posted to different stations, be determined

(a) in the case of those promoted by their relative seniority in the lower service, class, category or grade;

(b) in the case of those recruited direct except those who do not join their duties when vacancies are offered to them according to the positions attained by and assigned to them in order of merit at the time of competitive examination or on the basis of merit, ability and physical fitness etc., in case no such examination is held for the purpose of making selections;

(c) as between those promoted and recruited direct by the order in which appointments have to be allocated for promotion and direct recruitment as prescribed by the rules.

Note 2.-Any substantive appointments or permanent promotions made in any department prior to 15th May, 1953, will not be disturbed if otherwise in order unless such appointments or promotions are already the subject of any appeal, review or revision or otherwise pending decision.

(2) A member of a service, class, category or grade, unless he is reduced in seniority as a punishment shall retain seniority in such service or grade as determined by sub-rule (1) notwithstanding any delay in the completion of his probation or his appointment as a member of such service, class, category or grade.

(3) Where a member of any service, class, category or grade reduced to a lower service, class, category or grade he shall be placed at the top of the latter unless the authority ordering such reduction directs that he shall rank in such lower service, class, category or grade next below any specified member thereof.”

“22. Rule 111(1) of the Police Rules clearly states that Command and precedence among Police Officers shall be by seniority according to Rule 24 of C.C.A. Rules and their seniority in accordance with their position in their substantive rank. Sub Rule (2) of Rule 111 is the core issue which calls for close scrutiny in these appeals. The said Rule says that officers appointed on the same date as in this case will take seniority in the order in which they are appointed. As per proviso in case of several officers being appointed on the same date, who are required to pass any course or departmental examination as a necessary condition to their subsequent confirmation whose seniority will depend on their order of merit in their course or examination for confirmation. The non-obstante clause clearly states that, notwithstanding the foregoing Rules above mentioned, namely, Rule 111(1) and Rule 111(2), the seniority of the officers appointed or promoted on probation to any rank and in the event of several officers being confirmed on the same date their seniority as

against themselves shall remain the same as during the probationary period. On reading the entire Rule it would give only one conclusion that if the training is completed and probation is declared on the same date, seniority shall be fixed on the basis of marks secured in selection only.

23. In other words, if several officers appointed directly or promoted were send for training to complete the probation and they passed the training within the probation period, their rank in the seniority shall be finally determined by the confirmation of that rank and if several officers being confirmed on the same date, their seniority as amongst themselves shall remain the same as during the probation period.

24. In these cases the probation was completed by the directly recruited Prosecuting Officers in terms of the condition mentioned in the appointment order and the confirmation of probation in the rank of Prosecuting Officers was also issued on the same date. By virtue of non obstante clause Rule 111(2) of the Police Rules, cannot be applied to fix seniority of such of those direct recruits who were sent for training, completed the training and were confirmed by a common order and they shall be given seniority during the probation period which means that they should be given seniority as assigned in the select list which was based on the merit as assessed in written test as well as viva voce test. If some of the selected candidates who were sent for training during probation period on the same date, failed to pass the training course and if confirmation was delayed, then only the occasion will arise to consider the merit secured by the said candidates in such course or examination for determining seniority after confirmation. Thus there is no ambiguity in Rule 111(2) of the Police Rules and there is no inconsistency between Rule 24 of the CCA Rules and Rule 111 (2) of the Police Rules.

25. The learned counsels appearing for the appellants argued that Police Rule being a special Rule, it will prevail over the CCA Rules which is a general rule. Their argument can be appreciated only if there is any inconsistency in both the Rules. Rule 111 (2) of the Police Rules will apply only if candidates appointed and sent for training on the same date failed to pass out the training and the confirmation was delayed due to delay in passing the training course or confirmation was delayed for some other reasons. On the basis of the above finding we are of the view that Rule 111 of the Police Rules need not to be declared as ultra vires and the respondents in these appeals having been found more meritorious during the selection and were treated as seniors during probation period of three years, which is not disputed and they have been sent for training on the same date and confirmed on completion of three years probation on the same date after passing the training course, they are bound to be treated as seniors as per the non obstante clause contained in Rule 111. The decisions cited by the learned counsels for the appellants having been rendered based on the relevant Rules, the said decisions have no application to the facts and circumstances of these cases.”

“29. As rightly contended by the learned counsel appearing for the 1st respondent in LPASW No. 138/2011, in the appointment order it is stated that the appointee shall have the seniority as per the order of merit in the select list. Non obstante clause mentioned in Rule 111 of the Police Rules clearly states that in the event of several officers being confirmed on the same date their seniority shall remain the same as during the probation period. Thus the learned Single Judge was right in quashing the re-fixation of the seniority. On the reasons stated supra we are of the view that Rule 111 of the Police Rules ought not to have been declared ultra vires or unconstitutional as there is no irrationality in the said Rule.”

“34. In fine, the writ appeals are disposed of and the order of the learned Single Judge is affirmed insofar as allowing the writ petitions and quashing the re-fixation of seniority.”

19. Looking to the law laid down in case of Rohit Gupta (supra) it is clear that the non obstante clause in Rule 111 of J&K Police Rules clearly states that in the event of several officers being confirmed on the same date, their seniority shall remain the same as during the probation period. The non obstante clause of Rule 111 admits of one interpretation and that is, if the training is completed within the probation period, seniority shall be fixed on the basis of marks secured in selection only. To reiterate the finding of the Hon'ble High Court in case of Rohit Gupta (supra): “In other words, if several officers appointed directly or promoted were send for training to complete the probation and they passed the training within the probation period, their rank in the seniority shall be finally determined by the confirmation of that rank and if several officers being confirmed on the same date, their seniority as amongst themselves shall remain the same as during the probation period.”

20. It was argued by learned counsels for the respondents that in the present case, the private respondents were confirmed prior to the confirmation of the applicants and, therefore, the non obstante clause of Rule 111 would be inapplicable and so, the seniority is to be fixed as per Rule 111 (2). On the other hand, learned counsel for applicants argued that it is nobody's case that the applicants and the private respondents did not complete their probation

successfully on the same date and so the seniority would be governed by the non obstante clause of Rule 111.

21. In the instant case, there is no record to show that the applicants and the private respondents did not complete their probation successfully on the same date. Mere averments of either party that they completed their probation prior to each other is not supported by any record. Had it been otherwise, official respondents should have placed the record before the Tribunal showing different date on which the applicants and private respondents passed the training within the probation period. The conclusion, therefore to be drawn is that all the candidates passed their training within the probation period and are deemed to be confirmed on the same date, their seniority as amongst themselves shall remain the same as during their probation period.
22. In fact, we notice that the malaise of lack of steadfast and continuity in having in place fixed systems in its administration has plagued the police organization in J&K. Over the decades, the administrators have been unable to evolve and put in place, systems/procedures which have continuity in their applications to recruitment/seniority/promotions. It seems, successive Administrations and at times, different wings of the police have applied different rules, procedures, interpretations etc leading to uncertainty and multiplicity of litigation which has adversely affected the efficacy of the organization at the administrative level. This, uncertainty and lack of systematic procedures as well as frequent and different interpretation of rules needs to be addressed

by the concerned Administration to reduce the level of litigation being faced by the organization.

23. We, therefore hold that the non obstante clause of Rule 111(2) of the Police Rules, is to be applied to fix seniority of the applicants and they shall be given seniority during the probation period i.e. seniority based on the merit as assessed in written test as well as viva voce test and not on the merit obtained in the training course. Accordingly, we quash the final seniority list of Sub-Inspectors in Executive Wing of J&K Police issued by respondent No. 2 vide order No. PHQ order No. 2678 of 2019 dated 12.07.2019 to the extent respondents No. 4 to 208 were placed over and above the applicants. The T.A. is allowed and the seniority of the applicants and private respondents in the instant case be re-drawn and fixed by assigning seniority based on the merit as assessed in written test as well as viva voce test and not on the merit obtained in the training course. T.A. is accordingly disposed of. No costs.

(Anand Mathur)
Member (A)

(Rakesh Sagar Jain)
Member(J)

Arun

