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during her life-time but would not alienate the same without consideration and for legal necessity. The question arose, whether the interest which she got in the two-third share of the property left by her husband stood enlarged into an absolute estate. Relying upon the decision of the Supreme Court in *Badri Parshad's case* (supra), a Division Bench of the High Court held that the widow's interest in the property stood enlarged into an absolute estate. If the view of the learned Judges was that the widow already had the identical interest in the property, which was recognised by the compromise, and, therefore, it stood enlarged under section 14(1) of the Hindu Succession Act, I have nothing more to say. If, on the other hand, the learned Judges meant to lay down that widow who enters into an agreement expressly restricting her interest in certain property must take advantage of section 14(1) and claim an absolute interest in the property, I venture to express my doubts about it. Earlier, I have pointed out that the effect of section 14(2) is not to restrict either the freedom of the donor to donate or the freedom of the widow to contract."

My brother Rajinder Nath Mittal, J., has explained the decision in *Nand Singh's case*. I do not wish to add anything more.

N.K.S.

FULL BENCH

Miscellaneous Civil.

Before O. Chinnappa Reddy, S. S. Sandhawalia and R. N. Mittal, JJ.

SURJIT SINGH,—Petitioner.

versus

THE STATE OF PUNJAB and others,—Respondents.

Civil Writ No. 1779 of 1976.

April 5, 1977.

Punjab Police Rules 1934—Rules 12.2(3), 13.8(1), 13.17, and 14.1(2)—Rule 14.1—Whether statutory—Seniority of lower subordinates—Whether to be finally determined by the date of their confir-

mation—Non-communication of adverse entries to such subordinates—Whether infringes Police Rules—Such Rules—Whether exclude, by implied inenament, principles of natural justice.

Held, that Chapter 14 of the Punjab Police Rules 1934 is an integral part of the rules which have been framed under sections 7 and 12 of Act V of 1961 and is not in anyway less statutory than the rules contained in the preceding chapters 12 and 13 thereof. The provisions contained in this chapter are at par with and of equal force and validity as any others contained in other chapters. Rule 14.1 contained in chapter 14 is, therefore, statutory. (Para 7).

Held, that the rules visualise the enrolment to the ranks of constables and promotions and appointments to other ranks on permanent basis and the persons so appointed have to serve a statutory period of probation whereafter alone they are to be confirmed in accordance with the provisions provided therefor by the competent authority. Rule 14.1 is statutory and has to be given effect to. It is categoric in laying down that the seniority of officers appointed or promoted on probation to any rank is finally determined by the date of the confirmation in that rank. The language used therein is "any rank" and, therefore, is applicable to all ranks whether they fall within the scope of lower subordinates or upper subordinates. A harmonious construction of rules 12.2(3) and 14.1 requires that the former should cover the field of seniority of lower subordinates during their probationary period whilst the latter would govern their seniority after confirmation. The third paragraph of sub-rule (3) of rule 12.2, therefore, operates only during the probationary period of the lower subordinates. After confirmation in either of the two ranks comprised therein the provisions of rule 14.1 would obviously come into full play. Therefore, the seniority of a confirmed officer would be finally determined by the date of his confirmation and he would rank senior to an officer not confirmed in that rank, irrespective of the latter's date of appointment.

(Paras 15, 19 and 20).

Kashmira Singh v. The State of Punjab and others. (C.W. No. 1584 of 1975 decided on 26th September, 1975) and *Gurmail Singh etc. v. The State of Punjab and another*, (C.W. No. 1992 of 1976 decided on the 16th September, 1976).

OVER RULED

Held, that while framers of the rules were apparently alive to the necessity of communicating adverse entries in regard to upper subordinates and gazetted officers they excluded the lower subordinates from the operation of this principle. Hence, far from there being any infraction of the police Rules they do not provide at all for the communication of any adverse entries in the record to the lower subordinates. (Para 27).

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Held, that the rules of natural justice are not embodied rules. It is, therefore, possible to exclude them from operation either by express or implied intendment in the relevant statutory provisions. There seems to be an implied exclusion of any such principle by the Punjab Police Rules themselves. While rule 13.17 in terms provides for the communication of adverse entries to the upper subordinates and gazetted officers, yet no such provision has been laid out by the framers in the case of the lower subordinates. By necessary intendment, therefore, the rule-makers seem to have excluded this provision of communicating adverse entries as regards the lower subordinates. On the other hand, rule 13.8(1) visualises the maintenance of their service record which is expressly directed to be kept confidential. Thus, with regard to the non-communication of the adverse reports to the lower subordinates, the principles of natural justice, if any, are clearly excluded in the particular context both by express and implied intendment of the Punjab Police Rules.

(Paras 29, 30 and 32).

Case referred by Hon'ble Mr. Justice S. S. Sandhawalia, vide order dated 10th November, 1976 to a Division Bench for decision of an important question of law involved in the case. The Hon'ble the Chief Justice constituted a full Bench for decision of the same. The Full Bench consisting of Hon'ble Mr. Justice O. Chinnappa Reddy, Hon'ble Mr. Justice S. S. Sandhawalia and Hon'ble Mr. Justice R. N. Mittal finally decided the case on 5th April, 1977.

Petition under Article 226 of the Constitution of India praying that a writ of Certiorari, Mandamus or any other suitable writ, Direction or Order be issued, directing the respondents :—

- (i) to produce the complete records of the case,
- (ii) a Writ of Mandamus be issued directing the respondents to send the petitioner for the Intermediate School Course which has already commenced on October 1, 1976 or such other Course which the Hon'ble Court may deem proper,
- (iii) the respondents be directed to confirm the petitioner with effect from the date persons junior to him viz. Respondents Nos. 3 and 4 have been confirmed,
- (iv) it be declared that the petitioner is senior to Respondents Nos. 3 and 4;
- (v) this Hon'ble Court may also grant all the other consequential reliefs to which the petitioner may be found entitled to and pass any other Order which it may deem just and fit;
- (vi) the costs of this petition may also be awarded to the petitioner.

J. L. Gupta, Advocate, for the Petitioner.

I. S. Tiwana, D.A.G., for the Respondents.

S. S. Sandhawalia, J.

(1) Whether the seniority of lower subordinates in the Punjab Police Force is governed by the date of their appointment only and is not to be finally determined by the date of their confirmation, is the significant question which has necessitated this reference to the Full Bench.

(2) The facts in so far as they are relevant to the basic legal issue aforesaid, lie in a narrow compass. The petitioner joined the Punjab Police Force as a Constable on the 7th July, 1964 and was promoted as Head Constable with effect from the 15th of April, 1967. As against this, respondents Nos. 3 and 4 were promoted as Head Constables after the petitioner, on August 5, 1969 and August 10, 1969, respectively. However, both these respondents were later confirmed as Head Constables on the 22nd of March, 1976. The admitted position is that the petitioner continues to be an unconfirmed Head Constable so far.

(3) The petitioner's primary claim is that despite the fact that he has not been confirmed in the post of a Head Constable, he nevertheless ranks senior to respondents Nos. 3 and 4 because according to him seniority *inter se* of all lower subordinates is to be governed by their dates of appointment to the post and has no relevance to their subsequent dates of confirmation. On these premises, he claims to rank higher than respondent Nos. 3 and 4 and thus entitled to be deputed for the Intermediate School Course at the Police Training School at Phillaur in preference to the two respondents.

(4) At the very outset, I may notice that the learned counsel for the petitioner faced an uphill task in so far as he was canvassing for a construction which has nothing to commend itself on principle. In effect the stand on behalf of the petitioner is that an unconfirmed officer is to rank senior to one duly confirmed in that very rank. In actual practice, it would lead to the effect that an officer who because of his atrocious service record may not be even fit for confirmation,

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would nevertheless continue to claim seniority over others who by virtue of their excellent records stand duly confirmed. This would be so owing to the mere incident of his having been promoted earlier to them. That such a situation would be anomalous is indeed plain and was even conceded by the learned counsel for the petitioner. Therefore, unless compelled by the clearest mandate of the law, one would find it difficult to arrive at such a result on principles of logic. I find no such statutory compulsion in the language of the rules to which I would advert in detail hereafter. The learned counsel for the petitioner was hard put to pin point any other provisions in the whole gamut of numerous service rules which would provide that an unconfirmed person is to rank senior to another confirmed in the same rank. By and large, the rationale and tenor of service rules is that a confirmed and substantive member of the service is to rank higher than those not confirmed. I, therefore, on principle, see no reason to easily accede to a construction which would introduce a rather anomalous rule of seniority within a disciplined force.

(5) However, the answer to the basic issue herein must inevitably turn on the construction of sub-rule 3 of rule 12.2 and sub-rule 2 of rule 14.1 of the Punjab Police Rules, 1934. It is, therefore, both convenient and indeed necessary to read these two provisions before adverting to the rival contention advanced on either side.

12.2 (1) ** * * * *

(2) * * * * *

(3) All appointments of enrolled police officers are on probation according to the rules in this chapter applicable to each rank.

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-a-vis any officers promoted or confirmed before him during his deputation.

The seniority of lower subordinates shall be reckoned from dates of appointment, subject to the conditions of rule 12.24 and provided that a promoted officer shall rank senior to an officer appointed direct to the same rank on the same date.

Proviso * * * * *

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14.1 (1) Command and precedence amongst police officers shall be :—

(a) by seniority of rank.

(b) by seniority of grade.

(2) Officers holding officiating appointments take the rank and seniority of such appointment for the time that they hold it only on reversion they take seniority in accordance with their position in their substantive rank. Officers in a selection grade take seniority above all officers in a time-scale of the same rank and among themselves in the order of their seniority in such grade. *The seniority of officers appointed or promoted on probation to any rank is finally determined by the date of confirmation in that rank, during the period of probation such officers will take seniority in the order in which they are gazetted, and, in the case of several being gazetted on the same date, promoted officers will be placed first in the order according to their length of service, and officers appointed direct will follow according to age.*

For purposes of discipline an officer on a higher rate of pay shall rank senior to an officer on a lower rate in the same time-scale, provided that no officer on probation in his

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rank shall take seniority above an officer who is confirmed in that rank, even though, on account of length of officiating service he may be drawing a higher rate of pay."

(6) I would first dispose of a contention raised by the learned counsel for the petitioner which appears to me rather facile. It was submitted with some vehemence that rule 14.1 and indeed all the 59 rules contained in Chapter 14 were not statutory and therefore, would be of no avail to the respondents, especially if they conflict with the rules in Chapters 12 and 13. According to the learned counsel, Chapter 14 titled as 'Discipline and Conduct' merely provides some non-statutory guide lines for the said purpose. By reference to the note at the very opening of the chapter, it was sought to be contended that these provisions were merely one with which the members were required to be acquainted alongwith other rules and consolidated circulars of the Punjab Government.

(7) I am unable to see any reason whatsoever for assuming that Chapter 14, which is an integral part of the Punjab Police Rules framed under Sections 7 and 12 of the Act V of 1861 is of any less statutory value than rules contained in the preceding chapters 12 and 13 thereof. Clearly, the provisions contained in this Chapter are at par with and of equal force and validity as any others contained in other Chapters thereof on which the learned counsel for the petitioner placed his primary reliance. No authority could be cited for the rather novel proposition that Chapter 14 only in a set of statutory rules should be downgraded to the level of mere instructions or guidelines without binding effect.

(8) I would, therefore, unhesitatingly reject the aforesaid submission of the learned counsel for the petitioner.

Once it is held that rule 14.1 is statutory it is plain that it must be given effect to and in case of conflict with any other provision, it has to be harmonised therewith. However, to be candid, I would say at this very stage that I see no contradiction between the rules 12.2 (3) and 14.1.

(9) Now, the core of the arguments on behalf of the petitioner rests entirely on the alleged difference of language used by the rule-makers regarding the order of seniority amongst Upper Subordinate as against that used for the provisions regarding the seniority of

Lower Subordinates, in the service. It was submitted that the framers had designedly used different language in paragraph 2 of sub-rule 3 (pertaining to upper subordinates) than that used in paragraph 3 thereof which governs the lower subordinates. On these premises, it was contended that whereas in the case of upper subordinates it had been provided that seniority shall be finally settled by the dates of confirmation, no such condition appears in the provisions of para 3 as regards lower subordinates. From this, the counsel sought to infer that the rule-makers intended the date of confirmation to be the criteria so far as the Upper Subordinates in the service were concerned, but in sharp distinction thereto, the date of appointment was to continue to govern the seniority of lower subordinates irrespective of their subsequent dates of confirmation.

(10) Some rationale for this rather anomalous distinction was sought to be provided by the learned counsel on the ground that seniority of the lower subordinates is primarily within the district of their appointment. It was submitted that since opportunities for promotion and subsequent confirmation varied in each district, the rule-makers had, therefore, provided that their seniority should continue to be governed by the date of their appointment rather than to be affected by the date of the order of subsequent confirmation. Reference was made by the counsel to the last sentence of rule 13.3 which lays down that seniority of Head-Constables in the district will be recorded in form 10.88 (1). Our attention was drawn to this Form to show that its 7 columns did **not** contain a reference to the date of confirmation, but column No. 4 thereof was expressly meant for recording of the date of enrolment. From this, an inference was sought to be raised that for purposes of seniority of Head Constables, the date of confirmation was inconsequential.

(11) To meet the primary argument of difference of language used in paragraphs 2 and 3 of sub-rule 3 of rule 12.1, Mr. Tiwana, the learned counsel for the respondent—State advanced a contention which is obviously meritorious. He rightly pointed out that the case of upper subordinates presented the problem of the determination of seniority during probation between persons who were promoted to the rank as against the others who were directly appointed thereto. Therefore, the rule-makers were compelled to make provisions for determination of seniority betwixt these two classes both at the pre and post-confirmation stages. On the other hand, the position as regards the lower subordinates was radically different. It was pointed

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out that under the Punjab Police Rules, Head Constables are never appointed directly to the rank and are invariably promoted there to from amongst the Constables. Therefore, no occasion arises for providing for seniority between direct appointees and promotees in this rank. Similarly, at the lowest rung, constables are invariably appointed or enrolled directly and are never promoted to that rank. In their case also thus no question of any distinction between promotees and direct appointees arises. This being so, the rule-makers had inevitably to provide distinctly and differently for Upper Subordinates on the one hand and Lower Subordinates on the other. Therefore, the second paragraph of sub-rule 3 provided in greater detail as regards upper subordinates and laid down the principle for determination of seniority between promotees and direct appointees both at the pre and the post-confirmation stages. On the other hand, no such complexity arose in the case of lower subordinates comprised as they are, of only two ranks of Constables and Head Constables and further being untroubled by any conflict of interest betwixt direct appointees and promotees. Consequently, the rule-makers as a matter of abundant caution, dealt with seniority of lower subordinates separately in the third paragraph of sub-rule 3 with relative brevity.

(12) I am of the view that the distinction in the language used in paragraphs 2 and 3 of rule 12.2 (3) is amply explained by the aforementioned considerations. Indeed, the use of different language was inevitable in view of the different situations which the rule-makers were called upon to meet as regards upper subordinates on the one hand and the lower subordinates on the other.

(13) Once the use of different and distinct language qua the upper and the lower subordinates in rule 12.2 (3) of the Punjab Police Rules is explained, the wind is taken out of the sails of the petitioner's case. The main contention being without merit, the ancillary ones inevitably crumble with the same. Nevertheless it deserves mention that the submission regarding the seniority of lower subordinates being entirely within the district is devoid of a factual foundation. Rule 12.26 of the Rules provides for inter-district transfers of lower subordinates as also an exchange of appointments betwixt the establishment of the district police and the railway police. Therefore, the half-hearted attempt to support the petitioner's case on this basis is not well-founded. Even otherwise if the principle of an unconfirmed officer ranking senior to a confirmed one is anomalous, it would remain so whether the seniority is strictly inter-district or intra-district as well.

(14) I am equally unimpressed by the sketchy support which the learned counsel for the petitioner sought from rule 13.3 and the maintenance of the seniority of Head Constables in the districts in form 10.88(1). A mere procedural direction as regards the form in which the service record of an officer is to be maintained can hardly govern or control the substantive rule governing seniority *inter-se* of officers in the same rank. Equally plain it is that prescribed forms, etc. in a set of statutory rules are governed by the latter and not vice-versa. The construction of the rules cannot possibly be controlled by the existence or omission of a column in a form prescribed thereby. I am hence of the view that subsidiary contentions of the learned counsel for the petitioner on this aspect are equally without merit.

(15) On a larger perspective of the Punjab Police Rules, I am inclined to accept the stand of Mr. Tiwana the learned counsel for the respondent state that way-back in 1934 when the rules were framed, the Police Force was visualised as a regular establishment and merely temporary or purely *ad hoc* appointments were hardly within the ken of these provisions. Therefore, these rules visualise the enrolment to the ranks of Constables and promotion and appointments to other ranks on a permanent basis and the persons so appointed or promoted were deemed to be on a statutory probation on their posts. The lower subordinates comprising the ranks of Constable and Head Constables (vide rule 1.13) with which we are particularly concerned were to be appointed by the Superintendent of Police of their respective districts by virtue of rule 12.1 and sub-rule (3) thereof vested the power of confirmation in the appointing authority. It has to be borne in mind that rule 12.21 provides that a Constable who is unlikely to prove an efficient officer may be discharged by the Superintendent of Police at any time within three years of his enrolment and no appeal or remedy is provided against such an order of discharge. Therefore, it is apt to hold that for this period of three years, an enrolled Constable is on probation on his post till duly confirmed. This view of statutory probation is further buttressed by the first paragraph of sub-rule (3) of rule 12.2 which in terms provides that all appointments of enrolled officers are on probation according to the rules in Chapter 12 applicable to such rank. As regards promoted officers, the relevant part of rule 13.18 deserves quotation:—

“13.18. 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 periods of officiating

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service to count towards the period of probation. On the conclusion of the probationary period, the competent authority may either confirm the probationer or revert him, or, if it so thinks fit, extend the period of probation by one year in the aggregate and on the conclusion, of the extended period of probation, pass such orders as it could have passed on the conclusion of the original period of probation."

Reading rules 12.1(3), 12.2(3) and the afore-quoted 13.18 together, it is plain that a person promoted as a Head Constable has to serve a statutory period of probation whereafter alone he is to be confirmed in accordance with the provisions provided therefor by the competent authority.

(16) Against the aforesaid background the categorical stand of the respondent—State is that rule 12.2(3) covers the field of seniority during the period of probation only and not thereafter. After confirmation the only provision applicable is rule 14.1 for the purpose of determining seniority *inter se* of permanent officials in the Force.

(17) In support of the above stand, reference is first made to the fact that Chapter 12, as its very heading indicates, pertains to 'appointments and enrolments'. A reference to the 42 rules contained in the Chapter supports the respondents' stance that the provisions herein are primarily devoted to the initial appointments and enrolments of the members of the Police Force and their probationary period. Particular emphasis has then been placed on the sequence of the paragraphs in sub-rule (3) of rule 12.2, on which the primary argument of the petitioner had rested. It is pointed out that the first paragraph of the sub-rule lays down in no uncertain terms that all appointments of enrolled police officers are on probation. It is thereafter that the two paragraphs follow with regard to the seniority of the upper and lower subordinates. There is thus both force and plausibility in the contention of the respondents that these rules of seniority are thus applicable only to the enrolled officers on probation.

(18) In order to negative the petitioner's contention that an unconfirmed lower subordinate would be entitled to rank senior even to a confirmed one by virtue of his date of appointment, particular reliance has been placed on the second paragraph of sub-rule (2) of rule 14.1 of the Rules. This provision again lends massive support to the respondents' stand and tends to show that the intention of rule

makers was patently otherwise than what is sought to be contended on behalf of the petitioner. The aforesaid second paragraph lays down in categorical terms that no officer on probation in his rank shall take seniority above an officer who is confirmed in that rank even though on account of the length of officiating service he may be drawing a higher rate of pay. The intent thus seems to be obvious that despite any length of officiating service and the drawing of higher emoluments an unconfirmed officer has never to take seniority above one who is confirmed.

(19) As I have noticed earlier, rule 14.1 is equally statutory and has, therefore, to be given effect to. It is categoric in laying down that the seniority of officers appointed or promoted on probation to any rank is finally determined by the date of the confirmation in that rank. It is significant that the language used therein is "any rank" and, therefore, is applicable to all ranks whether they fall within the scope of lower subordinates or upper subordinates. A harmonious construction of the two rules would, therefore, equally require that rule 12.2 (3) should cover the field of seniority of lower subordinates during their probationary period whilst rule 14.1 would govern their seniority after confirmation.

(20) For the afore-mentioned reasons, I am of the view that the argument raised on behalf of the respondents is both plausible and sound. The third paragraph of sub-rule (3) of rule 12.2, therefore, operates only during the probationary period of the lower subordinates. After confirmation in either of the two ranks comprised therein the provisions of rule 14.1 would obviously come into full play. Therefore, the seniority of a confirmed officer would be finally determined by the date of his confirmation and he would rank senior to an officer not confirmed in that rank, irrespective of the latter's date of appointment.

(21) The view I am inclined to take finds tacit support from an earlier Full Bench of this Court reported as *Sardul Singh v. Inspector-General of Police and others* (1). Therein, also one of the issues was the claim of a lower subordinates to be sent to the Intermediate School Course on the basis of his seniority. After an exhaustive discussion, the Bench concluded as follows :—

"For the reasons given above, we are of the opinion that every Head Constable on list 'C' has the right to be sent for the

(1) AIR 1970 Pb. & H. 481.

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Intermediate School Course in the order of his seniority determined in accordance with Rule 13.8. While sending the Head Constables for the Intermediate School Course, the Deputy Inspector--General of Police shall first send the confirmed Head Constables and after their list is exhausted, the Head Constables on probation will be sent and last of all officiating Head Constables will be sent. This appears to us to be the most reasonable, fair and equitable way of complying with the provisions of Rule 13.9 of the Police Rules in the interest of all the Head Constables in the police force who legitimately aspire for promotion. Any Head Constable unwilling to undergo that course will of course be omitted."

From the above observations, it is plain that the Full Bench considered the confirmed Head Constable as being senior to a Head Constable on probation and classified the officiating Head Constables as last of all in the field of seniority.

(22) It is now necessary to advert to two Single Bench decisions of this Court on which primary reliance was placed on behalf of the petitioner. The first of these, which deserves notice is the decision of my learned brother R. N. Mittal, J., in *Kashmira Singh v. The State of Punjab, etc.* (2). Undoubtedly, the observations therein lend support to the stand taken on behalf of the petitioner. A reference to the judgment would show that the material provisions of rule 14.1 were not at all brought to the notice of the learned Judge in the course of the argument. Indeed Messrs. J. L. Gupta and I. S. Tiwana, learned counsel for the petitioner and for the respondents respectively, who were representing the parties in the aforesaid *Kashmira Singh's* case have fairly conceded that they were rather remiss in not bringing this provision to the notice of the Bench. It was in this context and owing to an omission to notice the provisions of rule 14.1 that the view was expressed that the dates of appointments determine the seniority of lower subordinate promotees. Even otherwise, it is patent that the matter was not adequately canvassed before the Bench both on principle and in the light of the scheme of the rules as also of the particular provisions to which a reference has been made above in this judgment. I am, therefore, of the view that *Kashmira Singh's* case on this point does not lay down the law correctly and would respectfully overrule the same.

(2) CW 1584-75 decided on 26th September 1975.

(23) The second judgment in *Gurmail Singh etc. v. The State of Punjab, etc.* (3), intrinsically followed the earlier view in *Kashmira Singh's case* indeed it was observed by the learned Judge that sitting singly he was bound by the same. or the reasons above-mentioned this case obviously is again not correctly decided and is hereby overruled.

(24) It now remains to examine an ancillary contention advanced with some diffidence by Mr. Gupta. To appreciate it some reference to the facts in regard thereto becomes necessary. In this context, the Petitioner's main grievance is that he has not been confirmed as a Head Constable despite a longer period of officiation while his juniors and, in particular, respondent Nos. 3 and 4 have been so confirmed. It is the petitioner's plea that either there has been no consideration of his case for the purpose of his confirmation and in any case such consideration has not been effective and real because certain adverse entries in his record were never conveyed to him.

(25) The stand of the official respondents on this point is clear and categorical. It has been repeatedly affirmed in the written statements of the Additional Superintendent of Police and the Senior Superintendent of Police, Jullundur, that the petitioner's case was fully considered both for the purpose of his confirmation as also for deputing him to the Intermediate School Course at Phillaur. It has been candidly stated that the record of the petitioner was carefully examined but in view of the adverse entries therein the authorities did not find the petitioner fit for confirmation. It is pointedly stated that the adverse entries in the record of he petitioner were not communicated to him as there is no provision in the Police Rules for doing so

(26) On the basis of the afore-mentioned factual foundation the learned counsel for the petitioner contended that there has been a patent infraction of the Police Rules because of the non-communication of the adverse entries to the petitioner. It was submitted that the consideration of the petitioner's case for confirmation, thus, stood vitiated. Rather curiously, reliance for the aforesaid contention was placed on Rule 13.17 which pertains to the annual confidential reports and, in particular, upon clause (2) thereof which provides that the reports classified as 'C' should be communicated to the officer concerned at a personal interview or, if this was not possible, then in writing,

(27) It appears to me that the counsel's reliance on rule 13.17, in fact, boomerangs on the petitioner's case. It deserves pointed notice

(3) CW 1992-76 decided on 16th September, 1976.

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that rule 13.17 in its very opening part makes it plain that it is applicable to the upper subordinates only and there is no mention whatsoever, therein of lower subordinates. It is equally plain that Clauses (2) to (5) of rule 13.17 are applicable only to the upper subordinates and ranks higher thereto. The learned counsel for the petitioner when repeatedly pressed could not point out any rule which makes a similar provision for the lower subordinates in the Force as well. Therefore, by necessary intendment the lower subordinates seem to have been deliberately excluded from the aforesaid provisions leading to the result that the framers of the Rules did not visualise the communication of any adverse entries in their record to them. Indeed, as is evident from rule 13.8 (1) (to which detailed reference is made hereafter) the record of the lower subordinates is directed to be kept confidentially. The end result seems to be that while the framers of the rules were apparently alive to the necessity of communicating adverse entries in regard to upper subordinates and gazetted officers they excluded the lower subordinates from the operation of this principle. I am hence of the view that far from there being any infraction of the Police Rules they do not provide at all for the communication of any adverse entries in the record to the lower subordinates.

(28) Repelled on the aforesaid point, the learned counsel for the petitioner inevitably fell back upon the principles of natural justice. It was contended that even though there was no express provision in the Rules with regard thereto the petitioner should have been conveyed the adverse entries in his record on which reliance was placed by the authorities in order to afford an opportunity of explanation to him. In the absence of any such explanation, it was submitted that the adverse entries in the record cannot and should not be taken into account to his detriment and if this has been so done, it is violative of the principles of natural justice. Reliance was placed on a Single Bench judgment of this Court in *Angral Kapoor, Sub-Divisional Officer, Public Health, P.W.D. v. The State of Punjab and others*, (4),

(29) I am unable to detect much merit in this contention as well. As the matter has not been fully canvassed before us in this context, I would not wish to pronounce on the abstract proposition whether the mere non-communication of an adverse entry in the service record involves by itself an infraction of the rules of natural justice. However, assuming entirely for the sake of argument in the petitioner's favour in this regard, his case is nevertheless not advanced

in the present context. As has been oft-repeated, the rules of natural justice are not embodied rules. It is, therefore, possible to exclude them from operation either by express or implied intendment in the relevant statutory provisions. In the present case there first seems to be an implied exclusion of any such principles by the Punjab Police Rules themselves. As noticed earlier, while rule 13.17 in terms provides for the communication of adverse entries to the upper subordinates and gazetted officers, yet no such provision has been laid out by the framers in the case of the lower subordinates. By necessary intendment, therefore, the rules-makers seem to have excluded this provision of communicating adverse entries as regards the lower subordinates.

(30) The aforesaid view is further buttressed when reference is made to rule 13.8(1) on which the respondents place reliance. This provides that in each district a list shall be maintained in card index form of all Constables who have passed the Lower School Course at Phillaur and are considered eligible for promotion as Head Constables. Such a card, apart from other relevant information, should contain comments by the Superintendent of police himself or furnished by gazetted officers under whom the constable has worked, as regards his qualification and character. The express provision herein is that this list shall be kept confidentially by the Superintendent of police and shall be scrutinised and approved by the Deputy Inspector-General of Police at his annual inspection. The mode in which this record is to be maintained is also prescribed by Form No. 13.8(1). A reference to this would show that this includes a column for the comments to be recorded by the Superintendent of Police as also for the scrutiny and approval of the said notes by the Deputy Inspector-General of Police. It is, thus, evident that with regard to the lower subordinates no provision is made for any annual confidential reports but instead the relevant rule visualises the maintenance of their service record in Form No. 13.8(1) which is expressly directed to be kept confidential.

(31) Some rationale for treating the lower subordinates in this regard differently from the higher ranks was also plausibly suggested by Mr. Tiwana on behalf of the respondents. It was pointed out that inevitably the work of the lower subordinates involves the duties of tracing crime and following up the activities of professional criminals and smugglers, etc., which is necessarily of a confidential nature. That being so, the communication of matters in regard thereto might well

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not have been deemed desirable by the framers of the rules. Considerations of general policy and practicability may have also necessitated this classification. It was pointed out that because of the preponderance of the lower subordinates in the Police Force and their large number therein, it may neither be possible nor perhaps practicable to convey each adverse entry in their service record to every one of them and to adjudicate thereon after eliciting explanations therefor. While such a procedure was practicable and desirable in the case of senior officers the framers of the rules did not choose to extend the same in the case of officers and men at the lower rung.

(32) I am, therefore, of the view that even if any principle of natural justice is attracted (assuming it to be so entirely for the sake of argument) with regard to the non-communication of the adverse reports to the petitioner, the same is clearly excluded in the particular context both by express and implied intendment of the Punjab Police Rules.

(33) The case of Angpal Kapoor (4) (supra) relied upon by the learned counsel for the petitioner appears to be wholly wide off the mark. Therein, the employee was a Sub-Divisional Officer in the Public Health (P.W.D.) and obviously there is no similarity or identity of the service rules applicable in that case to the present one. Further, that was a case in which the petitioner had, in fact, been conveyed an adverse report during the pendency of a criminal prosecution against him in which he was later acquitted. An appeal or representation by the petitioner against the adverse remarks in the said case was also pending when his case for regular appointment as Sub-Divisional Engineer was considered and the adverse entries against him were relied upon. It was in that peculiar situation that the observations were made regarding the applicability of the principles of natural justice. None of those considerations obviously arise here and the judgment is of no aid to the petitioner's case.

(34) For the aforementioned reasons, the petition is without merit and is hereby dismissed. In view of the rather intricate questions involving determination herein the parties are left to bear their own costs.

O. Chinnappa Reddy, J.—I agree.

Rajendra Nath Mittal, J.—I also agree.

N. K. S.

