
(1994) 06 P&H CK 0005
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 15009 of 1993

Kartar Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 02-06-1994

Acts Referred:

Punjab Civil Services Rules — Rule 3.11 , 3.12, 3.13, 3.14, 3.15

Citation : (1995) 110 PLR 138

Hon'ble Judges : Jawahar Lal Gupta, J

Bench : Single Bench

Advocate : Amarjeet Singh, for the Appellant; D.S. Dhillon, AAG, for the Respondent

Final Decision : Allowed

Judgement

Jawahar Lal Gupta, J.—The petitioners who are working as Head Constable inter-alia pray for the issue of a writ in the nature of mandamus directing the respondents to depute them for the Upper School Course. A few facts may be noticed.

2. It is the admitted position that the petitioners were recruited as Constables on June 13, 1972 and September 20, 1973 respectively. They passed the Lower School course in the year 1983 and were promoted to officiate as Head Constable in the year 1984. They were confirmed as Head Constable vide order dated April 18, 1990 with effect from April 6, 1990. A copy of this order has been produced as Annexure P-2 with the writ petition. They passed the Intermediate School course in the year 1992.

3. While they were still undergoing training for the Intermediate School course, the petitioners were transferred from the Punjab Armed Police to the District Police vide order dated May 22, 1992. They were, however, relieved of their duties from the Armed Police on August 29, 1992 and August 30, 1992. The petitioners aver that soon after the passing of the transfer orders, they had

submitted a representation on May 28,1992. The respondents dispute this fact and state that no such representation had been received. Be that as it may, the fact remains that the petitioners are continuing to serve in the District Police at Jalandhar.

4. On June 26, 1993 the respondents selected various persons for being deputed for the upper School course. A copy of this order has been produced as Annexure P-5 with the writ petition. The petitioners claim that the persons whose names appear from Serial No. 3 to 14 in this list are junior to them and that they had a right to be sent for the course before any one of these persons could be deputed for the cause. On behalf of the respondents, it has been averred that the petitioners having been transferred from the Punjab Armed Police to the District Police, have no right to claim any seniority vis-a-vis the persons mentioned in the order dated June 26, 1993. On this basis, it is claimed that the grievance made by the petitioners is wholly untenable.

5. Counsel for the parties have been heard. It is the admitted position that the petitioners were confirmed as Head Constables in the Punjab Armed Police. They consequently acquired a lien on these posts. Admittedly, this lien has not been suspended. It is also the admitted position that they have not been confirmed on any other post in the District Police. In this situation, the petitioners continue to retain their lien in the Armed Police. That being so, their seniority vis-a-vis the other persons working in the Armed Police and especially the Head Constable mentioned in the order dated June 26,1993 remains in tact.

6. Mr. Dhillon submits that in the Punjab Police Rules, there is no provision for retention of lien or protection of seniority. He is probably right. However, it is the admitted position that in matters regarding which no provision has been made in the Punjab Police Rules, the members of the force are governed by the provisions of the Punjab Civil Services Rules. In fact, a perusal of Rule 1.2 of the Punjab Civil Services Rules, Volume I, Part I shows that "these rules shall apply to all Government employees belonging to "Class I to IV services" under the State who are "under the administrative control of the Punjab Government and whose pay is debitable to the consolidated Fund of the State of Punjab. Further more, Rule 2.35 defines lien to mean "the title of a Government employee to hold substantively, either immediately or on the termination of a period of absence, a permanent post, including a tenure post, to which he has been appointed substantively. "Still further, a perusal of the provisions in Chapter III and more particularly the Rules 3.11 to 3.17 shows that a Govt. employee"s lien on a post cannot be terminated "even with his consent, if the result will be to leave him without a lien or a suspended lien upon a permanent post. In the present case, it is the admitted position that the petitioners have not been confirmed in the District Police. They consequently retain their lien in the Armed Police. That being so, it has to be presumed that they continue in the Armed Police and all their rights for promotion as Assistant Sub Inspectors etc. are protected.

7. Admittedly, persons junior to the petitioners were deputed for the course in

June, 1993. The claim of the petitioners was ignored on the wholly untenable ground that they had been transferred to the District Police. The petitioners had a right to be deputed for the course before any one junior to them could have been sent. The action of the respondents in not deputing the petitioners for the course was clearly violative of the provisions of Article 16 of the Constitution of India.

8. Mr. Dhillon has referred to the decision of a Division Bench of this Court in *Raj Kumar and Ors. v. State of Haryana* 1991(2) RSJ 342 to contend that there is no inter-se seniority between persons belonging to different ranges in the Police force. There is no quarrel with this proposition. However, in a case where a person has a lien on a post in a particular Range, it is to be presumed that he continues to hold that post even while he has been deputed to discharge the duties of another post outside the cadre. The concept of "next below rule" is well-known in the services jurisprudence. By merely transferring a person from one Range to another in spite of the fact that the person has a right in that cadre, the right relating to seniority and further promotion etc. cannot be taken away. Such a course of action, if permitted, would result in denial of equality of opportunity which is guaranteed by Articles 14 and 16 of the Constitution. In the case before the Division Bench, no argument on the basis of confirmation etc. had been raised. Consequently, it is of no assistance to the learned counsel for the respondents.

9. No other point has been urged.

10. Accordingly, it is held that the petitioners were entitled to be deputed for the course before persons junior to them could be sent. Consequently, it is directed that the petitioners be deputed for the next course. On their successful completion of the course, the claim of the petitioners shall be considered for the grant of all those benefits which may have been granted to any person junior to them. In case a Head Constable junior to the petitioners has been promoted to any higher post, the claim of the petitioners shall be considered. In other words, no person junior to the petitioners would derive any benefit by the mere fact that he had been deputed for the course prior to them. The writ petition is allowed in the above terms. In the circumstances of the case, there would be no order as to costs.