

(2020) 08 SHI CK 0400
In the High Court Of Himachal Pradesh
Case No : CWPOA No. 5318 Of 2020

Manish Chaudhary

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 31-08-2020

Acts Referred:

Punjab Police Rules, 1934 — Rule 12.2, 12.21, 13.21

Citation : (2020) 08 SHI CK 0400

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : M.A. Safi, Sudhir Bhatnagar, Arvind Sharma

Final Decision : Allowed

Judgement

Sandeep Sharma, J

1. Being aggrieved and dissatisfied with order dated 4.5.2017 (Annexure A-11), whereby representation dated 1.8.2016 (Annexure A-10) having been filed by the petitioner, regarding correction in provisional seniority list issued on 1.5.2016, came to be rejected, petitioner had approached erstwhile Himachal Administrative Tribunal by way of OA No. 5844 of 2018, seeking therein following main relief(s):

"i) The order dated 04.05.2017 (Annexure A-10), whereby the representation submitted by the Applicant has been rejected, may kindly be quashed and set aside.

ii) That the arbitrary condition contained in the Office Order dated 10.02.2012 (Annexure A-5), vide which the Applicant was granted out of turn promotion, being distinguished person to the rank of Inspector, wherein it has been provided that the seniority in the rank of Inspector will be assigned after successful completion of probation period, may kindly be declared non-est, being ultra vires the Punjab Police Rules as applicable to the State of Himachal Pradesh, 1934 as well as the Constitution of India.

iii) That the Respondents may be directed to fix the seniority of the Applicant w.e.f. 10.02.2012 i.e. the date of his actual promotion against the substantive rank/post/grade of Inspector."

2. After abolition of the erstwhile Himachal Pradesh Administrative Tribunal, above said Original Application came to be transferred to this Court and has been re-registered as CWPOA No. 5318 of 2020.

3. For having bird's eye view of the matter, facts as emerge from the record are that in the year 2010, respondent Department initiated process for filling up several posts of Sub Inspector of Police and in this process, name of the petitioner was also recommended for appointment as Sub Inspector by the Director, Youth Services and Sports, Himachal Pradesh. Respondents having found petitioner suitable for being appointed as a Sub Inspector of Police against sport quota, offered him appointment vide appointment letter dated 8.2.2010 (Annexure A-1). Pursuant to aforesaid appointment of the petitioner as Sub Inspector of Police, he was sent for doing "basic training course" in the year 2010. After completion of basic training course in the year 2011, petitioner was kept on probation but before he could complete the probation period, petitioner participated in the 59th All India Police Games-2010 held with effect from 2nd to 6th March, 2011, and secured second position/silver medal in the event of boxing, as is evident from the certificate issued by the authority concerned. (Annexure A-3).

4. Vide Standing Order No. 3 of 2007, respondents framed guidelines for one rank out of turn promotion of enrolled Police officers from Constable to Sub Inspector of Police, as a class/category, who have achieved distinction in games, athletics and duty meets at the National and International Level under the provisions of Police Rule 13.21 of Punjab Police rules as applicable in the State of Himachal Pradesh. At this stage, contents of Standing Order No. 3 of 2007, Annexure A-4, may be reproduced herein as under:

"STANDING ORDER NO.3 OF 2007

Subject: PROMOTION OF OUTSTANDING SPORTS PERSONS

1. This Standing Order has been framed in place of Standing Order No. P.II(4)Sports of 2002, circulated to all the Heads of Police offices in H.P. vide PHQ's Memo. No. No. P.II(4)Sports/02-14115-55 dated 13.11.2002, regarding one rank out of turn promotion of enrolled Police officers from Constable to Sub Inspector of Police, as a class/category who have achieved distinction in games, Athletics and duty meet at the national and International level under the provisions of Police Rule 13.21 of Punjab Police Rules as applicable in the State of Himachal Pradesh.

2. Following eligibility conditions are laid down for consideration of the sports persons for their one rank out of turn promotion:-

A candidate

a) should have won a medal (1st/2nd/3rd position) in an individual or a team event in International games recognized by Asian Commonwealth/International Federation.

Or

b) should have won a medal (1st/2nd/3rd position) in an senior level individual / team event in national sports event recognized by Indian Olympic Association/ Sports Authority of India/concerned Federation of Sports/Games.

Or

c) should have won a medal (1st/2nd position) in an individual event/team event in All India Police Games or All India Police Duty Meet.

3. Their subsequent promotion on further achievement in the Games/Sports/ Duty Meet in both individual and team events will be considered after winning atleast 2 medals in the subsequent years of participation. Out of these 2 medals in the events of games and sports, atleast one medal should be silver (2nd position) or above. For the purpose of the events of the Duty Meet one of eth medal out of the 2 should be gold (1st position) and the other should be a silver medal (2nd position) or above.

4. The candidates must have won above distinctions after having joined the Police Department.

5. The candidates who have already been promoted under rule 13.21, before issue of this Standing Order shall not be eligible unless they have achieved further distinction for their further promotion after having promoted earlier as mentioned in para 3 above.

6. They should have satisfactory service record and should not have any major punishment during last 3 years and minor punishment during last 6 months from the date of Departmental Promotion Committee Meeting.

7. In order to examine such cases and making recommendations, a Departmental Promotion Committee will be constituted by the Director General of Police consisting of an Inspector General of Police as Chairman with DIG, Armed Police and Training (Central Sports Officer), and one Range DIG as members.

8. Enrolled Police officers up to the rank of Assistant Sub Inspector of Police who are awarded any Police Medal out of those mentioned in para-2 and then deputed to under go prescribed promotion courses, wherever applicable in the next batch irrespective of other eligibility conditions.

9. In case of sub-Inspectors of Police, they shall be immediately promoted to the next higher rank, irrespective of other eligibility conditions. However, their seniority in the rank of Inspector of Police will be fixed before the names of Sub Inspectors of Police who are already on list-F at the time of their promotion.

10. They will not be reverted to rank while undergoing the promotional course.

However, their further promotion and seniority in next higher rank will be regulated after passing the prescribed promotion course as in case of other enrolled Police officials as per provisions of Police Rules and nor from the date on which they are promoted out of turn.

11. All such promotions will have prospective effect.

12. Promotions under these provisions will not exceed the prescribed 10% exemptee quota.

13. After passing the promotion course, officials promoted under this scheme shall vacate their seats under the exemptee quota.

14. Representation, if any, in this regard may be submitted to the Director General of Police through proper channel within three months of issue of the promotion orders."

5. On account of petitioner having won silver medal in All India Police Games-2010, respondent-Department convened a Departmental Promotional Committee in the year 2012, wherein petitioner came to be recommended for out of turn promotion to the substantive post of officiating Inspector of Police in terms of provisions contained in Standing Order No. 3 of 2007. Consequently, vide order dated 10.2.2012 (Annexure A-5), he was promoted to the post of Inspector. Aforesaid promotion order came to be passed subject to following conditions:

"(i) that there is nothing adverse against him which could render him unsuitable for promotion.

(ii) that his promotion would be defective from the date of orders but actual orders of promotion and seniority in the rank of Inspector will be issued after successful completion of probation period."

6. Besides above, respondents ordered that formal promotion order in this behalf will be issued by the IGP/SR and the promotion will take effect from the date of joining at his new place of posting on promotion. It also emerges from the record that since the petitioner failed to clear one of the subjects of basic training course, he was again sent to pass the test, wherein he again failed. Though the petitioner prayed for another chance to pass the said test, but he was directed to undergo full basic training programme, as is evident from communication dated 18.9.2013 (Annexure A-7). Petitioner underwent basic training course alongwith next batch and passed the same. Vide order dated 14.11.2014 (Annexure A-8), result of such training was declared, whereafter, respondent Department prepared and circulated provisional seniority list of Sub Inspector of Police as it stood on 1.8.2018 (Annexure A- 9).

7. Since name of the petitioner came to be figured below those Inspectors, who were promoted to the said rank in the year 2015, petitioner submitted a detailed representation (Annexure A-10) to the Department praying therein for correction

of provisional/final seniority list of the Inspectors of Police well as officiating Deputy Superintendent of Police, however, fact remains that vide order dated 1.5.2017 (Annexure A-11), aforesaid representation having been filed by the petitioner was rejected as such, petitioner was compelled to approach erstwhile Himachal Administrative Tribunal, praying therein for the reliefs as have been reproduced hereinabove.

8. I have heard learned counsel for the parties and perused the material available on record.

9. Having heard learned counsel for the parties and perused the material available on record, this Court finds that there is no dispute inter se parties regarding initial appointment of the petitioner to the post of Sub Inspector of Police under sports quota. Similarly, there is no dispute that subsequent promotion to the rank of Inspector from the post of Sub Inspector was in terms of provisions contained under Standing Order No. 3 of 2007 issued by respondents for providing one rank out of turn promotion to the enrolled police officers from Constable to Sub Inspector as a class/category who achieved distinction in games/athletics and duty meets at National and International level under the provisions of Rule 13.21 of Punjab Police Rules, as applicable to the State of Himachal Pradesh.

10. Careful perusal of Clause 9 of aforesaid Standing Order as contained in Annexure A-7, reveals that in case of Sub Inspector of Police, they are/were required to be promoted to next higher rank immediately irrespective of other eligibility conditions but while giving such benefit to them, seniority in the rank of Sub Inspector would be fixed below persons mentioned in list-F at the time of their promotion, meaning thereby the persons i.e. Sub Inspector of Police, who were already on list for promotion at the time of consideration of the Sub Inspectors, having achieved distinction in any individual/team event in All India Police Games/Police Duty Meets, for the promotion, shall be placed ahead of them in the seniority list.

11. Mr. Arvind Sharma, learned Additional Advocate General, while justifying the impugned action of the respondents, contends that since the petitioner at the time of out of turn promotion had not qualified the basic training of Sub Inspectors, i.e. probation, no fault, if any, can be found in the action of the respondents in as much as fixing of seniority of the petitioner in the cadre of Inspectors with effect from 1.5.2015 is concerned. While referring to Clause 10 of Standing Order, Mr. Sharma, learned Additional Advocate General submits that though the petitioner after having failed to clear the basic training /probation within stipulated time could not have been reverted in the rank but, definitely, his promotion and seniority in the next rank was to be regulated after his having passed prescribed promotion course as is in case of other enrolled police officers, as per Punjab Police Rules and not from the date, on which he was promoted on out of turn basis.

12. However, having carefully perused the Standing Order, as contained in annexure A-4, which provides for one rank out of turn promotion to enrolled police officers from Constable to Sub Inspector of Police, this Court is not inclined to accept the aforesaid submission made on behalf of learned Additional Advocate General because, careful perusal of Clause 9 of the Standing Order clearly provides that the Sub Inspectors having won medal in individual/team events in All India Police Games/ Police Duty Meets, shall be promoted immediately to next higher rank irrespective of other eligibility conditions, meaning thereby other eligibility conditions, governing promotion to the next higher post, would not come in the way of Sub Inspector of Police having been granted promotion on account of his/her having attained position in All India Police Games/Police Duty Meets. Conditions as contained in Clause 10 of aforesaid Standing Order, if read in its entirety, suggests that in case a person who stands promoted on account of his having won medal in All India Police Games/Duty Meets fails to complete the promotional course, he may not be reverted in rank, while undergoing the promotional course, however, his/her further promotion and seniority in next higher rank will be regulated after passing the prescribed promotion course. This Court is of the view that the conditions as contained in Clause 10 would come into operation once the incumbent is promoted as Sub Inspector of Police in terms of Clause 9 thereof, meaning thereby that Sub Inspector of Police after having been promoted to the post of Inspector, if fails to qualify the promotional course, as is in case of other enrolled police officers, he/she would not be reverted in rank, rather, his/her further promotion and seniority in the higher rank will be regulated after passing of prescribed promotional course.

13. In the case at hand, petitioner on account of his having achieved distinction in sports, came to be promoted from the post of Sub Inspector of Police to the post of Inspector before he could complete his basic training course in the year 2010, when he was initially appointed as a Sub Inspector of Police against sports quota. Record clearly reveals that though the petitioner had become eligible for promotion to the post of Inspector in terms of Clause 9 of Standing Order in the year 2010 but his case came to be considered for promotion in the Departmental Promotional Committee held in the year 2012, wherein admittedly the name of petitioner was recommended for out of turn promotion to the substantive post of Inspector.

14. Though vide order dated 10.2.2012 (Annexure A-5), respondents ordered that the promotion of the petitioner would be effected from the date of actual order of promotion and seniority in the rank of Inspector would be issued after successful completion of probation period, but, having carefully perused the conditions contained in order dated 10.2.2012, this Court finds substantial force in the submission made by learned counsel for the petitioner that though formal order for promotion to the rank of Inspector and seniority was to be issued after completion of probation period but his promotion and seniority is/was to relate back to the date of issuance of promotion order i.e. 10.2.2012. Even as per order

issued by the respondents, petitioner was promoted to the post of Inspector with effect from 10.2.2012, but the actual order with regard to promotion and seniority in the rank of Inspector was to be issued after successful completion of probation period, meaning thereby promotion and seniority in the rank of Inspector of the petitioner is/was to relate back to order dated 10.2.2012, when actually the petitioner was ordered to be promoted to the post of Inspector from the post of Sub Inspector of Police.

15. No doubt, in the case at hand, petitioner, who was initially appointed as Sub Inspector of Police against sports quota in the respondent Department though was sent for basic training course in the year 2010 but, before he could complete said basic training, he won silver medal in 59th All India Police Games, 2010, and as such, became entitled for further promotion to the post of Inspector in terms of provisions contained in Clause 9 of Standing Order, Annexure A-4. Careful perusal of order dated 10.2.2012, Annexure A-5, clearly reveals that his promotion to the post of Inspector though was made effective from the date of order, but it was specifically ordered that the actual order of promotion and seniority in the rank of Inspector will be issued after successful completion of probation period. At the cost of repetition, it may be reiterated that the language used in Clause 9 of Standing Order makes it abundantly clear that the seniority of an out of turn promotee would be fixed from the date of his promotion and further his seniority in the cadre of Inspectors would be fixed below the inspectors who were in the list-F of the line of promotion. It was not mandatory for the petitioner, in light of provisions of Clause 9 of Standing Order, to complete basic training course, rather, he after having been appointed to the post of Inspector in terms of Clause 9 of Standing Order No. 3 of 2007, ought to have been sent for training for working against the post of Inspector.

16. Though having perused para- 2 of the aforesaid communication, this Court finds that actual orders of promotion and seniority in the rank of Inspector were to be issued after successful completion of probation but, there is nothing to infer that seniority of the petitioner in the rank of Inspectors was to be given from the date he completed his probation period. Defence taken by the respondents, while denying seniority to the petitioner to the rank of Inspector with effect from 10.2.2012 that the petitioner did not complete basic training and was promoted during the probation period, is not sustainable in view of specific provision contained in Standing Order No. 3 of 2007, wherein specific exclusion has been enshrined qua the eligibility conditions.

17. It was not mandatory for the petitioner, in light of provisions of Clause 9 of Standing Order, to complete basic training course, rather, he, after having been appointed to the post of Inspector in terms of Clause 9 of Standing Order No. 3 of 2007, ought to have been sent for training for working against the post of Inspector.

18. Moreover, action of the respondents in as much as granting seniority to the petitioner with effect from 1.5.2015 is completely dehors the provisions of Rule

12.21 of Punjab Police Rules which provide that seniority in case of upper subordinates shall be reckoned in the first instance from the date of appointment, meaning thereby that the petitioner was to be assigned seniority from the date of his promotion and not from the date of completion of probation period. Having perused order dated 10.2.2012, this Court finds it difficult to accept the contention of learned Additional Advocate General that though the petitioner was ordered to be promoted to the rank of Inspector on account of his having won silver medal in All India Police Games on 10.2.2012, but his seniority in the rank of Inspectors would only be reckoned from the date he completed probation period because, bare perusal of aforesaid communication itself suggests that the petitioner stood promoted to the post of Inspector from the date of issuance of order dated 10.2.2012 but formal orders of promotion and seniority in the rank of inspector were to be issued after successful completion of probation period, which the petitioner was able to complete on 14.11.2014 (Annexure A-8).

19. Hon'ble Apex Court in *Paramjeet Singh Sandhu and others vs. Ram Rakha and others*, AIR 1979 1073 has held that seniority is ordinarily determined from the date of entry into cadre on the principle of continuous officiation. Hon'ble Apex Court has held as under:

"Seniority is ordinarily determined from the date of entry into cadre on the principle of continuous officiation. Confirmation in a post would ordinarily depend upon such circumstances as satisfactory completion of probationary period, efficiency in the discharge of duty, capacity to discharge functions of the post, availability of permanent vacancy, etc. Now, if seniority is to be determined according to the date of confirmation and the quota rule is not made relatable to confirmation in various posts falling vacant in the cadre it would directly impinge upon the seniority of members of the service"

20. High Court of Punjab and Haryana, in *Mohinder Singh, Head Constable and others vs. State of Haryana and others*, 1991 (4) SLR 717, has further held that as per Rule 12.2 it is the date of appointment or promotion, as the case may be, which is relevant for the purpose of determining seniority and not date of confirmation. It has been held as under:

"A reading of Rule 12.2 would demonstrate beyond doubt that it is the date of appointment or promotion as the case may be, which is relevant for the purpose of determining seniority and not the date of confirmation."

21. A Division Bench of this Court in *State of H.P. and others vs. Shri Dhrub Kumar*, CWP No. 2025 of 2007, decided on 4.5.2012 has specifically held that seniority is to be counted with effect from date of joining duty in service, unless otherwise stipulated by the Rules, to be counted based on date of advice for appointment. This Court has held as under:

"9. Seniority is to be counted w.e.f. the date of joining duty in the service unless otherwise stipulated by the rules, to be counted based on the date of advice for

appointment. Here the dispute is whether the seniority should be counted w.e.f. the date of actual promotion or the date of passing the test for promotion. Once exempted from passing the test for promotion, the date of promotion alone is relevant for the purpose of seniority and that is what is held by the Administrative Tribunal. Date of passing the test has no relevance for seniority. That is what is correctly and clearly stated in the Rules, stipulating that inter se seniority will be maintained among the qualified persons."

22. High Court of Jammu and Kashmir in *Kanchan Razdan vs. State of J&K* in Service Writ Petition No. 1134/1999, decided on 25.7.2010 has held that seniority is to be reckoned from the date of appointment and not from the date of confirmation, as such, plea of the respondents that seniority of the petitioner is to be reckoned from the date when he passed basic course is not in consonance with law. Date of confirmation has no relevance for fixation of seniority, rather, it is only date of appointment, which determines seniority.

"2. That it is well settled position of law that seniority has to be reckoned from the date of appointment and not from the date of conformation. The plea of respondents that seniority of the petitioner has been brought down from 50 to 73 due to her non confirmation against the post of Junior Office Assistant, is not in consonance with the law. The date of confirmation has no relevance for fixation of the seniority. As indicated above, it is only the date of appointment and not the confirmation which determines the seniority."

23. Otherwise also, by now, it is well settled that the services rendered during probation and before confirmation are to be taken into consideration, while assigning seniority. Services rendered during probation cannot be ignored while reckoning length of service. Reliance in this regard is placed upon judgment rendered by Hon'ble Apex Court in *L. Chandrakishore Singh v. State of Manipur*, (1999) 8 SCC 287, has held as under:

"15. It is now well settled that even in cases of probation or officiating appointments which are followed by a confirmation unless a contrary rule is shown, the service rendered as officiating appointment or on probation cannot be ignored for reckoning the length of continuous officiating service for determining the place in the seniority list. Where the first appointment is made by not following the prescribed procedure and such appointee is approved later on, the approval would mean his confirmation by the authority shall relate back to the date on which his appointment was made and the entire service will have to be computed in reckoning the seniority according to the length of continuous officiation. In this regard we fortify our view by the judgment of this Court in *G.P. Doval & Anr. vs. Chief Secretary, Government of U.P. & Ors.*

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18. Under the circumstances, the appeals arising out of SLP (C) Nos.18221/98 and 17310/98 filed by L.Chandrakishore Singh and N.Bijoy Singh are allowed by setting aside the judgment of the Full Bench. The writ petitions filed by the

appellants are allowed. The respondents are directed to treat the officiating appointments of the appellants as the date of their regular appointment and re-fix their seniority in terms of the observations made in this judgment. Fresh seniority list shall be prepared in the light of our directions alongwith the consequential benefits under the law to the persons who are found to be senior. The appeal arising out of SLP (C) 4870/99 filed by Smt.Vandana Karki & Ors. shall stand dismissed. The appellants L.Chandrakishore Singh and N.Bijoy Singh are held entitled to costs of Rs.10,000/- each to be paid by the Respondent-State."

24. Consequently, in view of above, this Court finds merit in the petition at hand and same is allowed. Order dated 4.5.2017 (Annexure A-10) rejecting the case of petitioner is quashed and set aside. Respondents are directed to fix the seniority of the petitioner with effect from 10.2.2012 i.e. date of actual promotion of the petitioner against substantive post/rank/ grade of inspectors.

The petition stands accordingly disposed of alongwith all pending applications.