

(2014) 12 P&H CK 0117

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 4829 of 2011 (O&M) and C.W.P. Nos. 6501, 8832, 9902, 11081, 24914, 25959 of 2013 (O&M), 5806, 13859 and 16313 of 2014 (O&M)

S.I. Pardeep Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 16-12-2014

Acts Referred:

Police Act, 1861 — Section 2, 3

Citation : (2015) 178 PLR 163 : (2015) 2 SCT 232

Hon'ble Judges : Mahesh Grover, J

Bench : Single Bench

Advocate : R.K. Malik, Senior Advocate and Heena Sabharwal, Advocates for the Appellant; Sudeepti Sharma, D.A.G., Vikram Bali and Gaurav Chopra, Advocates for the Respondent

Judgement

Mahesh Grover, J.—By this order I will dispose of C.W.P. Nos. 4829 of 2011, 6501, 8832, 9902, 11081, 24914, 25959 of 2013 and 5806, 13859 and 16313 of 2014. In this bunch of writ petitions, this Court has been called upon to answer a question pertaining to the seniority of the petitioners.

2. A common question of law arises which in brief has been encapsulated in the order dated 13.11.2014 which is extracted here below:-

"Learned counsel representing the petitioners in all the cases are agreed that there is a common question involved and if that is decided it would eventually satisfy their grievance for the reason that the factual aspects in any case would have to be left to the determination of the respondents subsequent to the decision of the main law point which may be enumerated as below:-

"If there was no separate cadre of PAP prior to the coming into existence of Rules 2008 then would the petitioners be entitled to a common seniority of those who were allocated the PAP as against those who were retained in the general cadre in the field."

3. The conceded facts thrown up in the petition are that upto year 2008, which is the year in which amended rules were introduced, there were no separate and distinct cadres between the Punjab Armed Police (P.A.P.) and the general cadres in the field. There was a common source of recruitment upon which services of the selected incumbents would be allocated to P.A.P. or be retained on the general side with complete inter-changeability amongst the two. It is only in 2008 by virtue of the amendment that separate cadres were created in the District Police, Armed Battalion and Intelligence Wing with a stipulation that seniority in each of the cadres at all levels would be maintained centrally.

4. It would be necessary to extract the relevant portion of the Punjab Police Rules as they existed prior to 2008 and thereafter:-

"PRIOR TO 2008:

1.1 For the purpose of Section 3 of the Police (Act V of 1861) the Punjab is divided into "General Police Districts" namely:-

(a) the Provincial Police District.

(b) the Railway Police District.

All ranks of the police employed in the Province are appointed or enrolled under Section 2 of the Act.

1.3 The Provincial Police General District is divided into Administrative Establishment; a Training School (including the Provincial Finger Print Bureau), a criminal investigation department and District Police Establishment. The Railway Police, General District, is divided into a Central Investigating Agency, and such number of sub divisions as the Provincial Govt. may authorize from time to time."

AFTER 2008:

That under Section 4(b) of the Punjab Police Act, which came into operation w.e.f. 20.2.2008, under the said Act new Service Rules have been framed within a period of one year, however, the Act itself has certain provisions which would impact the Service Rules and same are as under:-

(i) District Police, Armed Battalions and Intelligence Wing would constituted separate cadre.

(ii) Seniority in each of the cadre at all levels would be maintained centrally."

5. The petitioners are Assistant Sub Inspectors recruited directly to the Punjab Police Service on different dates which may not be necessary to set out in the petition for the limited question that is being answered. The petitioners claim that since they were retained in the District Police while their juniors who entered employment subsequently, were allocated to P.A.P., the respondent/State by treating the P.A.P. as a separate cadre, has given the officers allocated to it seniority and promotion which has resulted in their stealing a march over them. According to them, this could not have been done as concededly, the persons

allocated to P.A.P. were juniors to the petitioners having been recruited on different dates subsequent to their recruitment.

6. The respondents do not deny the aforesaid factual aspect and plead that the petitioners cannot be treated at par with officials of the P.A.P. as it forms a separate cadre. They place reliance on Rule 12.1(4) of the rules which is extracted here below:-

"12.1.(4) -- Inspectors shall be borne on provincial roll and shall receive provincial constabulary number. Sergeants shall be borne on a separate provincial roll and shall receive separate provincial constabulary number. Sub Inspectors and Assistant Sub Inspector shall be borne on range rolls and shall receive district constabulary number.

Head Constables and constables in each district shall be borne on district rolls and shall receive district constabulary numbers."

7. They have highlighted the fact that P.A.P. was born in the year 1941 as additional police to assist the regular police force and the nature of duties of the officers enrolled therein are totally at variance with the ones being performed by the district police. They also rely on the decision rendered by the Committee which had been constituted under the orders of this Court and it would be appropriate to extract the relevant portion of the decision of the Officers Committee:-

"This Committee is also of the opinion that the PAP should never have been integrated into the common cadre of the general police in view of the nature of duties all throughout having been completely different, but that being the fait accompli for decades, the clock can not be turned back in this respect at this stage. However, to treat the PAP as a part of the general police district and to grant accelerated promotions to all personnel of the general police district at par with those of the PAP where, by and large, promotions have been quicker than the general district, would not only be functionally irrational (natures of duty being different as explained above), but would also be a near impossibility where approximately 70% of the state police force (comprising in the general district as it was prior to 2007) would have to get accelerated promotion on par with approximately 30% of the force (comprising PAP/Armed Battalions).

This Committee, therefore, recommends that PAP be treated as a separate cadre throughout in view of the above and therefore, seniority of personnel recruited within the PAP cannot be treated as a precedence by general police district for parity in terms of promotion, even considering that rule 13.4 of PPR 1934, stipulates that promotions should be evenly distributed at range and state level. It is for this reason itself that PAP was not included in the common seniority list framed in the year 1999 and an affidavit was filed in the Hon'ble High Court in C.W.P. No. 13019 of 2000 titled as Head Constable Iqbal Sing, No. 80/70 and others v. State of Punjab.

The only other option, as can be seen by this Committee, is that all PAP personnel who have gained accelerated promotions at various levels within the PAP, be brought down to the level of the general police district at each level and reassigned ranks and seniority accordingly. This in itself would cause a huge amount of resentment amongst those who have already attained higher ranks on account of quicker promotions in the PAP cadre and to revert them at this stage would not only be inequitable but also administratively wrong. This is especially so in view of the fact that as of today, as per the new Police Act of 2007, the PAP is, demure, a separate cadre.

Therefore, this Committee, as already stated above, recommends that the PAP be treated as a separate cadre at least from the year 1988 onwards (reasoning for this cut off year has already been given earlier) and promotions till the stage of list "F" within the PAP should not create a right of parity with the general district either for PAP personnel or for those of the general district. In respect of list "F" (i.e. at the rank of Inspector) since the same has always been common to the PAP and the general district, the same would have to be maintained as this position cannot be reversed at this stage, till it has been formally separated even for this rank by the Punjab Police Act, 2007."

Learned counsel for the petitioners with reference to the aforesaid reasoning adopted by the Officers Committee state that the Committee admits that there is no mention of P.A.P. as a separate cadre anywhere in the Punjab Police Rules. Therefore, it has to be treated as a part of the General District Police.

8. On due consideration of the matter and upon a perusal of the material placed on record, the undeniable fact that emerges is that there was no separate cadre for the P.A.P. prior to 20.2.2008 when Section 4-B of the Punjab Police Act, 2007 was introduced creating three separate acknowledge cadres i.e. District Police, Armed Battalion and Intelligence Wing. The Punjab Armed Police would naturally fall within the Armed Battalion. Prior to 2008, there was complete commonality of cadre with undiluted inter-changeability. If that be so, then the persons who were retained in the general cadre or the District Police as one may choose it to define, cannot be deprived of the common seniority. The respondents cannot plead that in practice a cadre existed which was distinct having distinguishable functions so as to treat it as a separate cadre. Presumptively, even this could have been accepted had there been no inter-changeability amongst the two. In this situation, the respondents could very well have argued that P.A.P. was being maintained as a distinct cadre protected from any encroachment of human resource from any other source. But that is not the situation and the mere fact that there was inter-changeability would lead to an irresistible conclusion that there would have to be a common seniority list for all the concerned officers.

9. This view would attain greater profundity when the averments made by the petitioners in the petition and the corresponding reply filed by the respondents is evaluated. In para 16(v) of the petitioners, the petitioner have given instances of inter-changeability amongst the two cadres and the manner in which their cause

has been prejudiced. The relevant portion of the same is extracted here below:-

"THAT CONSIDERING THE PAP AND DISTRICT POLICE AS ONE CADRE/SERVICE, THE TRANSFERS/PROMOTIONS HAVE BEEN MADE OF THE SIs/INSPECTORS OF PAP TO DISTRICT POLICE.

Considering the PAP and District Police as one cadre/service 100s of ASIs/SIs/Inspectors have been promoted/transferred from PAP to District Police. At present more than 251 posts of Inspectors in the District Police are manned by the SIs of PAP who have been promoted as Inspectors and holding the posts in the District Police. So, this clearly demonstrate that PAP and District Police has been considered one cadre/service before 20.2.08. If the official respondents are considering PAP and District Police as a separate cadre/service then hundreds SIs of PAP who have been promoted as Inspectors against the posts of Inspectors of the District Police, has no right to hold the said posts. Similarly all the private respondents and those ASIs/SIs/Inspectors who have been transferred and confirmed under the District Police have no right to hold the said posts. Take the instance of SI Gurjit Singh No. 164 FDR, respondent No. 10, he was appointed as Constable/Head Constable/ASI and SI in PAP, thereafter, vide order No. 20356-58-E4 dated 3.7.03, he was transferred to District Police and confirmed as ASI in District Police and allotted number 164 FDR in District Police form No. 992 of PAP vide order number 865-76/AC1 dated 14.2.2006 by DIG, Faridkot Range, Bhatinda and he and 19 others PAP SIs further promoted as Inspectors on dated 1.1.2010 in District Cadre vide order No. 54-85/E.1, even after amendment of 20.2.;2008. So this clearly demonstrate that District Police and PAP is one cadre/service. So, in these circumstances the petitioners have right of consideration for promotion from the dates their juniors have been promoted as SIs/Inspectors. The details of the employees transferred from Commando Formation of PAP to District Police from 18.5.1992 to 23.8.2007 to this effect is attached as Annexure P-12."

The reply to this para is evasive and contains no specific denial. The relevant portion of the same is extracted here below:-

"(v) That in reply to sub para(v) it is submitted that District Police cadre and PAP cadre are separate cadres. Reply submitted in para No. 8 above may kindly be read as reply to this sub para."

10. Besides this, there would be two earlier precedents of this Court which though rendered in a different context, lend semblance of support to the above observations made by this Court. In C.W.P. No. 6829 of 2011 titled Sub Inspector Dev Dutt v. State of Punjab and others, an officer who was recruited as an A.S.I. in the Punjab Police, was posted in the Punjab Armed Police at Jalandhar but transferred to District Police subsequently and promoted as Sub Inspector. He sought promotion to the rank of Sub Inspector with effect from the date persons junior to him in the cadre of A.S.I. in P.A.P. were promoted. The Court noticed in the very same judgment, the judgment rendered in Shakattar Singh's case in

R.S.A. No. 2435 of 2004, (the judgment which has-been noticed by the Officers Committee as well) and after noticing the reply and the comments of the Officers Committee, concluded as below:-

"5. I have heard learned counsel for the parties and gone through the record. The short question that arises for consideration is as to whether the petitioner, soon after his direct recruitment as Assistant Sub Inspector in 1992, was allocated to the alleged "PAP cadre" and if so whether his subsequent shifting to the District Police tantamount to change of cadre ? The answer to the question posed herein above firstly depends upon the fact situation as to whether "PAP" and "District Police" actually constitute two separate cadres? It may be seen from the above reproduced proceedings of the Officers' Committee that notwithstanding the judicial verdict to the effect that the police officers constitute one cadre only and there is no segregation like "PAP" or "District Police" cadres, the respondents insist upon existence of two separate cadres.

6. The aforesaid controversy, however, need not be gone into the present case. The petitioner's claim is only to the effect that his juniors in the "PAP" cadre have been promoted over and above him, ignoring his claim. Assuming the PAP a separate cadre as claimed by the respondents, in my considered view, mere transfer of the petitioner to the District Police could not and did not result into termination of his parent lien in "PAP Cadre" as no such decision was ever taken or conveyed to the petitioner. The transfer or posting from "PAP Cadre" to "District Police" is only an incidence of service. It is not the case of the respondents that the petitioner ever sought the change of his cadre by losing the seniority in his parent cadre. A member of the police force can be asked to serve anywhere which per-se cannot alter the conditions of his service. In other words, if there were a PAP cadre, the petitioner continued to maintain his lien in the said cadre. The petitioner is, thus, entitled to be considered for promotion and/or any other service benefit(s) as and when conferred on his juniors.

7. As against it, if there were only one police cadre, the posting of the petitioner to the District Police was again an administrative decision and it cannot have any adverse effect on his seniority. The petitioner would, thus, be entitled to seek the consideration for promotion from the date his juniors by virtue of joint seniority of the ASIs, have been promoted. The claim of the petitioner for promotion as and when his juniors, whether in the alleged "PAP cadre" or in the "single cadre" were granted such promotion, has to be considered in both the eventualities."

11. Evidently, the Court framed a question as to whether the shifting of the officers from P.A.P. to District Police amounted to a change in the cadre and concluded that it would depend upon the factual situation as to whether P.A.P. and the District Police actually constituted two separate cadres or not. It then went on to affirm that from the pleadings of the parties, it was evident that there was no segregation of P.A.P. or District Police cadres. While answering the petition, the Court relied heavily on an assumption by referring to the hypothetical situation to treat the P.A.P. as a separate cadre in which eventuality,

the transfer of an employee from the P.A.P. cadre to the District Police Cadre would not rob the officer of his lien in the P.A.P. cadre and would eventually entitle him to promotion at par with the ones who were junior to him in the P.A.P. cadre. It was also observed in the judgment that the transfer of an officer from P.A.P. to District Police Cadre was merely an administrative order which could not affect the seniority of the concerned officers.

12. It is thus not difficult to conclude that P.A.P. and the District Police did not constitute any separate cadre prior to 2008 and if that be so, then complete interchangeability would only suggest that the respondents would be obliged to maintain a joint seniority list of the two categories so as to avoid any prejudicial assignment in seniority to the affected officers. Needless to say that after 2008, one separate cadre has been created and the acknowledged administrative instinct of the respondents would naturally dictate a separate seniority.

13. The aforesaid question posed before this Court is thus answered as above and it declared that prior to 2008, the respondents would be obliged to maintain a common seniority for both the categories i.e. P.A.P. and District Police.

14. In one of the petitions, i.e., C.W.P. No. 6501 of 2013, learned counsel for the private respondents has raised the issue of delay to contend that the matter has been agitated belatedly. I would not treat this plea to be worthy of acceptance considering the fact that the seniority stood recast in the year 2011 and the first petition in this regard was filed in 2011 itself. The plea is therefore, rejected. The petitions are thus disposed of with a mandate to the respondents to recast the seniority of the officers by keeping in view the observations of this Court. The respondents would do well to give wide publicity to the exercise proposed to be undertaken and invite the claims and objections from all affected so as to obviate the chances of any objection on this score. While dealing with the matter, the respondents would be at liberty to take an appropriate decision in regard to the individual claims and pass speaking orders in this regard.