

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP no.988 of 1995(O&M)

Date of Decision :21.10.2015

Raghbir Singh

....Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

- 1)Whether reporters of local newspapers may be allowed to see the judgment?
- 2) To be referred to the Reporters or not?
- 3) Whether the judgment should be reported in the Digest?

Present : Ms. Loveleen Dhaliwal, Advocate for the petitioner

Mr. Ashok S Chaudhary, Addl. AG, Haryana

MAHESH GROVER, J.

The petitioner prays for appropriate writ to be issued quashing impugned orders Annexure P-8 and P-9 dated 4.2.1994 and 14.7.1994 vide which respondent no.3 has been promoted without considering the claim of the petitioner even though he is senior in rank.

The petitioner was appointed as a Constable on 25.11.1956 and absorbed in the Executive clerical cadre w.e.f 12.11.1959 to be confirmed on 1.3.1964. He was promoted to the rank of Head Constable on 11.7.1968 and confirmed as such on 26.9.1974. He stood promoted to the rank of Sub Inspector

w.e.f 1.10.1974 and confirmed w.e.f 18.8.1978. He was then promoted as an

adhoc Inspector Welfare from 10.6.1985 and made regular on 13.4.1991 to retire as such. It is averred by him and fortified from documents on record that he was always senior to respondent no.3. With reference to Annexure P-1 there is a recommendation made by the Deputy Inspector General, relevant of which is extracted herebelow:-

“**2.Shri Raghbir Singh:** He was appointed as Constable in the PAP on 25.11.1956 and was placed on three years' probation w.e.f 1.9.1961. He should be confirmed as Constable w.e.f 1.9.1964 against vacancy of Ist or 2nd Bn. Haryana Armed Police. He should remain in Haryana Armed Police. According to his service particulars mentioned in his Character Roll as also his deemed date of confirmation w.e.f 1.9.1964, he should rank senior to Shri Karnal Singh, SI mentioned at Sr. no. 6 of the seniority list supplied to you.”

The gradation list issued by the respondents from time to time also showed that the petitioner is senior as Sub Inspector and also the Inspector. Relevant of which is extracted herebelow from Annexures P-3 and P-4:-

Annexure P-3 Gradation list of Sub Inspectors/Assistant Sub Inspectors (Executive Clerks) of Haryana

Sr.No.	Name and Range no.	Date of entry into Govt. service	Date of promotion as SI	Date of Confirmation as SI	Education	Home District
1.	Raghbir Singh HAP/109	25.11.56	1.10.74	18.8.78	FA	Gurdaspur
2	Karnail Singh HAP/52	25.7.64	1.10.74	18.8.78	10 th	Kapurthala

Annexure P-4 Gradation list of Inspectors as on 1.1.1990

Sr.No.	Name and Range no.	Home District	Date of Birth	Qualifications	Date of promotion as offg. Inspector	Substantive Rank
1	Xxxx					
2.	Raghbir Singh HAP/109	Gurdaspur	7.2.37	FA	10.6.85	SI
3	xxx					
4	xxx					
5.	xxx					
6.	xxx					
7.	Karnail Singh HAP/52	Kapurthala	7.5.43	Matric	19.5.87	SI

The trouble arose when Karnail Singh filed a civil suit seeking a declaration that he be promoted to the rank of Inspector of Police from the date when his juniors were promoted. He did not implead any of the affected persons as parties including the petitioner. The civil court accepted the plea of the plaintiff Karnail Singh and while doing so observed as follows:-

“It is correct that the plaintiff is senior than Ram Chander because the plaintiff was confirmed on 18.8.1978 whereas Ram Chander was confirmed on 1.2.1979 and the plaintiff is entitled to seniority over Raghbir Singh, Kartar Singh, Goverdhan and Amar Chand. Therefore ignoring the claim of the plaintiff at the time of promotion of these other persons was illegal. Ram Chander was also promoted ignoring the claim of the plaintiff whereas he was junior to him. Therefore, the plaintiff is certainly entitled to be promoted where his junior Ram Chander was promoted on 30.9.1981.

Therefore, this issue is decided in favour of the plaintiff and against the defendant.”

The suit was therefore decreed in favour of the plaintiff – Karnail Singh.

The official respondents then re-cast the seniority to promote the plaintiff Karnail Singh as mandated by the decree of the civil court. The petitioner has alleged in this petition that his seniority was altered without issuing show cause notice to him and the civil court decree did not bind him for the simple reason that he was not a party to the proceedings. In para 7 of the petition he has clearly averred as such and this has not been denied by the respondents in the reply to the corresponding para. It is also not being denied by the respondents that the petitioner was senior to said Karnail Singh but the alteration in seniority list has been attributed to the civil court decree.

The petitioner has now since retired and so would have Karnail Singh. Therefore, the only issue that remains is that as to whether petitioner's seniority could have been altered without affording an opportunity of hearing to him. Clearly if civil court suit decree is to be perused petitioner is not a party to the proceedings. Therefore, any observation made by the civil court without affording any opportunity of hearing to the petitioner would have no consequence on his claim. He would not be bound by such an observation and in any eventuality if the respondents were to even adhere to the civil court decree they

were obligated to hear the petitioner before passing an order detrimental to his cause. Since the rule of audi alteram partem has clearly been violated, I am of the view that the petition needs to be accepted. Ordered accordingly. The respondents are directed to consider the case of the petitioner for grant of seniority over and above the claim of Karnail Singh by giving an opportunity of hearing to the affected persons regardless of what the civil court has observed. Obviously at this stage it would be of no consequence to Karnail Singh who would have also retired. In case the claim of the petitioner is accepted and he is declared senior he would only be entitled to notional benefits without any monetary benefits except for change in pension.

October 21, 2015
rekha

(Mahesh Grover)
Judge