

Case No. : C. W. P.No. 16618 of 2008

Date of Decision : October 08, 2015

Kuldeep Singh		Petitioner
Vs.		
State of Haryana and others		Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

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Present : Mr. Shilak Ram Hooda, Advocate
for the petitioner.

Mr. Harish Rathee, Senior DAG, Haryana.

Mr. S. N. Yadav, Advocate
for respondents no. 8 to 10.

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DEEPAK SIBAL, J. :

On 15.04.1992, the petitioner was appointed as a Constable in the Haryana Police in the Commando Police Force, which is a distinct cadre. On 22.08.2002, he was transferred out of his cadre to District Panchkula, to which, at an earlier point of time, he had specifically objected to, which was over-ruled by the respondents. While he was serving in

District Panchkula, he was promoted as a Head Constable with effect from 20.07.2004. On 21.04.2006, his juniors in the cadre of Commando Police Force – respondents no. 7 to 13 were promoted as Assistant Sub Inspectors, whereas the petitioner continued and continues to hold the post of Head Constable. On the promotion of the private respondents no. 7 to 13, who were his juniors in his parent cadre, he filed the present petition seeking promotion with effect from the date his juniors had been promoted.

The precise grievance of the petitioner, as raised in the present petition, is that even if he has been transferred outside his cadre, his seniority would have to be counted in his parent cadre and on the strength thereof, he would earn his promotions and other related benefits. Therefore, it is the case of the petitioner that he would be entitled to promotion as Assistant Sub Inspector with effect from 21.04.2006 i.e. from the date his juniors in the parent cadre have been promoted.

The issue raised by the petitioner is no longer res integra as the same stands settled by a Full Bench decision of this Court in **Niranjan Singh vs. State of Punjab – 1999 (2) SCT 154**, wherein it has been held as under :-

“7. In view of the above, we answer the question posed at the outset as follows :-

The unilateral act of transfer by the department of member of the Police

Force from one cadre to another cannot affect his seniority or right to be considered for being deputed for the course or promotion.”

A similar view has been taken by the Apex Court in **State of Haryana and others vs. Kashmir Singh and another etc. etc. - Civil Appeal Nos. 8690-8701 of 2010**, decided on 06.10.2010, wherein it has been held as under :-

“13. Thus, a plain perusal of the Punjab Rule shows that transfer can be done from one district to another district or even to another range, and there is no absolute prohibition for doing so. However, in such a case, the seniority of Constable and Head Constables at the district level and of ASI and SI at the range level is maintained in the parent district/range despite the transfer. Promotion/confirmation is also given strictly as per the seniority in the parent district/range level, as per Memo No. 43515-22/E-(III) dated 10.8.2010.”

The above quoted portions of the judgments rendered by the Full Bench in **Niranjan Singh's** case (*supra*) and **Kashmir Singh's** case (*supra*) leave no room for doubt that the transfer of the petitioner outside his cadre would not affect his seniority and other consequential benefits as the same would continue to be in his parent cadre. The above proposition

of law is not disputed either by the counsel for the State or by the counsel representing the private respondents. However, they place reliance on a standing order of the Police Department dated 05.04.1988, which provides for transfer of Constables from their parent cadre. In the light of the settled position of law, as referred to above, the stand of the respondents cannot be sustained. Even otherwise, the record reveals that the aforesaid standing order dated 05.04.1988 was amended in the year 2001 i.e. before the transfer of the petitioner, wherein it has been specifically mentioned that even after transfer, the Constables would retain their seniority in their parent unit.

In view of the above, the respondents are directed to consider the case of the petitioner for the grant of promotion to the post of Assistant Sub Inspector with effect from the date his juniors have been promoted, with all consequential benefits.

The writ petition stands allowed in the above terms.

No costs.

(DEEPAK SIBAL)
JUDGE

October 08, 2015

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