

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

Civil Writ Petition No.5432 of 2011 (O&M)

Date of decision: 1.10.2015

Parminder Singh and others

... Petitioners

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Pawan Kumar, Sr.Advocate, with
Mr.Abhimanyu Batra, Advocate
for the petitioner.

Mr.H.S.Sethi, Additional AG., Punjab.

Mr.Namit Kumar, Advocate,
for respondents No.6 to 38 and 40.

Mr.Ravinder Kumar, Advocate, for
Mr.M.K.Bhandari, Advocate,
for respondents No.12 & 25.

Mr.Sukhbir Singh Mattewal, Advocate,
for respondent No.39.

Mr.Akshay Bhan, Sr. Advocate with
Mr.Alok Mittal, Advocate,
for the applicants in CM No.12515 of 2015.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

The Punjab Police Act, 2007 [Punjab Act No.10 of 2008] [in

short, “the Act”] was brought into force by notification dated 5th February,

2008 when the Governor of Punjab gave his assent to the Act on 24th January, 2008. Section 85 of the Act continued the provisions of the Punjab Police Rules, 1934 framed under Police Act, 1861 [Central Act No.5 of 1861] which would remain in force unless the rules are specifically superseded. Section 3(1) declares that there shall be one police service in the State. Section 4(b) provides that subject to the provisions of the Act, the officers of subordinate ranks of district police, armed police, Intelligence and technical and support services shall form separate cadres. The seniority of each cadre shall be maintained at the State level. The transfer of a member of one cadre to another cadre shall not be allowed.

This case concerns issues of cadre seniority in the subordinate ranks of technical and support services. The technical and support services have been adverted to in Section 19(1) and (2) of the Act which read as follows : -

“19. (1) The State Government shall create and maintain such specialized and technical agencies and services, under the Director General of Police, as may be considered necessary or expedient for promoting efficiency in Police Service.

(2) The services created under sub-section (1), shall include a full fledged Forensic Science Laboratory at the State Level, a Finger Print Bureau, a State Crime Record Bureau and a Computer and Telecommunication Wing.”

The power to make rules lies in Section 80 of the Act. The history of formation of Telecommunication Wing in the Punjab Police is necessary to elucidate the moot point in this case with respect to seniority of Operators and Technicians and whether they form a single cadre or separate cadre within the Telecommunication Wing/Branch of the Punjab Police. The

Telecommunication Wing was established on 18th May, 1960 under Section 2 of the Police Act, 1861 which constitutes the police force as one police force. The Telecommunication Wing was created by Government instructions. In the year 1985, some of the Head Constables [Operators] serving in the Punjab Police approached the Division Bench of this Court in CWP No.772 of 1985; **Vinod Kumar and others v. The State of Punjab and others**; decided on 29th March, 1985 contending that the Government had issued instructions, according to which, promotion to the post of Assistant Sub Inspectors can be made only by way of promotion and not by direct recruitment. The instructions took away the power of the Government to make direct recruitment to the post of ASIs in the Telecommunication Wing. The Division Bench did not accept this argument. The Bench referred to Rule 12.3 of the Punjab Police Rules, Volume II which prescribes that the Government can fill up 25% posts of the ASIs by direct recruitment. Therefore, the instructions could not take precedence over the rules. The argument raised by Head Constables [Operators] was rejected. The petitioners belong to the cadre of Operators. The private respondents are Technicians.

The factual position pleaded in *Vinod Kumar* was that the total vacancies were 939 and out of these vacancies, 130 were to be filled up by direct recruitment. It was urged by the Operators [Head Constables] that 25% of the vacancies comes to only 85 and, therefore, the respondents cannot fill up the posts by direct recruitment in 130 vacancies. This argument was also rejected. The fact position according to the State was that there was only 519 sanctioned posts, out of which, 180 were occupied by

the promotees. Out of the remaining 339, 130 posts were being filled by direct recruitment and the remaining 209 vacancies were still available to be filled up by promotion from amongst the eligible Head Constables [Operators]. In 1983, there were 375 Head Constables [Operators] whose cases for promotion could be considered against vacancies when they fulfilled the eligibility conditions and were assigned the requisite seniority. Thus, sufficient vacancies were available for promoting the petitioners and they could have no legitimate grievance. The vacancies sought to be filled by Punjab Government of ASIs were less than 25% of the total number of vacancies. It was lastly contended by the petitioners in *Vinod Kumar* case that some of the Head Constables [Operators] who were promoted as ASIs were not as qualified as the petitioners and according to them, the petitioners should be promoted against other vacancies. Even this argument did not find favour with the Division Bench and the writ petition was dismissed after noticing the averments in the additional affidavit filed by the State dated March 28, 1985 wherein it was spelled out that prior to April 4, 1979, when the Standing Order was issued, some Head Constables were promoted as ASIs. However, after coming into force of the Standing orders, the promotions are to be made according to the qualifications laid down in the executive instructions, according to which, the petitioners had not become eligible for promotion. SLP No.8191 of 1985 preferred against the orders of the Division Bench was dismissed by the Supreme Court. The curtains were drawn on that chapter.

As at present, in exercise of powers conferred by the Punjab

Police Act, 2007, the rules have not been framed and Punjab Police Rules,

1934 continue to remain in force. The State Government has, however, notified 4 cadres created vide notification No.S.O.59/P.A.10/2008/S.4/2009 dated 14th December, 2009 into four units of service. The notification reads as follows : -

“Government of Punjab
Department of Home Affairs and Justice
(Home-III Branch)

ORDER

The 14th December, 2009

No.S.O.59/P.A.10/2008/S.4/2009-In pursuance of the provisions of clause (a) of Section 4 of the Punjab Police Act, 2007 (Punjab Act No.10 of 2008), and all other powers enabling him in this behalf, the Governor of Punjab is pleased to determine the following cadres in the Police Service, namely : -

- i) District Police ;
- ii) Armed Police ;
- iii) Intelligence; and
- iv) Technical and Support Services.

A.R.Talwar,
Principal Secretary to Government of Punjab.
Department of Home Affairs and Justice.”

It is, thus, argued by the learned senior counsel for the petitioners that technical and support services form a single cadre. The natural extension of this argument is that the Operators and Technicians are not separate cadres in the eyes of law. It is asserted that the Punjab Government has sanctioned 412 vacancies of constables for Computer and Wireless Wing without any tag of classification or bifurcation. On the basis of the information supplied under the Right to Information Act, 2005, it is asserted that even the wireless staff sanctioned by the Punjab Government has separate sanctioned posts of all ranks from constables to Superintendent

of Police in a pyramid without any splitting up and thus the stand of the respondents that the sanctioned strength of the Constables in the Technician Cadre is 11 and in the rank of Head Constables is 145 and that of ASIs is 132 is not only incorrect but is as well an arbitrary and discriminatory description of the cadre.

There is another important litigation fought in this Court which deserves reference while bearing on the subject. This was in CWP No.6059 of 1990 titled *Sadhu Singh and others v. State of Punjab* and others where it was argued, as asserted by the petitioners in a voluminous paper-book pithily commented upon by Hon. Jawahar Lal Gupta, J. that the paper-book had more mass than merit. It was asserted by the petitioners that the Operators and Technicians working in the Telecommunication Wing of the Punjab Police have a common cadre and should, therefore, be borne on a common seniority list. The claim was based on a letter dated May 18, 1960 issued by the Home Secretary to the Government of Punjab to the Inspector General of Police, Punjab [when the post was equivalent to present day Director General of Police, Punjab] notifying the sanction of the Governor of Punjab with respect to the enlistment of the existing civilian radio personnel under Section 2 of the Police Act, 1861 in their present pay scale in the Police rank as indicated therein. The accompanying letter described posts with the designations of Police Radio Officer, Chief Operator/Chief Technician and Supervisor Operator/Supervisor Technician and Radio Operators/Technicians, Workshop Fitters in the scale of pay and rank after enrollment rising from Constable to Superintendent of Police [Wireless] including in between the stepping stone posts of ASIs, SIs and Inspectors of

Police. The Court in *Sadhu Singh* case read the vacancies with the circular letter which is Appendix-A, a perusal of which showed that the qualifications and duties of the Operators and Technicians in Punjab police were entirely different. In the category of the Operators, three grades contemplated were Grade-III, Grade-II and Grade-I. The duties involved receiving by ear the Morse code; sending the Morse in plain language and letter cipher; knowledge of wireless equipment, ability to locate external faults and test voltage and specific gravity of storage batteries and charge batteries from engines. An operator Grade-III was required to possess the qualifications of Matriculation from a recognized University. However, in case of Technicians, the candidate was required to possess elementary knowledge of electricity and magnetism, tuned circuits, vacuum tubes, receiver circuits, principles of transmitters. The Court held on a close scrutiny of the policy letter that the job requirements of Operators *vis-à-vis* Technicians were entirely different in content. The duties to be performed by each category are separate and, consequently, there is even difference in the educational qualifications inasmuch as knowledge of science is essential in case of Technicians while it is not so in case of Operators. It is, thus, apparent that the very document relied upon by the present petitioners for contending that there should be a common seniority of Operators with Technicians does not support their claim.

The Court read the Government letter dated June 26, 1990 and found that it clearly brings forth the duties of the Operators and Technicians as distinct from each other. The qualifications are separate. The Operators and Technicians undergo upgradation course under different subjects and

from the very beginning, formed separate cadres. The Court held that from the perusal of the record, it appears that the Operators and Technicians have been sanctioned as separate units. Right since the inception, separate seniority lists have been maintained of the two. The position remained so from November 1, 1956 to March 31, 1985 where separate seniority lists were issued in respect of the Operators and Technicians.

The Court noticed from the voluminous record placed before it that there was not even a single document from where one might say that the competent authority had ever decided to create a common cadre of Operators and Technicians. Therefore, the question of a common seniority list did not arise. The Court held that the State was under no compulsion to draw a common seniority list.

The Court further noticed notification dated June 15, 1990 issued in exercise of powers conferred by Section 7 of the Police Act, 1861 where a proviso has been added to rule 1.1 of the Punjab Police Rules, 1934 which read : -

“Provided that each of the Telecommunications Branch, Finger Prints Bureau, Women Police Wing, Band Staff, Mounted Police, Armourers and Executive Clerical Wing that is uniformed clerical functionaries posted in various subordinate offices shall form its separate cadre.

There is an explanation to this proviso which reads as under : -

“The expression “subordinate offices” means the offices of the District Senior Superintendent of Police, Director, Finger Prints Bureau, Phillaur and Superintendents of Police, Incharge Recruits Training Centre.”

The Court was unable to persuade itself to hold that the

Operators and Technicians have been brought on a common cadre and such a joint seniority list has to be prepared and to the contrary the material placed on record suggested otherwise. Both had separate channels of promotions provided to them with separate qualifications and duties and hence no case for interference was made out. Hon. J.L.Gupta, J. passed the orders on July 21, 1992 exploding the myth sought to be created by the petitioners of a unified cadre.

The State presently has filed a supplementary affidavit of Ashok Kumar Dogra, PPS, Deputy Superintendent of Police [Telecommunication], Punjab, Chandigarh. The history has again to be adverted to. The State is on record to say that the Civilian Radio Section was merged with the Punjab Police vide memo dated 18th May, 1960 issued by the Home Secretary, Government of Punjab which mentions about the separate cadres of Operators and Technicians in Police Radio Section. Presently, the nomenclature of the Wing is Information Technology and Telecommunication Wing of Punjab Police. The sanctioned strength of the cadre of Operators and Technicians is separate with separate seniority maintained in the Wing. The wing is one but with two cadres. The training course and promotional course are also different and promotions from one rank to the next higher rank are being effected separately on the basis of seniority list maintained separately of the two cadres in the Department. A detailed explanation has followed and reference has been made to the decision of this Court in CWP No.6059 of 1990 [supra] and it is affirmed that the law declared therein is the operating law. They have referred to another litigation in this Court in CWP No.7807 of 1998 where this Court

has held that even different seniority lists are maintained for the Inspectors [Operation] and Inspectors [Technician] for administrative purposes but for the purpose of promotion to the rank of DSP, the rank where merger takes place, it is the seniority of Inspectors based upon the length of service which is the determining factor. However, below the rank of DSP [Wireless] promotions are ordered separately from rank to rank till they reach the level of Inspectors. The affidavit is dated 30th July, 2015.

It would be relevant to take note of the Standing Order dated 9th July, 2004 issued at Serial No.13.20 of PPR, Volume-II governing the selection of Constables of Telecommunication Wing by DPC for list B-1 for undergoing lower school course. A test based on syllabi has been prescribed in the Standing Order including composition of Departmental Promotion Committee. The object was to select Constables of Telecommunication Wing for lower school course at PPA, Phillaur as envisaged in the said rule which was amended by 171st amendment, 1972. The eligibility of constables to sit in the test is specified in 'III' which reads : -

“III) ELIGIBILITY OF CONSTABLE TO SIT IN THE TEST

All constables who have following qualifications : -

a) Educational Qualifications : -

(a-I) For Constable-Operators-Matriculation having passed the subjects of : English, Maths, Science and Punjabi.

(a-II) For Constable Technicians- Matriculation having passed subjects of English, Maths, Science & Punjabi ; and ITI (ITI being the requisite subject for recruitment of the constable Technicians).

Provided that no constable having lower qualification than the ones mentioned herein, will be allowed to take the B-I test and

(b) Have put in more than three year of service as

constable of Telecommunication Wing;

Or

c) Had obtained 1st class with credit (as defined in IGP's Standing Order No.1/83) in the recruits course as specified in rule 19.2 of Punjab Police Rules Vol-II.”

Mr.Pawan Kumar learned senior counsel appearing for the petitioners relies on **State of Haryana and others v. Kashmir Singh and another etc.**, (2010) 13 SCC 306 to urge that the Supreme Court accepted inter district transfers of lower ranks in the Punjab Police which reinforces the argument that the two moot cadres could not be viewed separately. However, the ruling is distinguishable on facts. The Supreme Court did not deal with the question whether the Constables [Operators] and Constables [Technicians] are from one cadre or separate cadres. Even in *Kashmir Singh's* case, the Supreme Court held that the seniority in district police would not be disturbed merely on account of transfer from parent police district. The issue of seniority and transfer was elucidated as different concepts serving different purposes.

So far as Mr. Pawan Kumar's reliance on the decision rendered in CWP No.4913 of 2010 and CWP No.19854 of 2010 is concerned, those cases can have no bearing on the present case. The question involved in those cases was whether the person from the Telecommunication Wing can be considered for being placed in List 'F' and 'G' when considering cases of promotion of Inspectors to the rank of DSPs. Promotion to the post of Inspector is borne on the provincial rolls while the posts of Inspectors and Assistant Sub Inspectors, Head Constables and Constables are borne on the district roll and this is fortified by the provisions of rule 12.1 (4) of the PPR,

1934 which prescribes that the Inspectors shall be borne on a provincial roll and shall receive provincial constabulary numbers. Sub-Inspectors and Assistant Sub-Inspectors are borne on the range rolls and shall receive range constabulary numbers whereas Head Constables and Constables shall be borne on the district rolls and shall receive district constabulary numbers. Even so, the decision rendered by this Court in Sadhu Singh v. State of Punjab [supra] was not brought to the notice of the Court deciding those cases. The position obtaining is that both the categories of posts fall within the erstwhile Telecommunication cadre which is now re-designated as Information Technology and Telecommunication Wing and forms separate and distinct sub-cadres. A cadre means only the sanctioned strength of a unit of service. Both are distinct units of service with separate seniority lists and the prayer of Mr.Pawan Kumar learned senior counsel that a common seniority list should be drawn deserves to be rejected as that would make those who are unequal, equals and that would infringe Article 14 of the Constitution. There can be no heartburn unless promotional avenues are not open to both the cadres in their own respective chain and hierarchy up to the post of Deputy Superintendent of Police and Superintendent of Police. Both the sub-cadres have been encadred separately by sanctioned strength resulting from cadre review exercise which is an executive function not open to correction in the court domain.

It is only at the level of the Deputy Superintendent of Police [Wireless] that Inspectors of both categories are considered on the basis of length of service in the feeder cadre and not on the basis of birthmark.

The prayer for a restraint order pressed vehemently by Mr.

Kumar against the official respondents commanding them not to depute the private respondents for promotional course of Head Constables which was scheduled to start on 1st April, 2011 at PPA, Phillaur does not deserve to issue as that would violates the rights of the private respondents and frustrate their chances of promotion in the available vacancies in the higher cadre. Therefore, notification dated 14th December, 2009 determining four cadres, the last of which is Technical and Support Services cadre is not to be read as a single unit of service with common seniority of the personnel. The Technical and Support Service is of wide amplitude and the Government remains within its subjective discretion to continue the thread of history of creation of cadres and the notification dated 14th December, 2009 does not set about unsettling things which have settled. The notification is no more than a broad division of police jurisdiction and demarcate boundaries in running the affairs of the Punjab Police, i.e., District Police, Armed Police, Intelligence and Technical & Support Services.

Mr.Namit Kumar appearing for some of the private respondents is right when he points to rule 1.1 in Part-1, Chapter-1 of the Punjab Police Rules, 1934 which deals with the constitution of the Departmental Organization called the Punjab Police in its many faces which together form its “uniformed cadre” . It reads : -

“1.1 Constitution. For the purposes 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 police employed in the province are appointed or enrolled under Section 2 of the Act.

[Provided that each of the Telecommunications Branch,

Finger Prints Bureau, Women Police Wing, Bank Staff, Mounted Police, Armourers and Executive Clerical Wing, that is uniformed clerical functionaries in various subordinate offices shall form its uniformed cadre.

Explanation- The expression “subordinate offices” means the offices of the District Senior Superintendent of Police, Director, Finger Prints Bureau, Phillaur and Superintendents of Police, Incharge Recruits Training Centres]”

Both the petitioners and the respondents belong to uniformed cadre in the Telecommunication Wing of the Punjab Police while they form two separate units of service with different duties and responsibilities, which present wide differences in almost all ways known to service law. These rules [PPR] have continued in force by virtue of Section 85 of the Punjab Police Act, 2007.

The respondents' other learned counsel including Mr.H.S.Sethi, learned Additional Advocate General, Punjab appearing for the State to defend the case submit that the position explained in the memo dated 29th September, 2008 placed at Annexure R-6/10 at page 303 to 307 of the paper-book reflects the correct position while dealing with the criteria to be adopted to recast the seniority of Telecommunication Wing. The Officer's Committee had noted the background of the posts and the criteria to be adopted observing : -

“BACKGROUND

1. Telecommunication Wing and its sub cadres:-

The Telecommunication has two sub cadres i.e. Operator Cadre and Technician Cadre. The Government has approved posts in these two sub cadres as per proposals moved by this office. The Basic qualification for recruitment under these cadres is also different. Moreover, the syllabus/contents of the promotional course are also

different. So, the inter-se seniority of these two sub cadres would remain separate.

2. **Promotion Policy adopted by Telecommunication**

Wing till date : - Chapter XIII of Punjab Police Rules, 1934 relates to promotions of police personnel wherein various promotion lists are described such as list- 'A', 'B', 'C', 'D', 'E' & 'F'. Accordingly the confirmation in each rank has been considered as the basis for further promotion. However, this basis of promotion has not been followed in the Telecommunication Wing. The length of service in a particular rank and completion of requisite promotional courses have been the basis of promotion. These promotional courses are basically technical courses and have been followed in accordance with the guidelines given by the Directorate Co-ordination Police Wireless (DCPW), under MHA, Gol, New Delhi. There is no mention of such technical courses in Chapter XIII of Punjab Police Rules, 1934.

(B) CRITERIA TO BE ADOPTED TO RECAST THE SENIORITY:

1. The promotional courses of Telecommunication Wing i.e. Grade-III (Operator/Technician), Grade-II (Operator/Technician), Grade-I (Operator/Technician) should be considered as equivalent to Lower School Course, Intermediate School Course and Upper School Course respectively as mentioned in Punjab Police Rules, 1934, for purpose of promotions.

2. Those who have already qualified a Higher Grade Course but not a course lower than that, should be given ex-post facto exemption from Lower Course.

3. Telecommunication wing (being consisted of technical officials) remained separate cadre from the date of its creation since 1960. Therefore, there cannot be any question of parity of the personnel of Telecommunication Wing with those of the General cadre and their seniority should also be deemed separate. However, should there be need for considering them at par with general cadre for recasting of seniority at State level, the Telecommunication personnel within the same rank should get precedence over

their counter-parts in general cadre because the requisite qualification of the personnel of the Telecommunication cadre at the entry level is higher than those of the General cadre at the same level of entry.”

The two sub-cadres in the Telecommunication Wing/Cadre are reasonably classified and form parallel groups that cannot be intertwined so that one may eclipse the other and destroy the fabric of the service. The above reasoning found in the recommendations of the Officers' Committee does not suffer from any error and is in conformity with the rules of service and judicial precedents on the issue as noticed above. If Mr. Pawan Kumar's contentions are accepted it will lead to administrative chaos and service disharmony apart from offending rules and rewriting history of the Telecommunication Wing in the Punjab Police.

For the reasons recorded above, there is neither merit nor any substance in this petition which is accordingly dismissed. The interim orders are vacated. Pending applications, if any, stand disposed of with the main writ.

(RAJIV NARAIN RAINA)
JUDGE

October 1, 2015

Paritosh Kumar