

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

LPA No.1831 of 2015 (O&M)

Date of Decision: 05.04.2016

Constable Parminder Singh

... Appellant

VS.

State of Punjab & Ors.

... Respondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR.JUSTICE P.B. BAJANTHRI**

Present: Mr. Girish Agnihotri, Senior Advocate with
Mr. Vijay Pal, Advocate for appellant

Mr. Harsimran Singh Sethi, Addl. AG Punjab

Mr. Namit Kumar, Advocate
for respondents No.6 to 11, 13 to 24, 26 to 38 & 40

Mr. Akshay Bhan, Senior Advocate with
Mr. Alok Mittal, Advocate
for respondents No.12,25,37,41 to 60

Mr. KS Khehar, Advocate

SURYA KANT, J. (Oral)

(1) This order shall dispose of LPA No.1831 of 2015 and CWP No.2003 of 2016 as the point in issue in both the cases is common in nature. For brevity, the facts are being extracted from LPA No.1831 of 2015.

(2) The instant Letters Patent Appeal is directed against the order dated 01.10.2015 whereby learned Single Judge declined to interfere with the separation of seniority lists of Constables (Operator) and Constables (Technician) in the Punjab Police and has

consequently declined to issue any direction for the merger of two cadres/seniorities for the purpose of resultant promotions.

(3) The case of appellant is founded upon Section 4(a)&(b) of the Punjab Police Act, 2007 read with the State Government notification dated 14.12.2009 purportedly issued in exercise of powers under Section 4(a) of the Act. It would be profitable to reproduce Section 4(a)&(b) as well as the above-mentioned notification dated 14.12.2009 which are to the following effect:-

“4. Organisation and composition of Police

Service. - *Subject to the provisions of this Act,-*

(a) the Police Service shall consist of such numbers in various ranks and have such organizations or cadres, as the State Government may, by general or special orders, determine, and shall include the members of the Indian Police Service, allocated or deputed to the State;

(b) the officers of subordinate ranks of district police, armed police, intelligence and technical and support services shall form separate cadres. Seniority of each cadre shall be maintained at the State level. Transfer of a member of one cadre to another cadre shall not be allowed”

Emphasis applied

xxxx xxxx xxxx

xxxx xxxx xxxx

*“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”*

(4) On the other hand, learned Single Judge has referred to and Section 85 of the 2007 Act which is also relied upon by counsel for the respondents and it reads as follows:-

“85. Continuation of Punjab Police Rules, 1934.
- The Punjab Police Rules, 1934, framed under the Police Act, 1861 (Central Act 5 of 1861), shall remain in force, unless those rules are specifically superseded.”

(5) It is undeniable that the 1934 Rules still holds the field and it is under these Rules read with Standing Order dated 04.04.1978, that separate seniority lists of Constables (Operator) and Constables (Technician) have been maintained from the very inception.

(6) The appellant submits that after the 2007 Act has come into force “Technical and Supporting Services” constitute one and the same cadre and there cannot be two separate seniority lists of members of the same cadre. A direction is thus sought to give effect

to the provisions of Statute read with the notification reproduced above and merge the seniority following the principle of length of service and grant the seniors like appellant all the consequential benefits.

(7) Learned State counsel, on the other hand, refers to the report of Officers' Committee constituted by the State Government in deference to the directions issued by this Court in some other case for the redressal of service-related grievances of different Wings of Police Force. He very strongly reiterates that the past practice of maintaining separate seniority lists of Constables (Operator) and Constables (Technician) deserves to be continued as the Operators and Technicians are two different streams; their academic qualifications and the nature of duties, as also training are different.

(8) It is not discernible from the record whether the State Government has taken any conscious decision to accept the recommendations made by the Officers' Committee. Though it is stated by learned State counsel that the State Government has accepted the recommendations dated 18.10.2012 (P22) of the Officers' Committee but no such conscious decision has been brought on record. On the other hand, the Department has issued written instructions to the learned State counsel claiming that a new Committee headed by IGP/IT&T Punjab has been constituted for restructuring of IT&T Wing. The said Committee has submitted its

report dated 26.02.2016 which has been forwarded to the Director General of Police for approval.

(9) Having heard learned counsel for the parties, we are of the considered view that the merger of two Wings and/or to keep them separately for the purpose of seniority or further promotions is essentially a policy decision which has to be taken at the level of competent authority. It is true that the notification dated 14.12.2009 does give an impression that the 'Technical and Support Service' is one combined cadre but the fact of the matter is that the authorities have continuously maintained separate seniority lists. The notification dated 14.12.2009 appears to have been understood or construed in a broader sense and not as a decision for the merger of different cadre/wings.

(10) Be that as it may, it is imperative upon the State Government to take a holistic view and come out with its definite decision for addressing the aspirations of Police Force. The State Government cannot thrive upon vague and evasive administrative decisions which have become perennial source of avoidable and unwarranted Court-cases.

(11) While it is for the State Government to decide whether or not to give effect to the recommendations made by the Officers' Committee (P22) or to accept the counter-claim put forth by the appellant and other Constables but a specific decision in this regard must be taken. Needless to say that if the State Government decides

to implement the recommendations made by Officers' Committee then the expressions and words contained in the notification dated 14.12.2009 will have to be suitably clarified by way of a corrigendum, may be from the date the notification was issued. The fact remains that the State Government must take the call and its final decision at the earliest.

(12) Let the State Government and the Director General of Police, Punjab take their final decision within four month from the date of receipt of a certified copy of this order.

(13) In the light of the above, the appeal is allowed in part and the order of the learned Single Judge stands modified in above terms.

(Surya Kant)
Judge

05.04.2016
vishal shonkar

(P.B. Bajanthri)
Judge