

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

CWP No.14370 of 2018

Date of Decision:-16.07.2018

Kulwinderjit Singh, Head Constable(P.R. No.9/359, PAP Amritsar).

.....Petitioner.

Versus

State of Punjab & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Amit Kumar Walia, Advocate for the Petitioner.

JASWANT SINGH, J.

Petitioner Kulwinderjit Singh, who is working as Constable in the respondent-department has preferred the instant writ petition, seeking directions to the Police Department for counting his service being rendered as Special Police Officer (SPO in short), as a qualifying service for the purpose of seniority to his existing post of Constable.

Learned Counsel for the petitioner has argued that the petitioner was initially recruited as a Special Police Officer on 24.10.1993 and thereafter his services were regularized as an Auxiliary Constable on 21.02.1994. However, despite the fact that the petitioner was entitled for getting his service counted w.e.f. 24.10.1993 for the purpose of qualifying service and seniority benefits, but same has not been considered. It is further argued that a person namely Constable Rajinder Kumar, who is

similarly situated as the petitioner and was also appointed as SPO on 13.09.1993, had filed a civil suit in which he has been granted the benefit of counting his past service rendered as SPO i.e. w.e.f. 13.09.1993, which is evident from the order passed in Civil Revision No.2295 of 2010 decided on 06.09.2010 (P-4). It is further argued that the petitioner had moved an application to the concerned Authority for redressal of his grievance, which was looked into by SSP Batala, who in turn recommended grant of seniority to petitioner. However, vide order Annexure P-7 dated 08.12.2017, the Additional Director General of Police, Armed Battallion, Jalandar has rejected the case of petitioner. Thus prayer has been made for setting aside the said order Annexure P-7 and consequently grant him service benefits w.e.f. 24.10.1993.

After having scrutinizing the arguments addressed by learned Counsel for the petitioner and perusing the paper book, I do not find any merit in the instant writ petition.

Entire case of the petitioner is on the basis of seeking parity with one Constable Rajinder Kumar, who was appointed on 13.09.1993 and has been awarded benefits from the same date. However, in the opinion of this Court, the petitioner cannot be permitted to draw parity with said Rajinder Singh. It is apparent from the order dated 06.09.2010 Annexure P-4 passed in CR No.2295 of 2010 that Constable Rajinder Singh had filed a civil suit probably around 1995-96 for seeking relaxation in height and chest as he was not being permitted to join the services as a Constable, although he had been inducted as a SPO. The said civil suit was initially dismissed by the trial Court, however, the appeal was allowed by the Appellate Court somewhere in the year 2005. Since, no benefit was granted

to Rajinder Singh despite order of civil court in his favour, he filed an execution and it was in this execution that petitioner's (Rajinder Singh) services were counted with effect from 13.09.1993. Thus, from the aforestated facts it becomes clear that Rajinder Singh had approached the Court well in time and had sought relief. It is another matter that it took him nearly 15 years to get the relief that he had sought. However, in the present case, petitioner had accepted his fate of granting of service benefits w.e.f. 21.02.1994 instead of 24.10.1993. It is only after he learned about passing of order P-4 that he woke up of his slumber and has sought benefit and that also by filling a writ in the year 2018. In these facts and circumstances, I am of the opinion that the petitioner cannot be granted any benefit by drawing parity with said Rajinder Singh, as petitioner's case is clearly hit by principles of estoppel as well delay and laches. The reason for same is that seniority, which is being counted since 1993 till 2018 cannot be permitted to be disturbed after a period of 25 years approximately. Many third party rights must have been created by this time and same cannot be disturbed at the whims and fancies of the petitioner.

There is another angle to it. A perusal of order Annexure P-7 passed by Additional Director General of Police would show that no prejudice has been caused to the petitioner as no person who is junior to him has been made senior to the petitioner. The awarding of seniority and counting of service benefits become more relevant, when a person junior to an employee takes a march over the other. Although petitioner has alleged that some persons who were appointed on the same date as petitioner has stolen a march over him because of counting of service w.e.f. the date of their joining as SPOs, however, no document worth the name has been

produced on record to prove such prejudice. Further, the argument that SSP Batala had recommended the case of petitioner for counting his service w.e.f. 24.10.1993, is also incorrect. A perusal of the recommendation and internal communication sent between the official respondents would reveal that it was merely stated that in case some persons junior to petitioner had been awarded counting of service from the date of joining as SPO, then petitioner be granted the same benefit. Thus, it cannot be said that SSP Batala had positively recommended petitioner's name for grant of service benefits w.e.f. 24.10.1993. In any case, it is settled position of law that no employee can take benefit of any internal communication *inter se* the officials as same cannot be made the basis for grant of any relief, being merely, a communication and not a binding order.

In view of the above, finding no merit in the instant writ petition, the same is hereby dismissed.

(JASWANT SINGH)
JUDGE

July 16, 2018
Vinay

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No