

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

Date of decision : 04.07.2019

1. CWP-3801-2015 (O&M)

Raju Singh and others

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

2. CWP-26000-2016 (O&M)

Jasvinder Pal Singh and others

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

3. CWP-6241-2017 (O&M)

Hardial Singh and others

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

4. CWP-13087-2018 (O&M)

Sherpartap Singh and others

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Gurminder Singh, Sr. Advocate,
with Mr. M.S. Longia, Advocate,
for the petitioner(s) in CWP-3801 of 2015
and CWP-26000-2016.

Mr. Gagneshwar Walia, Advocate,
for the petitioner(s) in CWP-6241-2017.

Mr. K.S. Sidhu, Advocate,
for the petitioner(s) in CWP-13087-2018

Ms. Sunint Kaur, AAG, Punjab.

JITENDRA CHAUHAN, J.

The present batch of four petitions noted above is being disposed of by this single judgment as common questions of facts and law are involved therein. However, the facts are being derived from CWP-3801-2015, for brevity.

The petitioners seeks issuance of a direction to the respondents to make the petitioners to join in District Police as provided in the policy instructions dated 12.11.1992 (Annexure P-1) governing the recruitment of Constables, which were in force when the petitioners were appointed to the Punjab Police.

It is contended that the petitioner was appointed as Special Police Officers (SPOs) in the respondent department during the years 1992-1994. Thereafter, they were absorbed as Constables during the period from 2002 to 2004 in armed battalions and were earmarked to serve in the Commando Battalions as per the policy (Annexure P-1) which provided that all the recruitments to the post of Constable shall be made at the first

instance in Punjab Armed Police and from the Punjab Armed Police, the recruits would be shifted to the Commando Battalions and then transferred to the District Police in a time-bound manner. These trained commandos were to stay in the Commando Battalions for two years and thereafter, to be shifted to the District Police. At present, the petitioners are working in various battalions and were detailed to join these battalions before 30.07.2009 and are awaiting their transfer to district police as per policy Annexure P-1.

It is further submitted that after coming into force of the Punjab Police Act, 2007, the State had taken a policy decision on 18.08.2009 (Annexure P-5) for transferring the police personnel who had been recruited as per the policy Annexure P-1 and had been already sent to Commando Battalions before the cut-off date i.e. 30.07.2009. As per the said policy, the commando training of the petitioners was exempted. It is further submitted that in view of the above policy, many Constables were transferred to District Police, but many were again left out. As the Constables were aggrieved having not been transferred to the District Police in terms of policy dated 18.08.2009 (Annexure P-5), various writ petitions were filed the lead case being Mohan Lal and others Vs. State of Punjab and others, CWP-6004-2012. During the pendency of the aforesaid petition, the official respondents formed a committee to resolve the dispute and gave an undertaking by way of filing additional affidavit that 1341 constables of Commando Battalions including the petitioners therein, would be transferred to District Police. It was further decided that remaining constables would also be transferred in the same manner (Annexure P-10).

However, despite the undertaking given before this Court, only the petitioners in the aforesaid petitions were transferred and the case of the petitioners was again not considered. Aggrieved against the inaction of the respondents, the petitioners submitted a joint representation before the Director General of Police, Punjab (Annexure P-6) with a prayer to transfer them to district police in terms of policy dated 18.08.2009 (Annexure P-5) but to no avail.

On the other hand, learned State counsel contends that the practice of transfer of personnel from Armed Battalions to District Police in terms of policy instructions (Annexure P-1) was discontinued after coming into force the Punjab Police Act, 2007, which provides for separate cadres and transfer of a member of one cadre to another is not permissible. It is further submitted that the petitioners never underwent commando training which is a prerequisite for transfer to the District Police.

Heard.

It is to be noted that after coming into force of the Punjab Police Act, 2007, the respondents had taken a policy decision dated 18.08.2009 (Annexure P-5), for transferring the police personnel who had been recruited as per the 1992 Policy (Annexure P-1) and had already been sent to the Commando Battalions before the cut off date i.e. 30.07.2009. In the said policy, it has been stipulated as under:-

(i) Constables joining the Commando Battalions after 30.07.2009 shall not be transferred to District Police in future.

(ii) All constables working in Commando Battalions

as on 30.07.2009 shall be transferred gradually to district police subject to fulfillment of prescribed conditions.

(iii) The Constables absorbed from SPOs will not be sent for commando training in view of their age.

Undisputedly, the petitioners in terms of 1992 policy (Annexure P-1) were to complete a time-bound programme whereby, after initial training and training in Commando Battalions, they were to be shifted to the District Police. All the petitioners joined in Commando Battalions much prior to the cut off date of 30.07.2009. The petitioners have been appointed under the old act which provided for one unified cadre and interchangeability was permissible from one wing to another. The issue regarding the constitution of Punjab Police under the Punjab Police Act 1861 and the Punjab Police Rules 1934 came up for interpretation by this Court in CWP-4913-2010 titled as Satavatar Singh Vs. State of Punjab and others, decided on 14.10.2010 (Annexure P-9), wherein, it has been laid down as under:-

“A perusal of these rules thus indicates that there is no concept of separate cadres as is canvassed by the respondents. The matter fortunately is not res integra. In CWP No. 10636 of 1996 decided on 17.07.98 a Division Bench of this Court held as follows:-

“The main and substantive issue which calls for adjudication in this petition is whether the petitioners,

who were appointed as Assistant Sub Inspectors of Police in Intelligence Wing of Criminal Investigation Department, Punjab, are entitled to be treated as members of the general police.

xx xx xx xx xx

xx xx xx xx xx

On the basis of the above discussion and the judgment of the supreme Court, we hold that the petitioners belong to the cadre of Provincial Police district and they are entitled to be considered for promotion and they are entitled to be considered for promotion on the post of Inspector in the General Cadre. This conclusion of ours is amply supported by the statement made by the learned Deputy Advocate General that the petitioners will be considered eligible for appointment as Sub Inspectors in the General Cadre.”

*Thereafter in **State of Haryana and others v. Kashmir Singh and another**, Civil Appeal Nos. 8690-8701 of 2010 decided on 06.10.2010 the Hon'ble Supreme Court held as follows:-*

“ 10. Thus a perusal of the relevant provisions of the Police Act clearly shows that the state police is one integral unit and does not consist of separate independent units. The overall administrative control of the

police in the State is with the Inspector-General of Police (now the Director General of Police).”

In the circumstances the stand of the State is clearly indefensible.”

Even otherwise, the policy dated 12.11.1992 (Annexure P-1) was followed till 18.04.2008, even after coming into force the new act i.e. Punjab Police Act, 2007, when the names of the police personnel were sought for transfer to District Police vide letter dated 18.04.2008 (Annexure P-2).

It is further to be noted that in Madan Lal's case (supra), the respondents, as per the undertaking given before this Court, have transferred more than 1341 constables to District Police. These transfers were also made after the promulgation of the new Act i.e. after 20.02.2008. The respondents cannot set different standards for similarly situated persons, without there being any rationale for doing the same. It has also been brought to the notice of the Court that more than 8000 vacancies of Constables in various Districts of the State are still lying vacant. Moreover, vide interim order dated 09.08.2017, 195 vacancies have already been kept in abeyance for the petitioners in the present batch of petitions.

Another argument raised is with regard to the petitioners not having undergone commando training. In this regard, it is evident that the respondents had taken a policy decision on 18.08.2009 (Annexure P-5), laying down certain conditions for transferring the Constables to District

Police. As per condition No.3, the Constables absorbed from SPOs will not be sent for commando training in view of their age which is equally true in case of the petitioners as well. Therefore, the stand taken by the respondents is contrary to their on policy decision of 18.08.2009. Moreover, there is nothing on record to show that the petitioners were ever directed to undergo commando training.

During the pendency of the instant writ petition, in an inter-departmental communication dated 10.07.2015 (Annexure P-12), addressed to ADGP, Armed Battalions, Jalandhar Cantonment, the office of the IGP, Commando Battalions, Punjab, Bahadurgarh, stated that 500 Constables who have joined commando battalions prior to 30.07.2009, are eligible for transfer to district police. All the petitioners in the present petitions are included in the said list of 500 Constables and have been shown to be eligible for transfer to District Police.

In view of the above discussion, the instant petitions are allowed and the respondents are directed to adjust the petitioners in the District Police on priority basis, within a period of three months from the date of receipt of a certified copy of this judgment.

Allowed.

Photocopy of this judgment be placed on the file(s) of the connected case(s).

04.07.2019
atulsethi

(JITENDRA CHAUHAN)
JUDGE

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