

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.3141 of 2002

Date of Decision: 05.02.2020

Gulzar Singh

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE GIRISH AGNIHOTRI

Present: None for the petitioner

Ms. Safia Gupta, AAG Haryana

Mr. Anil Malhotra, Advocate for respondent No.5

GIRISH AGNIHOTRI, J. (Oral)

(1) This order shall dispose of CWP Nos.3141 of 2002 and CWP No.2274 of 2003 as common issues are involved. For the purpose of order, CWP No.3141 of 2002 is being treated as the lead case.

(2) The present writ petition has been filed by petitioner Gulzar Singh, *inter alia*, with a prayer to quash order dated 23.01.2002 (P7) whereby the petitioner's representation claiming *pro forma* promotion in the rank of Inspector and DSP was rejected. It was also prayed that directions be issued to respondents No.1 to 4 to give benefits of promotion of the post of DSP to the petitioner w.e.f. date when the said post was available and the petitioner was eligible and not from the date when the petitioner was actually promoted.

(3) Reply on behalf of respondents No.1 to 4 was filed. It is stated in the reply that the petitioner was enrolled as Constable "Radio Operator" (Trainee) w.e.f. 21.09.1966 vide order dated 29.09.1966 (R1). It has been further pointed that Sh. Rajender Kumar, respondent No.5, on the other hand, was enrolled as "Temporary Constable Technician" vide order dated

17.12.1968 (R2). The pleaded case of the official respondents therefore is that petitioner and respondent No.5 were enrolled in two different trades i.e. “Operation” and “Technical”. It has been pleaded that channel of promotion of the operation staff and technical staff is quite different up to the rank of DSP. For the sake of ready reference, para 1 of the preliminary submission of the reply filed by respondents No.1 to 4 is reproduced as under:-

“That in this writ petition, the petitioner has prayed for the following relief from the Hon’ble High Court.

“(ii) Issue an appropriate writ, order or direction, directing the respondents No.1 to 4 to give benefit of promotion to the petitioner as DSP w.e.f. 1.11.90 and benefit of promotion to the rank of inspection wef 3.10.1984.”

As will be seen from above, the petitioner is asking for the relief of promotion to the post of DSP with effect from 1.11.90 and that of Inspector wef 3.10.1984. In view of this, the petition is extremely time barred and is not maintainable.

That in the present writ petition, the petitioner has alleged that he has been discriminated in the matter of promotion to the rank of Inspector and DSP qua Sh. Rajinder Kumar, DSP (respondent No.5). In this regard, it is submitted that the petitioner was enrolled as constable “Radio Operator” (Trainee) wef 21.9.1966 (FN) vide order No.20047-52 dated 29.9.1966, a true copy of this order has been attached as Annexure R-1. It is further submitted that Sh. Rajinder Kumar respondent No.5 was enrolled as “Temporary Constable” Technician” vide order No.31642-46 dated 17.12.1968, a true copy of this order is at Annexure R-2. It will be appropriate to mention here that as will be seen from Annexure R-1 and R-2, the petitioner and respondents no.5 were enrolled into different trades, that is “Operation” and “Technical”. The route of promotion of the operation staff and technical staff is quite different upto to the rank of DSP. Each trainee has to pass

different tests for getting promotions. In the operation staff, one is to pass SOG-III, SOG-II and SOG-I and advance Cipher Course. In the case of technical staff, one is to pass SMG-III, SMG-II and SMG-I. Thus the seniority of the petitioner and respondent no.5 upto the rank of DSP are separately maintained. So the petitioner has got no locus standi to draw a comparison with respondent No.5 upto the rank of DSP. In view of this, the present writ petition is not maintainable and is liable to be dismissed.”

- (4) Respondent No.5 has also filed its reply. The stand taken by respondent No.5 in para 1 of the preliminary submission is as under:-

“That the claim of the petitioner who belongs to the operational cadre in seeking relief qua respondent No.5 who belongs to the technical cadre is wholly misconceived. It is pertinent to mention here that there are two cadres namely operational and technical in the Department of Telecommunications in the office of Respondent No.2 since its Policification vide order dated 18 May 1960 issued by the erstwhile Punjab Government and a true copy of which is appended as Annexure R-5/1 with this written statement. Since then the inter se seniority and promotions are being done in their respective cadres.”

- (5) In CWP No.2274 of 2003, the additional prayer, *inter alia*, made is to quash the order dated 17.01.2003 (P8) passed by respondent No.1 whereby respondent No.5 has been promoted to the post of Superintendent of Police (Telecommunication), Haryana.

- (6) In this case also, the official respondents have clarified their stand to the following effect:-

“That initially the staff in erstwhile Punjab Police Wireless department was civilian. The policification of the staff was made vide Punjab Govt. memo No.6238-H-60/17180 dated 18th May, 1960 (copy attached Annexure R-1). Since then the seniority of the employees of this department which was

reallocated to Haryana during creation of State of Haryana is being reckoned both of operation and technical staff separately. In the present, the petitioner has alleged that he has been discriminated in the matter of promotion to the rank of Inspector and DSP qua Sh. Rajinder Kumar, DSP (respondent No.5). In this regard, it is submitted that the petitioner was enrolled as constable "Radio Operation: (Trainee) w.e.f. 21.9.1996 (FN) vide order No.20047-52 dated 29.9.1966. A true copy of this order has been attached as Annexure R-12. It is further submitted that Sh. Rajinder Kumar respondent No.5 was enrolled as "Temporary Constable" Technician" vide order No.31642-46 dated 17.12.1968. A true copy of this order is attached as Annexure R-3 it will be appropriate to mention here that as evident from annexure R-2 and R-3, the petitioner and respondents No.5 were enrolled into different trades, that is "operation and "Technical". The route of promotion of both the trades is quite different upto the rank of DSP. Each trainee has to pass different test for getting promotion. In the operation staff, one is to pass SOG-III, SOG-II and SOG-I. Thus the seniority of the petitioner and respondent No.5 upto the rank of DSP are separately maintained as enshrined in Technical Standard Committee Report 1987 copy attached Annexure R-4. So the petitioner has got no locus standi to draw a comparison with respondent No.5 upto the rank of DSP. In view of this, the present writ petition is not maintainable and is liable to be dismissed."

(7) Respondent No.5 had also filed separate reply. The basic stand reads as under:-

"That the present petitioner has earlier filed CWP No.3141 of 2002, Gulzar Singh vs. The State of Haryana and others which is pending for motion hearing in this Hon'ble Court wherein the petitioner has claimed promotion retrospectively to the post of Inspector w.e.f. October 3, 1984 and to the post of DSP w.e.f. November, 1, 1990 on which basis the petitioner claims

seniority over and above respondent No.5 which in turn is his alleged basis for claiming promotion as Superintendent of police over and above respondent No.5. This claim of the petitioner is untenable, inadmissible, unacceptable and deserves to be rejected on the basis of the following factual submissions.”

(8) On the last date of hearing on 16.01.2020 notice was issued but non has put in appearance.

(9) This Court accepts the stand taken by the official respondents and the private respondent.

(10) The present writ petitions were filed in the year 2002 & 2003. It has also been brought to the notice of this Court that it was as far back as 1966, the petitioner had joined the Punjab Police Service as Constable. It has further been pointed out that both the petitioner and the private respondent No.5 have since retired from service long time back. Even on merits, as noticed above, this Court finds force in the pleas taken by the respondents. There is no challenge to the rule or the scheme of maintaining separate seniority list.

(11) The writ petition is therefore dismissed being devoid of merit.

05.02.2020
Vvishal

(Girish Agnihotri)
Judge

1. Whether speaking/reasoned?
2. Whether reportable?

Yes/No
Yes/No