

**(209) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-29464-2018 (O&M)

Date of Decision: 21.04.2022

Nirmal Singh and others

... Petitioners

Vs.

Union of India and others

... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Arvind Kashyap, Advocate
for the petitioners.

Mr. Sudhir Nar, Advocate
for Union of India.

RAJBIR SEHRAWAT, J. (Oral)

The petitioners have filed this petition under Article 226 of the Constitution of India for quashing order dated 15.10.2018 (Annexure P-15) passed by the respondents as also for issuing a writ of mandamus directing the respondents to rectify the tentative seniority list issued vide order dated 23.02.2017 (Annexure P-6) in accordance with law by counting entire length of service in the cadre of Head Constables.

Averments of the petitioners in the writ petition, as well as, the arguments raised by the learned counsel for the petitioners is that the petitioners were promoted to the post of Sub Inspectors after being brought on approved D-list. After promotion, the tentative seniority list of Sub Inspectors was issued by the department and objections were invited. Some members of the cadre raised objections to the seniority of petitioners on the ground that petitioners were promoted pursuant to DPC/Approved list in December 2003 whereas the objectors were promoted pursuant to DPC/Approved list in September 2003, therefore, they were senior to the petitioners. Respondent-Department accepted the objections on 10.04.2009

and further process of promotions from the post of Sub Inspector to the post of Inspector was initiated. Since the petitioners were rendered junior as Sub Inspector on acceptance of the objections of the objectors, who were otherwise juniors to the petitioners in the feeder cadre, therefore, the petitioners were left out of promotion to the post of Inspector.

Refuting the claim of the objectors, learned counsel for the petitioners has submitted that the objectors were, otherwise, junior to the petitioners in the feeder cadre. Since the petitioners had been promoted in the cadre of Sub Inspector earlier to the objectors, therefore, their seniority is to be seen as per their seniority in the feeder cadre. Accordingly, the petitioners should have been treated as senior and should have been further promoted as Inspectors. In support of his assertions, learned counsel for the petitioners has referred to the instructions dated 08.09.1998 issued by Ministry of Personnel, Government of India and has submitted that the persons junior to the petitioners were even wrongly considered for promotion by DPC in September 2003. It is further submitted that this DPC could not have been held because the DPC for year 2003 had already been held in January 2003. The DPC could have been held only once in a year as per the abovesaid instructions. Hence, the very factum of bringing the juniors to the approved list for the promotion to the post of Sub Inspector was wrong. They could have been considered only in the year 2004. Hence, they were wrongly made senior to the petitioners.

On the other hand, learned counsel for the respondents has submitted that even petitioners No.3 and 4 had expressed their unwillingness to undergo the course for which DPC was held in September 2003, therefore, they could not be considered for selections in that DPC.

Petitioners No.1 and 2 were facing the currency of punishment in September 2003, therefore, they could not have been considered by the DPC at the time when the juniors were considered. Insofar as petitioner No.5 is concerned, he could not qualify the mandatory test upto that time, therefore, he was not considered in the DPC at that time. Hence, it is submitted by the learned counsel for the respondents that since the promotion to the post of Sub Inspector was based on seniority subject to the course and the selection by the DPC and the petitioners could not have been selected and promoted at that time of DPC conducted in September 2003, therefore, their juniors were rightly selected and promoted. Hence, their objections were rightly accepted by the Authorities. They have rightly been made senior to the petitioners. Accordingly, it is submitted by the learned counsel for the respondents that there is no force in the present petition and the same deserves to be dismissed.

Having considered arguments raised by the learned counsel for the parties, this Court finds substance in the arguments raised by the learned counsel for the respondents. Although learned counsel for the petitioners has relied upon instructions dated 8.9.1998 to stress that the DPC could have been held only annually, therefore, the same could not be held more than twice in the year 2003 to promote the juniors, however, a perusal of the said instructions do not support the argument of the learned counsel for the petitioners. A reference to the said instructions is necessary for proper appreciation of the case. The said instructions read as under:

“Frequency at which DPC should meet

3.1 The DPCs should be convened at regular annual intervals to draw panels which could be utilized on making promotions against the vacancies occurring during the course of a year.

For this purpose, it is essential for the concerned appointing authorities to initiate action to fill up the existing as well as anticipated vacancies well in advance of the expiry of the previous panel by collecting relevant documents like CRs, Integrity Certificates, Seniority List, etc., for placing before the DPC. DPCs could be convened every year if necessary on a fixed date, e.g., 1st April or May. The Ministries/Departments should lay down a time-schedule, for holding DPCs under their control and after laying down such a schedule, the same should be monitored by making one of their officers responsible for keeping a watch over the various cadre authorities to ensure that they are held regularly. Holding of DPC meetings need not be delayed or postponed on the ground that Recruitment Rules for a post are being reviewed/amended. A vacancy shall be filled in accordance with the Recruitment Rules in force on the date of vacancy, unless rules made subsequently have been expressly given retrospective effect. Since amendments to Recruitment Rules normally have only prospective application, the existing vacancies should be filled as per the Recruitment Rules in force.

(Very often, action for holding DPC meeting is initiated after a vacancy has arisen. This results in undue delay in the filling up of the vacancy causing dissatisfaction among those who are eligible for promotion. It may be ensured that regular meetings of DPC are held every year for each category of posts so that an approved select panel is available in advance for making promotions against vacancies arising over a year)”

A bare perusal of the instructions would show that instructions are only in the nature of model procedure for holding of DPC and not as a mandate to prescribe holding of DPC by the Competent Authority as illegal. Moreover, the spirit of these instructions is to impress upon the Authority to hold the DPC at regular intervals, at least once in a year and not to skip holding of DPC unless it is certified by the Appointing Authority that there

are no vacancy to be filled up through promotion. Hence, essence of these instructions is to direct the holding of DPC under any circumstances if the vacancies exist rather than prohibiting holding of DPC more than once in a year. If there are vacancies, the Appointing Authority is free to hold DPC as many times in the year as filling of the vacancies so demand. Hence, interpretation of the said instructions by the petitioners is misconceived.

Insofar as the other aspects of the case are concerned, it is not even disputed by the learned counsel for the petitioners that the petitioners No.1 and 2 were facing currency of the punishment at the relevant time which rendered them ineligible for consideration by the DPC in September 2003 and petitioners No.3 and 4 had submitted their unwillingness to the course and, further that the petitioner No.5 could not qualify the course which was mandatory for being considered by the DPC. In view of the aforesaid developments, when the DPC for promotion was conducted in September 2003 and the juniors were considered for promotion then the petitioners were ineligible for promotion. Hence, persons juniors to the petitioners were rightly promoted as per their turn and the petitioners have been promoted subsequently when they acquired the necessary eligibility condition; on expiry of the currency of the punishment or by passing the requisite course. Insofar as inter se seniority is concerned, it is not even disputed that as per the statutory rules, seniority is to be determined from the date of appointment by way of promotion. Since the dates of promotion of the persons who were juniors to the petitioners in the feeder cadre happened to be earlier to the dates of promotions of petitioners, therefore, they were entitled to be senior to the petitioners in the promotional cadre.

The respondents have done only that much by accepting the objections of

the objectors who had raised objections against the petitioners. Hence, no fault can be found with the action taken by the respondent.

Accordingly, finding no merit, this petition is dismissed.

21.04.2022

rajeev

Whether speaking/reasoned

Whether reportable

(RAJBIR SEHRAWAT)
JUDGE

Yes/No

Yes/No