

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

CWP No.3142 of 2018 (O&M)

Reserved on:21.07.2022

Pronounced on:26.08.2022

Naveen Saini and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Gurminder Singh, Senior Advocate with
Mr. RPS Bara, Advocate
for the petitioners.

Ms. Akshita Chauhan, AAG, Punjab.

Mr. P.S. Khurana, Advocate
for respondents No.5 & 7.

Mr. Harsh Aggarwal, Advocate
for respondent No.6.

JAISHREE THAKUR J.

1. The petitioners have approached this Court under Article 226/227 of the Constitution of India for quashing order dated 20.03.2017 (Annexure P-9) whereby private respondents have been granted seniority in the cadre of DSPs in the general line *de hors* of the fact that they were appointed as DSP (Wireless) against separate ex-cadre posts in the Wireless and Telecommunication Wing and ignoring the statutory rules as well as principles of natural justice and for setting aside the order dated 01.11.2017 (Annexure P-14) vide which private respondents have been assigned seniority with petitioners, who are DSPs of general line without there being any merger of the posts in the regular cadre and without

considering the objections of the petitioners. It is further prayed that respondents be restrained from sending names of private respondents to UPSC for consideration for further promotion to IPS as they are not eligible for said promotion under the relevant rules.

2. In brief, the facts as enumerated in the writ petition are that petitioners herein were appointed to the post of DSP by way of direct recruitment through the Punjab Public Service Commission under the Punjab Police Service Rules, 1959 (for short 1959 Rules). Vide order dated 18.05.1960, the State of Punjab ordered for enlistment of existing civilian radio personnel in the police ranks under Section 2 of the Police Act of 1861 and by virtue of the said order, a separate wing/cadre came into existence, that is called Wireless Wing. Thereafter from time to time, the cadre strength of different posts in Wireless Wing was increased by executive orders and as of now, there are 10 posts of DSPs in Wireless Wing. On 15.02.1990, an advertisement was issued by the Punjab Public Service Commission for filling up 2 posts of DSP (Wireless) and the qualification prescribed for said post was Graduate Degree in Telecommunications Engineering, Electrical Communication Engineering or Electrical/Computer Science from a statutory University or equivalent degree. Holders of post graduate degree in Physics with Electronics/Wireless as a special subject from statutory University were also eligible. In pursuance to aforesaid advertisement, respondent No.5 herein was appointed to the post of DSP (Wireless) on 14.06.1993 and similarly, respondents No.6, 7 and 8 were appointed on 09.05.1992, 18.03.1993 and 05.04.1995 respectively. Respondents No.5 to 8 made

various representations before the competent authorities to place them in the seniority list along with DSPs of general line on two grounds viz; (i) their services are governed by the 1959 Rules and (ii) there are no avenues of promotion in the Wireless Wing. After considering their representations, the State Government took a policy decision to grant promotion to these officers as a measure personal to them against ex-cadre posts to the higher ranks and in pursuance to said policy, respondent No.5 was promoted as officiating SP in the ex-cadre post on 27.08.2007, meaning thereby, even after their promotion they were not considered in the general line for the fixation of seniority. In the year 1994, one Sukhdev Singh was given promotion to the post of Deputy Inspector General of Police and that too against the upgraded non-cadre post and as a personal measure to him. Thereafter, on 18.08.2010, a notification was issued by the Government of Punjab, Department of Home Affairs and Justice (Home-III) Branch whereby 1959 Rules stood amended and percentage in promotion from the post of Inspector to DSP was prescribed for the four cadres namely District Police Cadre, Armed Police Cadre, Intelligence Cadre and Technical and Support Service Cadre. After assuming the officiating charge of Superintendent of Police, respondent No.5 made various representations to the department and also filed a writ petition before this High Court, which writ petition was disposed by directing the State Government to consider the representation of respondent No.5 by passing a speaking order. The State Government considered the representation of respondent No.5 and the same stood rejected vide order dated 21.07.2011. Aggrieved against the said order, respondent No.5 again

filed a writ petition bearing CWP No.15079 of 2013 titled as *Mandhir Singh Vs. State of Punjab and others*. In the said writ petition, the State Government vide its reply took a specific stand that the Wireless Wing is a separate cadre and the promotions given to DSPs of Wireless Wing as officiating SPs are ex-cadre promotions, hence benefit of seniority with DSPs of general line cannot be given to them. However, during the pendency of writ proceedings, the respondent-State passed order dated 20.03.2017 by which respondents No.5 to 8 herein have been granted seniority with the general line of DSPs and thereafter, on 07.04.2017, the writ petition was dismissed as withdrawn on the statement made by respondent No.5 that the relief sought in the writ petition has already been granted to him. Aggrieved by the order dated 20.03.2017, petitioners made representation dated 26.04.2017 to the respondent-department and raised various objections. Thereafter, on 02.06.2017, respondent-department passed an order proposing the amendment in the seniority by placing PPS officers of Wireless Wing in General Cadre and gave 15 days' time to the affected officers to submit their objections, which were duly submitted by the petitioners on 06.09.2017. On 01.11.2017, respondent No.2 in an illegal and arbitrary manner granted seniority to respondents No.5 to 8 over and above petitioners in the PPS cadre along with DSPs of general line from the date of their joining the department. Hence, writ petition.

3. Mr. Gurminder Singh, learned senior counsel assisted by Mr. RPS Bara, Advocate appearing for the petitioners challenged the impugned orders dated 20.03.2017 and 01.11.2017 on the following grounds:-

- (1) The appointment of private respondents No.5 to 8 cannot be considered to be an appointment to the service of DSP under the 1959 Rules and thus, no benefit in service, much less, seniority can be granted to them. Moreover, qualification of DSP (Wireless) is different from DSP general line.
- (2) DSP (Wireless) is a separate cadre and at no point of time, included in the cadre of DSP general line. Even the posts mentioned in Appendix 'A' of 1959 Rules were never increased to include these technical posts by the Government. As of now, there are 10 posts of DSPs in the Wireless Wing and even after issuing notification dated 18.08.2010, till date, there is no order of merger of cadre of Wireless Wing with DSP general line passed by the State Government and therefore, the impugned orders are liable to be set aside. Even till today, there is no alteration in Appendix A of 1959 Rules qua merger of two cadres.
- (3) The amendment in the 1959 Rules vide notification dated 18.08.2010 is only to the extent of prescribing percentage for promotion to the post of DSP from the post of Inspector from different cadres i.e. District Police Cadre, Armed Police Cadre, Intelligence Cadre and Technical and Support Service Cadre. It nowhere gives right to the DSPs (Wireless) to claim merger in the general line cadre as they were directly recruited to the ex-cadre/non-cadre posts of DSP (Wireless).

- (4) That the impugned orders have been passed without adhering to Article 14 of the Constitution of India as well as principles of natural justice, as the petitioners have not been given a reasonable opportunity of hearing before granting seniority to the private respondents over and above the petitioners herein in their feeder cadre.
- (5) The claim of the private respondents that they are member of service on account of fact that their services are governed by 1959 Rules is totally erroneous. The 1959 Rules were applied to them on account of the fact that there were no particular rules framed by the government for them and therefore, they cannot claim any benefit like seniority or promotion with the members of the service on whose service 1959 Rules were applied.
- (6) Duties of DSP (Wireless) are different from the duties of DSP general line. It is totally technical post and officers so appointed have no knowledge of police administration, investigation and other practical knowledge. Even DSPs (Wireless) were not parted with training at PPA Phillaur with regard to administration and working at headquarters, which the petitioners have duly undergone.
- (7) Reliance has been placed on judgment passed by the Hon'ble Supreme Court in ***Arun Kumar and others Vs. Union of India and others (2007) 5 SCC 580*** to contend that when there are two sources of appointment, the third mode of appointment cannot be opened and in the absence of any other mode of

recruitment, the benefit of service rendered in the other cadre, cannot be given. In 1959 Rules, there are only two modes of appointment; direct and by way of promotion and therefore, appointment of private respondents to the general cadre from the ex-cadre/non-cadre posts would amount to absorption or transfer would amount to introducing a third method of appointment, which is contrary to statutory rules.

- (8) Further reliance has been placed on judgment rendered by Hon'ble Supreme Court in ***S.P. Shivprasa Pipal Vs. Union of India and others 1998 (4) SCC 598*** to argue that when different cadres have to be merged, then the factors like nature and duties, powers exercised, minimum qualification and salary of post have to be taken into consideration, which exercise is missing in the instant case. It is further argued that administrative action should be in fairness and the order passed by the earlier authority cannot be reviewed only because of change of regime and in this regard, reliance has been placed on the judgment passed by the Hon'ble Supreme Court in ***Vinod Kumar Vs. State of Haryana and others 2013 (16) SCC 293***.

4. Per contra, learned counsel appearing on behalf of the respondent-State would submit that the private respondents were appointed as DSP (Wireless) on requisitions sent to the Punjab Public Service Commission after due advertisements of the said posts. The Wireless Wing of the Punjab Police was never treated as a separate cadre for the purpose of direct recruitment of DSP and further promotion as SP and other above

ranks. Neither in the advertisements (Annexures R-1 & R-2) nor in appointment letters (Annexures R-3 & P-4), it is anywhere mentioned that appointments would be made against ex-cadre posts. Rather it was specifically mentioned in the appointment letter of respondent No.5 that his services would be governed under the 1959 Rules for all purposes including seniority and further promotion. Under Appendix 'A' of the Punjab Police Service Rules, 1959, the designation of the post is mentioned as Deputy Superintendent of Police and therefore, Wireless Wing cannot be treated as a separate cadre, rather all DSPs form a uniform State cadre i.e. PPS Cadre. In other words, Punjab Police Service Rules, 1959 do not speak about any separate cadre i.e. (PAP Cadre, Intelligence Cadre, District Police Cadre and Wireless Wing) at the level of Deputy Superintendent of Police and therefore, the respondents No.5 to 8 have rightly been accorded seniority according to their induction into service over and above the petitioners.

5. Mr. P.S. Khurana and Mr. Harsh Aggarwal, learned counsel appearing for respondents No.5 & 7 and 6 respectively would submit that services of respondents No.5 to 8 are governed under the Punjab Police Service Rules, 1959 (Appendix A) and it was nowhere mentioned in their appointment letters or advertisement that their appointment would be against ex-cadre posts and therefore, they are very well members of service, which is a uniform cadre i.e. PPS cadre at State level. It was further submitted that DSP (Wireless) is only a change of nomenclature within the DSP Cadre under the Punjab Police Service Rules, 1959. The nature and character of the sanctioned posts born out of a cadre, cannot be

changed with mere change of nomenclature or any of the qualification assigned to them. DSP is one uniform cadre as per Appendix A of the 1959 Rules and there is no bifurcation or distinction as projected by the petitioners as DSP (General Cadre) and DSP (Wireless Cadre), despite the fact that they were ignored for years by designating their posts as ex-cadre posts. The posts of DSP Wireless are transferable to other units and respondent No.6 remained posted in Chief Minister’s Security, Vigilance Bureau, Punjab, SP (Investigation), Lok Pal, Punjab, SP (Detective), Taran Tarn, Commandant 13th Bn, PAP, Punjab, Chandigarh, AIG (Crime), Amritsar as well as AIG (Crime), Litigation, Punjab, Chandigarh. Vide notification dated 18.08.2010 for filling up of posts of DSP through promotional channel from the post of Inspector, the definition of ‘Inspector’ has been amended to include Inspectors of District Police Cadre, Armed Police Cadre, Intelligence Cadre and Technical & Support Services Cadre, meaning thereby, a common cadre was created.

6. I have heard learned counsel for the parties and with their assistance have perused the pleadings as well as the case laws cited. It is not disputed that the respondents No.5 to 8 were appointed as DSPs before appointment of petitioners herein by way of direct recruitment/promotion, as is evident from the tabulation given below:-

	Date of Joining		Date of Joining
Petitioner No.1	08.08.1994	Respondent No.5	14.06.1993
Petitioner No.2	30.09.1993	Respondent No.6	09.05.1992
Petitioner No.3	17.08.1994	Respondent No.7	18.03.1993
Petitioner No.4	01.01.2002	Respondents No.8	05.04.1995

It is also admitted fact that in para No.3 of the appointment letter issued to respondent No.5, it is specifically mentioned that services of

respondent No.5 shall be governed by the Punjab Police Service Rules, 1959 as amended from time to time and other rules/orders of the State Government. Further it is also admitted fact that nowhere in the advertisement or in the appointment letter, it is written that appointments of respondents No.5 to 8 are against ex-cadre/non-cadre posts.

7. The question for consideration before this Court is whether DSP (Wireless) is a separate service cadre from PPS Cadre or it is part and parcel of PPS Cadre and the mere distinction is of nomenclature of the post. Appendix 'A' of the Punjab Police Service Rules, 1959 speaks about designation of post as Deputy Superintendent of Police. It is nowhere mentioned in Appendix 'A' that posts of DSP are related to District Police Cadre, Armed Police Cadre, Intelligence Cadre or any other cadre. It just mentions about designation of post as DSP. Meaning thereby, DSP is one uniform cadre at State level under the Punjab Police Service Rules, 1959. For all these years up till 2010, the posts of DSP (Wireless) are treated by the respondent-State itself as ex-cadre/non-cadre posts, which anomaly was attempted to be rectified vide notification dated 18.08.2010 whereby while exercising powers conferred by proviso to Article 309 of the Constitution of India, Government of Punjab was pleased to amend the Punjab Police Rules, 1959 whereby clause (d) of Rule 2 was substituted as under:-

“(d) “Inspector” means an Inspector of Police and shall include Inspectors of District Police Cadre, Armed Police Cadre, Intelligence Cadre and Technical and Support Service Cadre.”

Further in Rule 6, for sub rule (a), following sub rule was substituted:

“(1) Recruitment to the Service shall be made as under:-

(a) twenty per cent by direct appointment; and

(b) eighty per cent by promotion;

Provided that appointment to the eighty per cent posts in the service by promotion shall be made in the following manner, namely:-

(i) sixty per cent of the eighty per cent posts shall be filled up from amongst the Inspectors of District Police Cadre, who have an experience of working as such for a minimum period of six years;

(ii) twenty four percent of the eighty percent posts shall be filled up from amongst the Inspectors of Armed Police Cadre, who have an experience of working as such for a minimum period six years;

(iii) eight percent of the eighty percent posts shall be filled up from amongst the Inspectors of Intelligence Cadre, who have an experience of working as such for a minimum period six years.

(iv) eight percent of the eighty percent posts shall be filled up from amongst the Inspectors of Technical and Support Service Cadre, who have an experience of working as such for a minimum period six years.”

8. A conjoint reading of principal Punjab Police Service Rules and amended Act of 2010 would reveal that the post of DSP (Wireless) was never a separate cadre, rather it is an integral part of the PPS Cadre. In fact, vide amendment of 2010 in the 1959 Rules, the anomaly prevalent since 1990 has been rectified and the Wireless Wing (Technical and Support Service Cadre) was placed at the same pedestal as that of District

Police Cadre. The intent of the legislature in that regard is very much clear as while amending the definition of Inspector in Rule 2 (d) of 1959 Rules, the posts of '*Inspectors*' included Inspectors of District Police Cadre, Armed Police Cadre, Intelligence Cadre and Technical and Support Service Cadre, meaning thereby, a common cadre was created for promotion from the post of Inspector to the post of Deputy Superintendent of Police as per the percentage prescribed in Rule 6 (a) of Rules *ibid*. Therefore, arguments of learned senior counsel for the petitioners to the effect that services of the private respondents cannot be considered to be an appointment to the service of DSP under the 1959 Rules and that there is no merger of cadre of DSP Wireless Wing with DSP general line are not sustainable. When there is no distinction of DSPs qua cadre prescribed in the 1959 Rules, question of merger does not arise. Even if for the sake of arguments, it is admitted that private respondents were appointed against the ex-cadre posts of DSPs, that itself would lead to a preposterous situation, as in that eventuality, there would be no promotion of the private respondents from the post of DSP to SP (which is a cadre post) and the Inspectors from the cadres of District Police, Intelligence Wing, Punjab Armed Police and Technical and Support Service Cadre would eventually lead march over private respondents with the passage of time and there would be no surprise if one day they would be holding the charge of Superintendent of Police and the private respondents would be working under them.

9. The case laws relied upon by learned senior counsel in ***S.P. Shivprasa Pipal*** and ***Vinod Kumar*** (supra) are not applicable to the facts

of the instant case and are distinguishable on the ground that it is not a case of merger of cadre as has been enumerated herein above. Vide orders, which are under challenge, the respondent-State has merely granted seniority to the private respondents from the date when they were born in their feeder cadre of DSP (PPS Cadre), which is a uniform cadre at State level. The decision so taken by the respondent-State is founded on notification dated 18.08.2010 issued by the Governor of Punjab while exercising the powers under proviso to Article 309 of the Constitution of India. Furthermore, the petitioners herein have failed to establish that action of the respondent-State in granting seniority to the private respondents in their feeder cadre is illegal, arbitrary, unjust, unfair and based on conjectures and surmises.

10. Similarly, reliance placed by the learned senior counsel on the judgments rendered by the Hon'ble Supreme Court in *Arun Kumar's case* (supra) to the effect that a third mode of appointment, cannot be opened when there are two sources of appointment also does not come to the rescue of petitioners, as no third mode of appointment was introduced. It is an admitted fact that respondents No.5 & 6 have been recruited DSP by way of direct recruitment and respondents No.7 & 8 became DSP on promotion from the post of Inspector. Therefore, they were inducted into PPS service only from two sources i.e. direct and by way of promotion as has been provided under 1959 Rules amended from time to time and recently on 18.08.2010. Since this court has held that the private respondents are members of PPS service and their services are governed by Punjab Police Service Rules, 1959 for all intents and purposes, they have

rightly been granted seniority in their feeder cadre from the date of their induction into service.

11. The arguments qua different qualification and different nature of duties also would cut no ice, as the basic qualification for both DSP general line and DSP (Wireless) is a degree in graduation. It is on account of the fact that DSP appointed in Wireless Wing has to supervise and look after the technical work, degree in telecommunications engineering, electrical communication engineering or electrical engineering/computer science from a statutory university or equivalent degree has been kept as basic eligibility qualification. The higher qualification of Post Graduate degree in Physics with Electronics/Wireless as a special subject from a statutory university is an alternative qualification and that is why word 'OR' is used, meaning thereby, candidates who are not graduated in aforesaid streams but are post graduate in Physics with Electronics/Wireless as a special subject would also be eligible. It is settled position of law that '*eligibility*' and '*suitability*' have different connotations. Mere eligibility does not confer right upon a person to be appointed. It is the suitability of a candidate for a particular post which is adjudged by the recruiting agency by way of a selection process. It is again a settled position of law that in order to adjudge suitability of candidates for the posts advertised, the respondent-State is always free to give preference to candidates with higher qualifications. Further, the private respondents have gone through the basic training course as well as other training courses. They remained posted in security of Chief Minister, Intelligence Wing, Vigilance Bureau, Headquarters, Incharge/CID

Training School etc. etc. and therefore, it cannot be said that they have no knowledge of police administration, investigation and other practical knowledge.

12. The argument with regard to non-adherence of principles of natural justice also pales into insignificance as the order dated 20.03.2017 was passed on the representation of respondent No.5 keeping in view the notification dated 18.08.2010 and therefore, there was no requirement for affording opportunity of hearing to the petitioners herein. The respondent-State after casting tentative seniority list duly called for the objections of the affected parties and has also dealt with the objections raised by the petitioners herein to the said tentative seniority as well as affording them personal opportunity of hearing. Therefore, it cannot be said that principles of natural justice were not adhered to while passing the order dated 01.11.2017.

13. In view of the aforesaid facts and circumstances, this court does not find any merit in the prayers sought by the petitioners. Consequently, the instant petition stands dismissed being devoid of merit.

(JAISHREE THAKUR)
JUDGE

August 26, 2022
Pankaj*

Whether speaking/reasoned Yes/No

Whether reportable Yes/No