

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

CWP No. 25242 of 2021 (O&M)

Reserved on: May 4, 2022

Date of Decision: May 16, 2022

ASI Satish Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Aditya Yadav, Advocate
for the petitioner.

Ms. Upasana Dhawan, AAG Haryana.

JAISHREE THAKUR, J.

1. The instant writ petition has been filed under Article 226/227 of the Constitution of India for issuance of a writ, order or direction, especially in the nature of Certiorari for quashing the impugned orders dated 22.10.2021 (Annexure P-10) and 26.10.2021 (Annexure P-11) passed by respondent No.3 i.e. the Commissioner of Police, Gurugram, vide which the lien/seniority of the petitioner is fixed in District Police, Gurugram from HAP, Madhuban, being in violation of cadre and against the instructions dated 15.12.1995, 22.09.2006 and 12.11.2012 (P-1 to P-3 respectively) issued by Director General of Police (DGP), Haryana, as the petitioner passed B-1 test as well as got confirmation on the post of Head Constable in HAP Madhuban. It has been further prayed that lien/seniority of the petitioner in HAP Madhuban be restored.

2. In brief, the facts of the case are that the petitioner herein was

enrolled as Constable in Haryana Police on 01.12.2003 in District Police Madhuban. After passing B-1 test, the petitioner was deputed in the Lower School Course (LSC) from Haryana Armed Police (HAP), Madhuban and after being brought on list C-1, he was promoted on the post of Head Constable vide order dated 04.12.2012 (Annexure P-5) and confirmed as such, by an order dated 22.06.2015 (Annexure P-7). The petitioner was promoted to the rank of Officiating Assistant Sub-Inspector vide order dated 04.06.2015 (Annexure P-6). The petitioner was transferred from HAP, Madhuban to District Police, Gurugram under 3% sports quota along with other employees by the transfer order dated 15.11.2017 (Annexure P-9), in view of the Standing Order No.100 dated 07.11.2003 (Annexure P-8). Thereafter, the lien/seniority of the petitioner was re-fixed in District Police, Gurugram from HAP, Madhuban by orders dated 22.10.2021 and 26.10.2021 (Annexures P-10 and P-11) passed by respondent No.3. The grievance of the petitioner is that re-fixation of his lien/seniority in District Police, Gurugram from HAP, Madhuban, by the orders dated 22.10.2021 and 26.10.2021 is against the instructions dated 15.12.1995, 22.09.2006 and 12.11.2012 (Annexures P-1 to P-3) by agitating that his lien is in HAP, Madhuban and not in District Police, Gurugram, as the petitioner had passed B-1 test as well as promoted to the post of Head Constable in HAP, Madhuban. The petitioner also submitted his representation dated 22.11.2021 (Annexure P-12) to respondents No.2 and 3, but the same was not considered. Hence, the instant writ petition.

3. Notice of motion was issued in the matter, pursuant to which

appearance has been caused on the behalf of the respondents.

4. Mr. Aditya Yadav, learned counsel appearing on behalf of the petitioner, would argue that as per instructions dated 15.12.1995, 22.09.2006 and 12.11.2012, the lien of the employee shall remain in the district from where the employee passed the LSC or got confirmation on the post of Head Constable. It is contended that by the impugned orders dated 22.10.2021 and 26.10.2021, the lien/seniority of the petitioner has been re-fixed, by relying upon the Standing Order No.100 dated 07.11.2003, which Standing Order is basically a transfer policy for constables, especially recruited under 3% sports quota, so as to promote the sports in the Police Department. While relying upon order dated 28.09.2020 passed by the DGP, Haryana in the case of SI Kanwar Singh and order dated 22.12.2020 passed by IGP, Ambala Range, Ambala Cantt., in the case of SI Harpal Singh, wherein it has been held that lien will be considered in the District from where the official was enlisted in List B-1 or the official was confirmed on the post of Head Constable, it is argued that the lien of the petitioner will remain in HAP Madhuban, as the petitioner had passed the LSC and confirmed as Head Constable in HAP, Madhuban. In support of his arguments, learned counsel for the petitioner would also rely upon judgment rendered by the Apex Court in the case of ***State of Haryana and others vs. Kashmir Singh and another, 2010(13) SCC 306.***

5. Per contra, Ms. Upasana Dhawan, learned AAG Haryana, appearing on behalf of the respondents would argue that with the object to regulate transfers from HAP to District Police/GRP of those constables,

who are specifically recruited on the basis of their achievement in the field of sports, a new system of transfer of sportsmen from HAP to District Police/GRP has been adopted vide Standing Order No.100 dated 07.11.2003 (Annexure P-8). It is contended that as per the said Standing Order, Constables who are sportsmen and have been recruited under 3% quota or will be recruited in future, will be transferred from HAP to District Police as per their seniority only after attaining the age of 35 years. Their seniority and promotion etc. will be maintained in HAP till their transfer from HAP to District Police/GRP and their seniority shall be re-fixed according to their ranks in LSC, but they shall retain their present rank till their immediate juniors are also promoted to those ranks. The said Standing Order has also clarified that those who are unwilling for transfer to District Police, may opt to remain in HAP till their promotion to the rank of Inspector and the option once exercised in this regard, shall be final. It is submitted that as per the provisions contained in the said Standing Order, the lien of the petitioner herein was fixed in Police Commissionerate, Gurugram and his seniority has been re-fixed in Police Commissionerate, Gurugram in the rank of HC and ASI according to his rank in LSC. As such, the orders dated 22.10.2021 and 26.10.2021 passed by respondent No.3 and as challenged in the instant writ petition are not contrary to the instructions, as relied upon by the petitioner, as the petitioner was recruited as sportsmen constable and his transfer from HAP to District Police is governed by the Standing Order dated 07.11.2003.

6. I have heard learned counsel for the parties, apart from perusing

the pleadings of the case.

7. The short question involved in the present case is, whether the petitioner is entitled for the lien/seniority in HAP, Madhuban and not in District Police, Gurugram?

8. The facts in the present case as regards appointment, promotion and transfer of the petitioner are not disputed. The grievance of the petitioner is that impugned orders dated 22.10.2021 and 26.10.2021 passed by respondent No.3 re-fixing his lien/seniority in District Police, Gurugram from HAP, Madhuban is not as per the instructions dated 15.12.1995, 22.09.2006 and 12.11.2012 (Annexures P-1 to P-3) as issued by the DGP, Haryana; order dated 28.09.2020 as passed in the case of SI Kanwar Singh (Annexure P-13); order dated 22.12.2020 as passed in the case of SI Harpal Singh (Annexure P-14); and law laid down by the Apex Court in the case of ***State of Haryana (supra)***. Whereas, on the other hand, the stand of the respondents is that orders dated 22.10.2021 and 26.10.2021 as passed by respondent No.3 are in accordance with the provisions of Standing Order No.100 dated 07.11.2003 (Annexure P-8).

9. A perusal of the instructions dated 15.12.1995, 22.09.2006 and 12.11.2012 (Annexures P-1 to P-3) as issued by the DGP, Haryana would go on show that these instructions have been issued in order to avoid imbalances and administrative problems. In the instructions dated 15.12.1995, it has been directed that the Head Constables, who are confirmed in a particular range under normal circumstances, will not be transferred to another Range to enable them to get undue benefit, which may

accrue to them on account of their seniors having not been promoted confirmed in their range to which they are confirmed. If in any exceptional circumstances, transfer of the above nature becomes essential, the Head Constables so transferred will be treated as on deputation and will retain their original seniority in the parent Range from where transferred.

10. In the instructions dated 22.09.2006, as issued in compliance of the judgment dated 07.02.2006 as passed in **CWP No.18904 of 2005 titled as Megh Pal and others vs. State of Haryana**, it had been directed that the case of the petitioners therein, for determination of their cadre, be decided as per following criteria, which is reproduced as under:-

*“1. The cadre of constables will be the district/unit in which they were initially appointed/enrolled. **However, cadre of Constables enlisted in HAP/Commando will be the district/unit to which they were transferred permanently from HAP or Commando as per policy/standing order.***

2. The cadre of the Constables promoted as Head Constables but not confirmed as such will be district/unit in which they were initially appointed/enrolled.

3. The cadre of Head Constables will be the district/unit in which they were confirmed as Head Constable.

4. The cadre of direct P/ASI or PSI will be the unit in which they joined as their first appointment.”

11. Vide instructions dated 12.11.2012, Lien and Seniority Policy was issued to decide the lien and seniority of the official of executive police force and executive clerical cadre of the newly established Commissionerate of Police Ambala, Panchkula and Karnal Range by transferring Kaithal,

Kurukshetra & Yamunanagar districts from the erstwhile Ambala Range and district Karnal from Rohtak range to the newly created Karnal Range, Karnal, which instructions are not applicable to the case of the petitioner, as the petitioner does not belong to executive police force and executive clerical cadre and he belongs to HAP, Madhuban, and that this Policy was issued on separation of the Police Commissionerate and Range in Haryana State in the above Districts.

12. Learned counsel for the petitioner has sought to place reliance on order dated 28.09.2020 (Annexure P-13) as passed by Director General of Police, Haryana, in respect of SI Kanwar Singh, to argue that the department has always followed the policy and principle that the lien of an *upper subordinate* will be considered from the district where from the official was enlisted in List B-1. However, the said case would have no relevance considering it was not a case of transfer From HAP to District Police nor was it pertaining to a sportsmen appointed as constable with HAP. Similarly, the reliance on Annexure P 14 would also have no bearing to the facts in hand .

13. In the present case, the petitioner herein was enrolled as Constable under the sports quota of 3% and joined as such, in Haryana Armed Police (HAP), Madhuban. Standing Order No.100 dated 07.11.2003 is available on record as Annexure P-8, vide which it has been decided that the Constables sportsman, who have been recruited under 3% quota or will be recruited in future as Constable's sportsmen, will be transferred from HAP to district Police/GRP as per their seniority, only after attaining the

age of 35 years. Their seniority and promotion etc. will be maintained in HAP till their transfer from HAP to District Police/GRP. Upon transfer to District/GRP etc., their seniority shall be re-fixed according to their ranks in LSC, but they shall retain their present rank till their immediate juniors are also promoted to those ranks. All those unwilling for transfer to District Police/GRP may opt to remain in HAP till their promotion to the rank of Inspector. Option once exercised in this regard shall be final. It is also specified in the said Standing Order that these guidelines/instructions will supersede all transfer policy/instructions regarding transfer of sportsmen constables from HAP to District Police/GRP.

14. A perusal of Annexure R/1, which is a letter written by the petitioner himself to his department would show that by the said letter he had requested that he may please be sent to the HAP to District Police Gurugram as he has crossed the age of 35 years. Consequent upon his request, vide order dated 15.11.2017 (Annexure P-9), the petitioner was transferred from HAP, Madhuban to District Police, Gurugram. In this writ petition as well as during the course of arguments, learned counsel for the petitioner has taken the plea that it is nowhere mentioned in the Standing Order that Lien of Constable will be re-fixed, whereas from the discussion in the preceding paragraphs, this argument of learned counsel for the petitioner is not sustainable, as the Standing Order No.100 dated 07.11.2003 which is available on record as Annexure P-8 is very much clear in this regard.

15. Learned counsel for the petitioner has laid great emphasis upon

the judgment rendered in *State of Haryana (supra)*, where the Supreme Court has held that in case of transfer of Constables and Head Constables from one district to another district, the seniority of Police Constables and Head Constables at the district level shall be maintained in the parent district, despite their transfer. As such, the ratio of law, as laid down by the Apex Court in the said case, is not applicable to the facts and circumstances of the present, since the petitioner in the present case was enrolled as a Constable and subsequently confirmed as Head Constable in HAP (Madhuban) and not in any district.

16. In view of Standing Order No.100 dated 07.11.2013 (Annexure P-8), which is applicable to the petitioner being enrolled as Constable under the sports quota in Haryana Armed Police (HAP), Madhuban, upon his transfer to District/GRP etc. his seniority shall be re-fixed according to his rank in LSC, but will retain his present rank till his immediate juniors are also promoted to those ranks.

17. In view of the foregoing discussion, this court finds no ground to interfere in the impugned orders, which are legal and valid one and have been passed in accordance with the Standing Order, as applicable to the petitioner. Apropos, the instant petition is hereby dismissed, being devoid of any merits.

May 16, 2022
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned : Yes
Whether Reportable : No