

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

CWP-3944-2016 (O&M)

Reserved on 13.12.2022

Date of Decision: 23.02.2023

Gagandeep Singh and others Petitioners

Versus

State of Punjab and others Respondents

II. CWP-8631-2016 (O&M)

Tejinder Singh and others Petitioners

Versus

State of Punjab and others Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Kamaldip Singh Sidhu, Advocate,
for the petitioners No.4, 5, 7, 8, 20, 67 and 72
in CWP No.3944 of 2016.

Mr. Anil Kumar Bhardwaj, Advocate,
for remaining petitioners in CWP No.3944 of 2016 and
for the petitioners in CWP No.8631 of 2016.

Mr. Sehaj Bir Singh Aulakh, AAG, Punjab.

JAISHREE THAKUR.J

1. By this common judgment, this Court proposes to dispose of two writ petitions i.e. ***CWP No.3944 of 2016, Gagandeep Singh and others Versus State of Punjab and others***, and ***CWP No.8631 of 2016, Tejinder Singh and others Versus State of Punjab and others***, since facts are similar and a common question of law is involved. For sake of brevity, facts are taken from CWP No.3944 of 2016.

2. By way of present writ petition filed under Articles 226/227 of the Constitution of India, the petitioners herein seek a writ in the nature of mandamus or any other appropriate writ, order or direction to be issued to shift them in District Police in terms of instructions issued in the year 1992 (Annexure P-1) and till then, no direct recruitment be made for District Police.

3. In brief, the facts are that the petitioners herein are working as Constables in Commando Battalions in Punjab. They were directly recruited in the year 2006-07 pursuant to a selection process which was initiated by the State Government. At the time of their appointment, policy dated 12.11.1992 (Annexure P-1) was in effect which stipulated that the recruits appointed as Constables would, at the first instance, work in Punjab Armed Police (PAP) and thereafter would be shifted to the Commando Battalions and then to the District Police. The procedure for recruitment of Constables and further transfer to the districts was specified therein. The policy stipulated that after undergoing initial training, they will be put through three months' Commando training and thereafter they would be sent to PAP Battalions and after serving for 2 years in PAP (excluding the training period), they would be transferred to Commando Battalions where they would undergo two months' Commando Refresher course. They would serve for two years in the Commando Battalions and thereafter, would be shifted to District Police, GRP/Intelligence Wing etc. Subsequently, instructions dated 08.09.1997 (Annexure P-2) were issued wherein it had been decided as a matter of policy that all general vacancies of Constables in the Districts shall be filled up by transfer of trained Constables from Commando Battalions. This policy

was followed as the Director General of Police, Punjab, vide letter dated 11.08.2009 (Annexure P-3), issued directions to transfer all available commando trained Constables to the District Police against the existing vacancies. Subsequently, a policy decision was taken on 18.08.2009 wherein it had been decided that *(i) all 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.*

4. The petitioners were initially recruited in the Indian Reserve Battalions in the year 2006-07 and after having rendered more than 8 years service in IRB, became eligible for selection to Commando Formation and thus claim that they are entitled to be transferred to the District Police in terms of the instructions dated 12.11.1992 and 08.09.1997. However, after the implementation of the Punjab Police Act, 2007, which came into force as on 20.02.2008, instead of transferring the petitioners in the District Police, the respondents chose to fill up 1214 posts of Constables by issuing an advertisement on 28.02.2010. Against the said advertisement, the petitioners along with others, approached the Director General of Police, Punjab, by way of representation dated 11.03.2010, however, when they get no response, they filed CWP No.7001 of 2010 and other writ petitions, for quashing of that advertisement dated 28.02.2010 for appointment of Constables directly in District Police, which writ petitions were disposed of by a common order dated 24.04.2012 on a statement given by the Assistant Advocate General,

Punjab based upon an affidavit of the Assistant Inspector General of Police that all Constables who had joined the Armed Wing prior to the notification of the Punjab Police Act, 2007 and fulfill all parameters as laid down in the policy of 1992, would also be transferred to the District Police. In spite of the affidavit so filed, the petitioners were not sent to the District Police, which led to the filing of COCP No.167 of 2013, however, it was disposed of without passing any orders thereon.

5. The petitioners herein are thus aggrieved against their non-shifting from the Commando Battalions to the District Police in terms of instructions dated 18.08.2009.

6. Learned counsel appearing on behalf of the petitioners, would submit that after having been appointed in the year 2007, the petitioners were entitled to be transferred to the District Police in terms of the instructions dated 18.08.2009. It is argued that when they were appointed, instructions dated 12.11.1992 were in force which clearly spelt out that the recruits would be shifted to the Commando Battalions and then to the District Police. The petitioners had already raised a dispute for allocation of cadres and transfer to the District Police by way of various writ petitions, wherein an affidavit had been filed by the Assistant Inspector General of Police, in which it had been deposed that the Committee had recommended that the Constables who had joined Armed Wing before the enactment of the Police Act, 2007 would be transferred to the District Police provided they fulfill all conditions as laid down under the rotational policy of 1992. It is further submitted that the persons are now being appointed by virtue of various advertisements issued

and the newly appointed Constables would gain seniority in the District Police if the petitioners are not transferred in terms of the instructions dated 18.08.2009. Counsel would also urge that after the disposal of the writ petition No.7001 of 2010, certain Constables have been transferred, whereas the claim of the petitioners is not being redressed and, therefore, there is discrimination.

7. Learned counsel for the petitioners would further submit that even after coming into force of the aforesaid Punjab Police Act, 2007, the respondents have taken a policy decision dated 18.08.2009 for transferring police personnel, who had been recruited under the 1992 policy and had already been sent to the Commando Battalions before the cut-off date of 30.07.2009 and that they would be gradually transferred to the District Police subject to the fulfillment of prescribed conditions and, therefore, as on date, the petitioners would be entitled to be transferred to the District Police. He would rely upon the judgment rendered in CWP No.3801 of 2015 and connected matters.

8. *Per contra*, learned counsel appearing on behalf of the respondents would submit that a similar writ petition came up for hearing before the Division Bench of this Court in CWP No.6600 of 2003 titled as ***HC Jasbir Singh and others Versus State of Punjab***, which was dismissed vide order dated 04.12.2006. It is argued that the Division Bench, while taking note of the contentions, held that the decision to transfer Constables recruited to District Police was not based upon a decision taken by the Government. It is further argued that the case of the petitioners herein was

considered and they were informed by passing a speaking order that they were not eligible for transfer to the District Police as they did not fulfill the parameters as specified in the policy dated 12.11.1992 on the date when the Punjab Police Act, 2007 came into force since they had not completed 2 years mandatory service in PAP/IRB as on 20.02.2008.

9. I have heard learned counsel appearing on behalf of the petitioners as well as learned State counsel and have gone through the pleadings of the case.

10. The entire edifice of the case of the petitioners is based on Annexure P-1 which is a memorandum issued from the office of the Director General of Police on 12.11.1992. The proposal was to make a Recruiting Board for appointment of Constables. The relevant para of the instructions reads as under:-

“Initially, all the candidates shall be appointed in the P.A.P. After undergoing initial training all the trainees will be put through three months Commando Training. Thereafter, they would be sent to P.A.P. BNs and after serving for two years in the P.A.P. (excluding training period) they would be transferred to the Commando BNs. They shall undergo 2 months Commando Refresher course. The constables trained in the Commando Course shall stay in the Commando BNs for two years and thereafter shall be shifted to the district Police, G.R.P., Intelligence Wing etc. The period of their stay in P.A.P. or in Commando BNs can be reduced under the orders of the D.G.P. if the necessity so arises due to shortage of Constables in the districts.

However, I.G./G.R.P. and Distt. S.S.P. shall continue to recruit as per standing orders issued by this office vide No.29322-52/E-3 dated 30.10.1990, the wards of deceased Police officials under the priority list instructions.”

In terms of aforesaid policy of 1992, the recruits were required (i) to pass a training course of 9 months; (ii) to pass three months Commando Course; (iii) to complete two years service in PAP/IRB Battalions; (iv) to undergo 2 months Commando Refresher Course; and (v) thereafter to stay in the Commando Battalions for two years. In this manner, the petitioners were required to complete a total period of 5 years in the manner mentioned above to become eligible for transfer in the District Police Cadre, which period was not completed as they were recruited as Constables in the year 2007 when the Punjab Police Act, 2007 came into force. In fact when the Act of 2007 came into force, they had not even completed the stipulated period before they could be considered for transfer even to the Commando Battalion. A large number of writ petitions were filed which were disposed of by a common order dated 24.04.2012 largely on the strength of an affidavit furnished that all petitioners who were eligible as per the instructions of the DGP, Punjab, dated 18.08.2009 would be transferred to the District Police and the Constables who had joined the Armed Wing prior to the notification of the Punjab Police Act, 2007 and fulfill all parameters governing transfer from Commando Battalions to District Police would also be transferred subsequently. The Contempt Court did not pass any order on the contempt petition taking note of the fact that the petitioners were found ineligible on account of lesser tenure with the PAP. However, after the Act of 2007 came into force, respondents have taken a policy decision dated 18.08.2009 for

transferring police personnel who had been recruited as per 1992 policy and had already been sent to the Commando Battalions before the cut-off date i.e. 30.07.2009. In the said policy, it was stipulated as under:-

“i) all constables joining the commando Bns after 30.07.09 shall not be transferred to district police in future.

ii) and all constables working in commando Bns. as on 30.07.09 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.”

Therefore, in terms of the policy decision taken, the case of the petitioners is to be considered for transfer to the District Police in case it is established that the petitioners were working in the Commando Battalions as on 30.07.2009. This policy decision is also reflected in the affidavit as filed by the AIG in CWP No.21000 of 2011, a portion of which is reproduced as under:-

“That as per DGP Punjab’s instructions dated 18.8.2009. It was conveyed that all constables working in the Commando Bns as on 30.07.2009 and fulfilling the parameters of policy of 1992 shall be transferred gradually to District Police subject to fulfillment of prescribed conditions.”

11. The written statement as filed only reflects that the case of the petitioners could not be considered as they had not completed their two years mandatory service in PAP/IRB as on 20.02.2008. In fact their case ought to have been considered in the light of the subsequent instructions issued after the promulgation of Punjab Police Act, 2007 wherein it had been decided that those appointed under the 1992 policy and were serving in the

Commando Battalions as on 30th July, 2009 would also be transferred. As a matter of fact certain Constables recruited under the 1992 policy have already been transferred as would be evident from the affidavit filed in Court dated 08.05.2017.

12. A bunch of petitions came up for hearing before a Single Bench of this Court in ***CWP No.3801 of 2015, Raju Singh and others Versus State of Punjab and others, decided on 04.07.2019***, where in a similar situation Constables, who were appointed under the 1992 policy, sought their transfer to the District Police. The Single Bench allowed the said writ petition. It was held that:-

“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 own 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 interdepartmental 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”.

13. The judgment as relied upon by counsel for the petitioners would be applicable to the facts and circumstances of the present case whereas the judgment in ***HC Jasvir Singh's case (supra)*** rendered by the Division Bench would not be applicable in the instant case since the State itself has taken a policy decision on 18.08.2009 laying down certain conditions for transferring the Constables to District Police. This policy was not in force when the Division Bench decided the case in 2006.

14. Therefore, the petitioners' case for transfer to the District Police is to be considered in the light of the policy decision dated 18.08.2009 taken by the State within a period of three months from the date of receipt of

certified copy of this judgment, and in case, it is found that the petitioners are eligible, then respondents are directed to adjust the petitioners in the District Police on priority basis, within one month thereafter.

15. Writ petitions stand allowed in the aforesaid terms.

(JAISHREE THAKUR)
JUDGE

23.02.2023

sanjeev

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No