

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA-201-2017 (O&M)
Reserved on: 11.04.2023
Date of Decision: 25.04.2023

Surinder Pal Singh Appellant
Vs.
Rajpal Singh and others Respondents

CORAM: HON'BLE MR JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MRS JUSTICE SUKHVINDER KAUR

Present Mr. Ashwani Kumar Chopra, Senior Advocate with
Mr. Vidul Kapoor, Advocate for the appellant.

Mr. Deepak Gupta, Advocate for respondent No.1.

Mr. Aman Dhir, DAG, Punjab.

M.S. RAMACHANDRA RAO, J.

This Letters Patent Appeal is preferred against judgment
dt.30.11.2016 in *CWP-20423-2012* passed by the learned Single Judge.

The said Writ Petition has been filed by respondent No.1 herein
against the appellant and the other respondents challenging the order
dt.21.09.2011 (P- 10) passed by the Deputy Secretary to the Government of
Punjab, Revenue Department (respondent No.2 herein) and order
dt.23.08.2012 (P-13) passed by Financial Commissioner (respondent No.3),
affecting his seniority over the appellant.

The background facts

In the year 1996, a new Revenue Division by name Faridkot
Division had been carved out of Ferozepur Revenue Division.

The appellant was appointed on 30.4.1998 as clerk in office of
Commissioner, Ferozpur while the respondent no.1 was appointed a clerk in
office of Dy.Commissioner, Mansa on 24.3.1998.

The Financial Commissioner (respondent No.3 herein) decided on 01.04.1999 (R-4) to temporarily depute some staff from Ferozepur Division to the newly created Faridkot Division.

Circumstances leading to posting of appellant and his permanent absorption in office of Commissioner, Faridkot

On 02.04.1999, the Commissioner, Ferozepur deputed some employees of the Ferozepur Division temporarily to work in the office of the Faridkot Division initially for a period of 3 months, including one Kishan Lal Junior Assistant.

The said Kishan Lal and the appellant jointly made a request (R-4/3) for mutual transfer/swap of their posts. Kishan Lal wanted to go back to Ferozepur and the appellant wanted to come to Faridkot. This was accepted by respondent No.4 vide R-4/4 dt.2.4.2003 and the swap happened, and *the appellant came to be posted temporarily in the office of Commissioner, Faridkot as Junior Assistant on 02.04.2003*. The said order stated that the appellant will not be entitled to any deputation allowance as he was temporarily deputed in the office of the Commissioner, Faridkot division, Faridkot.

Later on 07.09.2007 (P-3), respondent No.2 transferred 14 posts from offices of the Commissioner, Ferozepur Division, Ferozepur, Dy.Commissioner, Mansa, Dy.Commissioner, Bathinda, and Dy.Commissioner, Faridkot to the office of Commissioner, Faridkot Division, Faridkot. In that list, the name of both Mohinder Singh, a Junior Assistant working in office of Commissioner Office, Ferozepur and the appellant also working there, were mentioned.

The said order dt.07.09.2007 (P-3) specifically stated that on the transfer of the said posts held by 14 individuals, including Mohinder Singh and the appellant from Faridkot Division, their posts will be abolished from their respective departments, and salary of the transferred employees would be drawn from the office of the Commissioner, Faridkot Division, Faridkot.

Thus, the appellant got absorbed permanently in the office of respondent No.4 at Faridkot Division and became a member of the cadre in the office of respondent No.4 on 7.9.2007.

But in the meantime, Mohinder Singh had taken voluntary retirement on 31.05.2007, even before issuance of P-3 proceeding dt.07.09.2007.

Circumstances leading to posting of respondent no.1 and his permanent absorption in office of Commissioner, Faridkot

Respondent No.1/Writ Petitioner, who had been appointed as clerk in office of Dy.Commissioner, Mansa on 24.3.1998, and was working there, gave an application on 30.03.2007 (R-4/5) requesting respondent No.4 to take him on deputation in his office against post of Mohinder Singh, who was to retire on 31.5.2007 on compassionate basis, on the ground of certain family circumstances.

Thereupon, vide Order dt.09.04.2007 (P-1), respondent No.4 *deputed* respondent No.1 to his office *on temporary basis till further orders*. The said order specifically stated that he would not claim any deputation allowance, and his salary would be drawn and disbursed to him in the office of Dy. Commissioner, Mansa.

Two months thereafter in November,2007, the respondent No.3 took note of the retirement of Mohinder Singh on 31.05.2007, the fact that his

post of clerk was vacant in office of Commissioner, Faridkot Division, Faridkot, and the fact that respondent No.1 had already been deputed to work as Junior Assistant in Faridkot from 09.04.2007, and issued *proceedings dt.14.11.2007(P-4) appointing respondent No.1 regularly against the post vacated by Mohinder Singh Junior Assistant* at office of Commissioner, Faridkot Division, Faridkot .

The Seniority dispute

On 11.09.2008, a *tentative* seniority list was prepared of Junior Assistants and objections were invited thereto, and the appellant filed objections to the said seniority list since respondent No.1 had been shown as senior to him therein.

However, the said objections were not accepted and on 19.03.2010 vide annexure P-5, a *final* seniority list was prepared in which respondent No.1 was shown as senior to the appellant.

Within 3 days, proceedings dt.22.03.2010 (P-6) were issued *promoting respondent No.1* as Senior Assistant in the office of the Commissioner, Faridkot Division, Faridkot.

The appellant then filed representation/objection on 15.09.2010 (P-7), not only against the promotion given to respondent No.1, but *also questioning the final seniority list*.

The order dt.21.9.2011 (P-10) of respondent no.3

Thereupon respondent No.3 issued proceedings on 21.09.2011 (P-10) for reconsideration of the promotion given to respondent No.1.

He held that the seniority was given to respondent No.1 on the basis of his service in the previous office, but as per clause 8 of the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994,

seniority has to be determined as and when a person is regularly appointed; so seniority has to be given from the date of his joining in the office of the Commissioner, Faridkot Division regularly i.e.14.11.2007 only; since the appellant had been posted regularly on 07.09.2007, appellant is senior to respondent No.1. He therefore observed that the appellant has to be given seniority over respondent No.1.

CWP-19467-2011

This proceeding was challenged by respondent No.1 before this Court in *CWP-19467-2011* which was disposed of on 10.05.2012 setting aside the order dt.21.09.2011 (annexure P-10) and directing respondent No.2 to consider the issue after hearing both the parties.

Respondent No.1 again made a representation (P-12) to respondent No.3 thereafter.

Order dt.23.8.2012 (P-13) of respondent no.3

Vide order dt.23.08.2012 (P-13), respondent No.3 rejected the claim of respondent No.1 *after hearing both the parties on 16.07.2012* and after perusing the entire case record.

After noting the respective dates of regular appointment of the appellant as well as respondent No.1, and noting that the appellant had been permanently absorbed in the office of Commissioner, Faridkot w.e.f. 07.09.2007 and respondent No.1 was permanently absorbed there subsequently on 14.11.2007 and relying on Rule 11 of the Punjab Commissioner's Office (State Service Class III) Rules, 1976 (which provides that seniority *inter se* of members of service in each cadre should be determined by their continuous appointments to that cadre of the service, and the similar provisions contained in the 1994 Rules referred to supra), he

opined that even though respondent No.1 had joined Government service earlier than the appellant, *Assistants form a separate cadre within the establishment of Commissioner's office*, and within the cadre of Assistants in the Commissioner office the appellant was senior to respondent No.1 and so the order dt.21.09.2011 (P-10) passed by respondent No.3 did not require any review or revision.

Challenging the same, respondent No.1 filed *CWP-20423-2012* before this Court.

The order in the Writ Petition CWP-20423-2012

The learned Single Judge allowed the Writ petition and set aside the orders dt. 21.09.2011 (P-10) and dt.23.08.2012 (P-13).

The learned Single Judge noted that the respondent No.1/writ petitioner was working in the office of the Commissioner, Ferozepur Division, Ferozepur before he was permanently joined on 14.11.2007 in the office of Commissioner, Faridkot Division.

This is factually incorrect since there is no dispute that he was working in the office of Dy.Commissioner, Mansa prior to his posting in office of Commissioner, Faridkot.

She noted at one place in the judgment that the appellant had filed objections on the seniority of respondent No.1, but later she erroneously held that seniority of respondent No.1 had never been challenged by the appellant.

This is also factually wrong since the appellant had filed objections vide R-4/10 dt.24.9.2008 to the tentative seniority list dt.11.09.2008 and had also filed objections vide P-7 dt.5.9.2010 to the final seniority list as well as the promotion of the respondent no.1.

Further in spite of the order dt.23.08.2012 (P-13) passed by respondent No.3 specifically stating that *both the parties were heard on 16.7.2012*, she gave a finding that the order of promotion of respondent No.1 had been cancelled without giving any opportunity of hearing.

These are serious errors vitiating the order of the learned Single Judge.

If the learned Single Judge had taken a view that there was a violation of principles of natural justice, the proper course for the learned Single Judge was to only remit the matter back to respondent No.3 for fresh consideration to pass an order after hearing both the parties. However she also went into the merits of the claims of both the parties and upheld the claim of respondent No.1 for seniority over the appellant which she ought not have done.

Consideration by the Court

In our opinion, since respondent No.1 had already been provided a hearing by respondent No.3 before passing of order dt.23.08.2012 (P-13), there is no necessity to remand the matter back to him again.

From the facts narrated above, admittedly 07.09.2007, the appellant got absorbed permanently in the office of respondent No.4 and became a member of the cadre in the office of respondent No.4 along with Mohinder Singh, Junior Assistant. But by that date, Mohinder Singh had already taken voluntary retirement on 31.05.2007.

The respondent no.1 had made *a request to* respondent No.4 dt.30.03.2007 to take him on deputation in his office against the post of Mohinder Singh, who was to retire on 31.05.2007, on compassionate basis. Respondent No.4 deputed respondent No.1 to his office on *temporary basis*

on 09.04.2007 with a specific condition that his salary would be drawn and disbursed in the office of DC, Mansa from where he was being deputed to work in the office of the Commissioner, Faridkot.

So, on 09.04.2007, respondent No.1 had not become a member of the service at the office of Commissioner, Faridkot since he continued to have his lien, being on deputation, in the office of Dy.Commissioner, Mansa and since he was drawing salary from the said office. But by then the appellant had become a permanent employee of the said Office.

Only on 14.11.2007, respondent No.3 appointed respondent No.1 regularly against the post vacated by Mohinder Singh.

In ***K. Madhavan v. Union of India***¹ the Supreme Court has held that there is not much difference between deputation and transfer. It held as under:

*“There is not much difference between deputation and transfer. Indeed, when a deputationist is permanently absorbed in the CBI, he is under the rules appointed on transfer. In other words, deputation may be regarded as a transfer from one government department to another. It will be against all rules of service jurisprudence, if a government servant holding a particular post is transferred to the same or an equivalent post in another government department, the period of his service in the post before his transfer is not taken into consideration in computing his seniority in the transferred post. The transfer cannot wipe out his length of service in the post from which he has been transferred. It has been observed by this Court that it is a just and wholesome principle commonly applied where persons from different sources are drafted to serve in a new service that their pre-existing total length of service in the parent department should be respected and presented by taking the same into account in determining their ranking in the new service cadre. See **R.S. Makashi v. I.M. Menon**²; **Wing Commander J. Kumar v. Union of India**³. ”*

¹ (1987) 4 SCC 566

² 1982 (1) SCC 379

³ 1982 (2) SCC 116

This principle was reiterated in **K.Anjiah v.K.Chandriah**⁴ and in **M.Ramachandran v. Govind Ballabh**⁵ cited by the counsel for the respondent no.1.

Therefore ordinarily, if a Government servant holding a particular post is transferred to the same or an equivalent post in another government department, the period of his service in the post before his transfer is to be taken into consideration in computing his seniority in the transferred post.

But in the case of a transfer *on request* of an employee, the transferred employee will have to forego his seniority till the date of transfer, and will be placed at the bottom below the juniormost employee in the category in the new cadre or department. This is because a government servant getting transferred to another unit or department for his personal considerations, cannot be permitted to disturb the seniority of the employees in the department to which he is transferred, by claiming that his service in the department from which he has been transferred, should be taken into account.

In **K.P. Sudhakaran v. State of Kerala**⁶, the Supreme Court has held that where a government servant is transferred on his own request, the transferred employee will have to forego his seniority till the date of transfer, and will be placed at the bottom below the juniormost employee in the category in the new cadre or department. It declared :

"11.In service jurisprudence, the general rule is that if a government servant holding a particular post is transferred to the same post in the same cadre, the transfer will not wipe out his length of service in the post till the date of transfer and the period of service in the post before his transfer has to be taken into consideration in

⁴ 1998 (3) SCC 218

⁵ 1999(8) SCC 592

⁶ (2006) 5 SCC 386

computing the seniority in the transferred post. But where a government servant is so transferred on his own request, the transferred employee will have to forego his seniority till the date of transfer, and will be placed at the bottom below the juniormost employee in the category in the new cadre or department. This is because a government servant getting transferred to another unit or department for his personal considerations, cannot be permitted to disturb the seniority of the employees in the department to which he is transferred, by claiming that his service in the department from which he has been transferred, should be taken into account. This is also because a person appointed to a particular post in a cadre, should know the strength of the cadre and prospects of promotion on the basis of the seniority list prepared for the cadre and any addition from outside would disturb such prospects. The matter is, however, governed by the relevant service rules.”(emphasis supplied)

But if there is no difference between deputation and transfer, and in the instant case the deputation to office of Commissioner, Faridkot Division of both appellant and respondent no.1 is *on their request*, can they still seek to count their seniority from their initial appointment in office of Commissioner, Ferozepur and Dy.Commisssioner, Mansa respectively?

We think not.

In ***S.C. Mandakki and Others Vs. Director of Health and Family Welfare Service and Others***⁷, a Junior Laboratory Technician in the department of the Family Health and Family Welfare Service was transferred and posted as First Divisional Assistant at his own request. The Supreme Court held that although both the posts carried the same scale of pay and were in the same department, the requisite length of service for entitlement to time bound advancement has to be computed from the date on which he assumed the charge of the post of First Divisional Assistant and not from the date of his appointment as Junior Laboratory Technician in view of proviso

⁷ 1996 (8) SCC 11

to Rule 6 of the Karnataka Government Servants' (Seniority) Rules, 1957 which directed that if an officer is transferred on his own request, he has to be juniormost to those working in the same cadre in the new cadre.

In *Mohan Lal and Another Vs. State of Punjab*⁸ this Court held that if seniority is maintained circle-wise and if a person *on his own request* is transferred from his parent circle to another circle, he would be placed below the junior most person in the seniority list of that rank in the transferred circle.

Thus since deputation and transfer are to be treated alike, in case of persons seeking deputation *on request* like in the case of those seeking transfer *on request*, they would have to be juniormost to persons of the same cadre in the new department so that seniority of others already in the new department is not affected.

Thus the respondent No.1 's seniority in Faridkot Division cannot be counted from 25.3.1998 when he joined as clerk in Office of Dy.Commissioner, Mansa and it can only be counted from 14.11.2007, when he was permanently absorbed there. Naturally, he would then be junior to appellant who had been appointed on permanent basis on Faridkot Division on 7.9.2007.

There is yet another way to look at this issue.

In *Maharashtra Electricity Board and another v. Rama Rajaramji Wadekar and another*⁹, the Sub-Engineers were in different circles and Sub-Engineers of each circle constituted a cadre by itself. The respondents sought a transfer from their original circle to Akola circle and the same was granted mentioning that the seniority will be determined according

⁸ 1992 (3) SLR 246 (P&H)

⁹ 2002(10) SCC 254

to Regulation 21(a) of the seniority Regulations framed by the appellant Board. Though the said regulation stated that in case of an ex-cadre request of an employee effected on is request, the service in the original unit of seniority from which he is transferred shall not count as service for the purpose of his seniority but the date of his reporting for duty in the new post shall be taken as basis of his seniority, the High Court had granted relief to the respondents. The Supreme Court reversed the decision of the High Court. It held:

“4. ... Regulation 2(b) defined “cadre” and Regulation 2(d) says “ex-cadre post” means “post outside the cadre”. Regulation 2(e) stipulates that “ex-cadre transfer” means “transfer of an employee from one cadre to another or in respect of an employee not being a member of a cadre, his transfer from one post to another”. Regulation 3 indicates that seniority shall be based on the length of continuous service in the particular category. Regulation 17 indicates that the cadre of Sub-Engineers was Circlewise and the note appended thereto unequivocally states that the category of Sub-Engineers has been deleted from the Circlewise seniority and included in the Statewise seniority w.e.f. 21-10-1980 by order dated 31-3-1983. It is thus crystal clear that prior to 1980 the seniority of Sub-Engineers was being determined on the basis of the Circle in which they had been absorbed and, therefore, each Circle would constitute a cadre so far as Sub-Engineers are concerned. Regulation 21(a) is, in fact, relevant for our purpose and the same may be extracted in extenso herein:

“21. (a) In the case of an ex-cadre transfer effected at the request of an employee, the service in the original unit of seniority from which he is transferred shall not count as service as for the purpose of seniority but the date of his reporting for duty in the new post shall be taken as the basis of his seniority.”

5. The aforesaid Regulation unequivocally states that in case of an ex-cadre transfer effected at the request of an employee, the service in the original unit of seniority from which he is transferred shall not count as service as for the purpose of seniority but the date of his reporting for duty in the new post shall be taken as the basis of his seniority.

6. In view of the definition of “cadre” as already stated, and in view of the fact that seniority of Sub-Engineers was being determined Circlewise and each

Circle constitutes a cadre, transfer of the respondents from one Circle to the other cannot but be held to be an ex-cadre transfer and such ex-cadre transfer having been made at the request of the employees, their seniority has to be governed by Regulation 21(a). The High Court, therefore, has been wholly in error in misconstruing the provisions of Regulation 21(a) and directing that the seniority shall be determined on the basis of their continuous length of service. We therefore have no hesitation in quashing the impugned order of the High Court and we do quash the same. This appeal is accordingly allowed. Be it stated that these two respondents' seniority has to be determined following the principle of Regulation 21(a) of the Regulations.”(emphasis supplied)

Thus if the seniority is to be determined circle wise or District wise, in case of an inter Circle/inter-District transfer/deputation, the person transferred or deputed *on his own request* , has to be juniormost in the transferred cadre /cadre to which he is deputed.

In the Punjab District Service (Class III) Rules, 1976, the term “Cadre” is defined in Rule 2(a) as “the strength of the Service or a part thereof *as a separate unit.*”

Rule 11 thereof deals with *inter se* seniority of members of the service and directs that “the inter se seniority of members of the Service in each cadre of the Service shall be maintained District-wise and determined from the length of continuous service on a post in that cadre of the Service.” So seniority has to be determined of each cadre District wise.

Even in the Punjab Civil Services (General and Common Condition of Service) Rules, 1994, Rule 8 states that “*the seniority inter se of persons appointed to posts in each cadre of a service shall be determined by the length of continuous service on such posts in that cadre of the service*” and Note mentioned thereunder states that “*Note:- Seniority of persons appointed as purely provisional basis or on ad hoc basis shall be determined*

as and when they are regularly appointed keeping in view the dates of such regular appointments.”

Admittedly, in the instant case, both the appellant as well as respondent No.1 had come on deputation to Faridkot Division *as per their requests* vide R-4/3 dt. 02.04.2003 in the case of the appellant, and vide R-4/5 dt. 30.03.2007 in the case of respondent No.1.

While the appellant came from Ferozepur, the respondent No.1 came from Mansa.

In the State of Punjab, Faridkot, Ferozepur and Mansa are different Districts.

Seniority therefore under Rule 11 has to be District-wise in the cadre of Junior Assistants and has to be determined from the length of continuous service on a post *in that cadre* of the Service i.e., it can only be counted from the date of permanent appointment in the District concerned.

Consequently, both the appellant as well as respondent No.1 can count their seniority in Faridkot Division only from the date of their continuous appointment in that Division i.e. w.e.f. 07.09.2007 in the case of the appellant and w.e.f. 14.11.2007 in the case of the respondent No.1.

The respondent No.1 cannot, having come *on request* on deputation initially to Faridkot on 09.04.2007 and having got absorbed there on 14.11.2007 claim to count his seniority from the date he was appointed as a Clerk in the office of the Dy. Commissioner, Mansa on 24.03.1998 and claim seniority over the appellant on the said pretext. His date of absorption in office of Commissioner, Faridkot Division being 14.11.2007 *after* the date of absorption of the appellant on 7.9.2007 in that Division, he would be junior to the appellant in that Division.

We are therefore of the opinion that learned Single Judge erred in holding that the respondent No.1 is senior to the appellant in the office of Commissioner Faridkot Division, Faridkot. Consequently, the promotion of the respondent no.1 to the post of Sr.Assistant in office of Commissioner, Faridkot Division is erroneous and cannot be sustained as he is junior to the appellant. So the appellant is declared entitled to the post of Sr.Assistant in office of Commissioner, Faridkot Division w.e.f 22.3.2010 with all consequential benefits.

Accordingly the LPA is allowed; order dt.30.11.2016 in CWP-20423-2012 is set aside; and the said Writ Petition is dismissed. The respondents shall grant promotion to the appellant to the post of Sr.Assistant in office of Commissioner, Faridkot Division w.e.f 22.3.2010 with all consequential benefits except monetary benefit within 8 weeks.

No costs.

Pending application(s), if any, also stands disposed of accordingly.

(M.S. RAMACHANDRA RAO)
JUDGE

(SUKHVINDER KAUR)
JUDGE

April 25, 2023

Mohit goyal

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

Yes/No
Yes/No