



358 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-15480-2001 (O&M)

Date of Decision:15.05.2024

BALWINDER SINGH

..... Petitioner

Versus

STATE OF PUNJAB AND OTHERS

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Ms. Alka Chatrath, Advocate and
Mr. Nikhil Singh, Advocate for the petitioner.

Mr. Pawan Kumar, DAG, Punjab.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking direction to respondents to consider him as Inspector from the date of deputation instead of date of absorption.

2. The petitioner on 21.10.1988 joined Punjab Police as deputationist. He, at that point of time, was holding the rank of Inspector in Border Security Force (for short 'BSF'). He was permanently absorbed in Punjab Police w.e.f. 18.07.1995. The petitioner claims that his service rendered with BSF may be ignored, however, his date of joining with respondent as deputationist should be considered for all service benefits.

3. On the 21.03.2005, the present petition was admitted and while admitting, the following order was passed:

"The petitioner was inducted as a Sub Inspector in the Border Security Force on 27.1.1977. He was promoted to the rank of Inspector on 13.4.1987. While holding the post of Inspector he was deputed to work in the Punjab Police Service on 21.10.1988. He discharged his duties as a deputationist in the Punjab Police Service in the rank of



Inspector. Although there was no provision under the Punjab Police Rules, 1934 for permanent absorption, yet an amendment to the Punjab Police Rules was effected in 1993. The aforesaid amendment reads as under:-

"12.43. Absorption of Non-Gazetted Officers and other ranks of para-military forces and other Police forces in the Punjab Police.- (1) If the Director General of Police so desires he may with the prior concurrence of the parent Department, order absorption in the Punjab Police of Non-Gazetted Officers and other ranks of para-military forces and other Police forces who have been working as such in the Punjab Police already on deputation for a minimum period of two years:

Provided that absorption so made shall not exceed 0.5 per cent of the total cadre posts in the ranks of Constables and Head Constables and 0.5 per cent of the cadre posts of Assistant Sub-Inspectors and Inspectors meant for direct recruitment and 0.5 per cent of the cadre posts of Sub-Inspectors.

(2) The non-gazetted officers and other ranks absorbed in terms of the provisions of sub-rule (1) will be placed junior to all the persons working in the respective cadres of the Punjab Police on the date of such absorption, subject however, to the condition that the basic pay they are getting in their parent department will be protected.

Explanation.- For the purpose of rule 12.43 the term "Para Military Forces" means the para military forces under the administrative control of Government of India, Ministry of Home Affairs."

In 1994 the aforesaid amendment was further altered so as to substitute the existing proviso with the following proviso:-

"provided that absorption, so made shall not exceed



0.5 per cent of the total cadre posts in the ranks of Constables, Head Constables, Assistant Sub-Inspectors of Police, Sub-Inspectors of Police and Inspectors of Police."

In order to seek absorption into the police service, the petitioner was granted a "No Objection Certificate" by the Border Security Force authorities on. 5.4.1994. He responded to an express option sought by the respondents by expressing his desire to be absorbed in the Punjab Police Service on 9.11.1994.

Rule 12.43 categorically envisages that an employee working on deputation and is thereafter absorbed into the Punjab Police Service, will rank, in seniority, below all existing employees holding the same rank in the Punjab Police Service, on the date of his absorption. It is this part of this rule, which is subject matter of challenge through the instant writ petition.

*In order to challenge the vires of Rule 12.43 of the Punjab Police Rules, learned counsel for the petitioner has placed reliance on the decision rendered by the Apex Court in **Sub Inspector Rooplal and another Versus. Lt. Governor through Chief Secretary, Delhi and others, (2000)1 Supreme Court Cases 644**. Learned counsel for the petitioner has invited our attention to the following observations made by the Apex Court in paragraphs No. 15 and 16 of the aforesaid judgment:-*

"15. We will now take up the question whether the appellants are entitled to count their service rendered by them as Sub-Inspectors in BSF for the purpose of their seniority after absorption as Sub-Inspectors (Executive) in the Delhi Police or not. We have already noticed the fact that it is pursuant to the needs of the Delhi Police that these officials were deputed to the Delhi Police from BSF following the procedure



laid down in Rule 5(h) of the rules and subsequently absorbed as contemplated under the said rules. It is also not in dispute that at some point of time in FSF, the appellants services were regularised in the post of Sub-Inspector and they were transferred as regularly appointed Sub-Inspectors to the Delhi Police Force. Therefore, on being absorbed in an equivalent cadre in the transferred post, we find no reason why these transferred officials should not be permitted to count their service in the parent department. At any rate, this question is not res integra and is squarely covered by the ratio of judgments of this Court in more than one case. Since the earlier Bench of the Tribunal relied upon Madhavan case to give relief to the deputationists, we will first consider the law laid down by this Court in Madhavan case. This Court in that case while considering a similar question, came to the following conclusion: (SCC p. 580, para 21)

"21. We may examine the question from a different point of view. 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. 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; Wing Commander J. Kumar v. Union of India." (emphasis supplied)

16. Similar is the view taken by this Court in the cases of R.S. Makashi and and Wing Commander J. Kumar which judgments have been followed by this Court in Madhavan case. Hence, we do not think it is necessary for us to deal in detail with the view taken by this Court in those judgments. Applying the principles laid down in the above-referred cases, we hold the appellants are entitled to count the substantive service rendered by them in the post of Sub- Inspector in BSF while counting their service in the post of Sub-Inspector (Executive) in the Delhi Police Force."

In order to controvert the aforesaid claim of the petitioner, learned counsel for the respondents has invited our attention to the following observations recorded in the same judgement: -

"19. This leaves us to consider the validity of the office memorandum which was relied upon by the Tribunal in the impugned judgment. We have noticed earlier in the judgment that the constitutional validity of this memorandum is independently challenged by the appellants in WP (C) No. 191 of 1999. There is considerable force in the argument addressed on behalf of the appellants that this memorandum had neither been made public nor the existence thereof made known to anybody concerned with the



controversy in question. We have already referred to this fact. Hence, we do not want to repeat the same in detail. On facts, we are of the opinion that the respondents ought not to have been permitted to rely upon this document because there is no material whatsoever produced by the respondents to show that this memorandum which was issued by the Government of India was either ipso facto applicable to the Delhi Police Force or the same was adopted and applied by the Delhi Police Force. It is to be noted that the law in regard to the right of a deputationist to count his service for the purpose of seniority in the transferred department was settled as far back as in the year 1982 itself in the cases of R.S. Makashi and Wing Commander J. Kumar (if not earlier). Therefore, it is reasonable to expect that a deputationist, when his service is sought to be absorbed in the transferred department would certainly have expected that his seniority in the parent department would be counted. In such a situation, it was really the duty of the respondents, if at all the conditions stipulated in the impugned memorandum were applicable to such person, to have made the conditions in the memorandum known to the deputationist before absorbing his services, in all fairness, so that such a deputationist would have had the option of accepting the permanent absorption in the Delhi Police or not. The very fact that such steps were not taken shows that this memorandum was, in fact, never acted upon. Apart from the above question of equity, the appellants have challenged the constitutional validity of the above memorandum on the ground that the same violates Articles 14 and 16 of the Constitution. One of the grounds raised is that their absorption in an equivalent post, is arbitrarily



taken away, if the memorandum in question is applicable to them. Therefore, they had prayed for a declaration that the memorandum be declared as ultra vires to the extent it offends their fundamental rights."

It is the vehement contention of the learned counsel for the respondents that in terms of Rule 12.43 of the Punjab Police Rules, the petitioner was expressly required to opt for his absorption into the Police Force. He exercised the aforesaid option wherein he conceded that in case of his absorption into the Police Service, he would not claim seniority. He also contends that statutory rules framed under Article 309 of the constitution of India, by the force of law, are deemed to be in the knowledge and notice of all concerned. Learned counsel for the respondents, therefore, contends that the judgment rendered by the Supreme Court in Sub-Inspector RooDlal's case (supra), would not be applicable to the controversy in hand.

We are satisfied that the controversy needs to be adjudicated upon in regular hearing by a Division Bench of this Court.

We are of the view that the controversy in hand needs a hearing as a regular case for an effective disposal on merits.

Admitted.

List for final disposal within one year."

4. Ms. Alka Chatrath, Advocate submits that in view of judgment of Supreme Court in ***S.I. Rooplal (supra)***, no rule and regulation or executive instruction can take away period of service rendered by deputationist in an equivalent cadre in the parent department while counting his seniority in the deputed post.

5. Learned State counsel submits that petitioner on attaining the age of superannuation retired from Punjab Police on 30.11.2012 and at that point of time, he was holding rank of Superintendent of Police. He was not member of Indian Police Service.

6. I have heard the arguments of both sides and with the able assistance of learned counsels have perused the record.

7. The petitioner is not claiming that his service rendered with BSF should be counted for the purpose of seniority and other benefits. His pay was protected at the time of absorption, thus, no financial loss at the time of deputation or absorption was caused him. He, at this stage, is seeking limited relief to the extent that his rank which he was holding with BSF at the time of deputation should be protected. He should be considered Inspector w.e.f. 21.10.1988 instead of w.e.f. 18.07.1995.

8. Keeping in mind Judgment of Supreme Court in *S.I. Rooplal (supra)*, the fact that petitioner has already retired from service, his pay was protected at the time of absorption and he was not made member of Indian Police Service, the petition stands disposed of with a direction to respondents to consider petitioner as Inspector w.e.f. 21.10.1988. It is hereby made clear that on account of assigning rank of Inspector w.e.f. 21.10.1988, he would be entitled to deemed promotion, however, he shall not be entitled to arrears because he had not performed the duties of promotional post, if any granted to him. The pay of the petitioner on account of change of rank be notionally re-calculated and accordingly, pension be fixed.

9. Pending misc. application(s), if any, shall also stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

15.05.2024
Ali

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No