

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-11697-2022 (O&M)
Reserved on 19.09.2024
Pronounced on 24.09.2024

Bahadur Singh and another ...Petitioners

Versus

State of Punjab and others ...Respondents

And

CWP-3811-2024

Satvir Singh and another ...Petitioners

Versus

State of Punjab and others ...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: - Mr. V.K. Jindal, Senior Advocate with
Mr. Anurag Goyal, Advocate,
Mr. Yagyadeep, Advocate,
Mr. Akshay Jindal, Advocate,
Mr. Gaurav Datta, Advocate,
Mr. Pankaj Gautam, Advocate for the petitioners

Mr. Aman Dhir, Deputy Advocate General, Punjab

Ms. Alka Chatrath, Advocate and
Ms. Neha Singh, Advocate for respondent No.4-UPSC

Mr. Chetan Mittal, Senior Advocate with
Mr. G.S. Sandhu, Advocate and
Ms. Sehej Sandhawalia, Advocate for respondent Nos.5 to 12

JAGMOHAN BANSAL, J.

1. As common issues are involved in both the captioned petitions, the same are hereby disposed of by this common order. For the sake of brevity and convenience, facts are borrowed from *CWP-11697-2022*.

2. The petitioners through instant petition under Article 226 of the Constitution of India are seeking setting aside of seniority list dated 03.07.2020 (Annexure P-17) whereby their names have been excluded from the final seniority list.

3. The petitioners joined respondent-State as Constables in the year 1990. They were inducted on the basis of their achievements in Sports. On account of their further achievements, they were granted out-of-turn promotions. They came to be promoted as Inspector in the year 1994. Date of promotion of petitioner No.1 was 08.02.1994 and of No.2 was 20.03.1994. On the basis of tenure of service, they were further promoted to the post of Deputy Superintendent of Police ('DSP') in 2001. Petitioner No.1 was promoted on 18.05.2001 and No.2 was promoted on 28.06.2001.

4. The petitioners, as aforesaid, were enrolled as Constable on the basis of their achievements in Sports and further promoted against quota. As per Punjab Police Rules, 1934 (for short '**1934 Rules**'), there is a list/register known as 'C' wherein names of Constables who are eligible for promotion to the post of Head Constable are recorded. In the said list, the respondent-State has power to enter name(s) of Constable(s) who have not complied with requisite conditions. They are known as 'exemptees'. Their names are

recorded in the list known as 'C-II'. The respondent granted exemption to Constables beyond 10% quota which was contrary to 1934 Rules. A few Constables challenged exemption granted beyond 10% quota before Court. In ***Swaran Singh v. State of Punjab and others, CWP-13788-1997***, this Court vide judgment dated 21.04.1998 declared promotions in excess of 10% out-of-turn quota as illegal. The relevant extracts of the judgment dated 21.04.1998 are reproduced as below:-

- “(i) Constables on List C-II up to 10% (and no more) of the cadre strength of Head Constables can be promoted at any given time.
- (ii) That the Constables on List C-II to the aforesaid extent have to be promoted strictly in accordance with the dates they are brought on List C-II.
- (iii) There would be no bar for a person on list C-II who happens to be a sportsman to be brought on List C-II, of course, subject to the approval of the DIG but his date on list C-II will be the date on which he is brought on the said list and may be promoted as a Head Constable in accordance with the date he is brought on List C-II.
- (iv) There is no special quota of 5% for sportsmen in List C-II. Rule 13.8(2) envisages filling of 10% posts of the Cadre of Head Constables from amongst Constables who might excel in various fields which would include sports.

While carrying out the aforesaid directions, persons may be reverted, if necessary, from the post of Head Constables to Constable strictly in order of their having been brought on List C-II but such Head Constables from List C-II would be no more than 10% of the total cadre strength of the Head Constables. Those Head Constables who are within 10% quota from list C-II and have further been promoted to a higher rank on officiating or ad hoc basis would hold lien on the

substantive post of Head Constable. Such posts may be temporarily filled by promoting Constables from List C-II strictly in accordance with the dates of their being brought on List C-II but if any of the Head Constables who is holding higher posts on officiating basis is reverted to the post of Head Constable who had been promoted from list C-II, then such an incumbent is to make room for such a revertee in accordance with his seniority.

Coming to the point raised by the learned counsel for the petitioner that some of the petitioners have been promoted as ad hoc ASI and even SI (ORP), they could not be reverted to the rank of Constables as they did not remain as Head Constable after having been promoted as ASI. We may observe that persons who is working as adhoc ASI, has no right to cling to the post, being ad hoc. In other words, he can be reverted as a Head Constable. However, the next question which would arise is whether the petitioners are within the limits of percentage of Head Constables who can be promoted on the basis of their being on list C-II? The answer is that if they are within the 10% of the Cadre strength of the Head Constables, they would not be reverted to the rank of Constables but if they are beyond 10% then the persons who are the junior most on the basis of the date of being brought on list C-II would have to make room while retaining 10% of such candidates on list C-II as Head Constables. The official respondents shall after taking into consideration the aforesaid observations, carry out an exercise as to whether any person-cannot be retained as a Head Constable who might have been promoted from list C-II.”

5. Director General of Police, Punjab vide memo dated 31.08.1998 circulated the aforesaid judgment. Pursuant to aforesaid judgment, the respondent reverted non-sports persons who were promoted in excess of 10% out-of-turn quota in Punjab Armed Police (‘PAP’) as well as District Police

Cadre. The respondent further reverted sportspersons of PAP, however, they were subsequently rehabilitated and their promotions were protected.

6. The respondent did not revert sportspersons of District Police Cadre though they were promoted in excess of 10% out-of-turn quota. The Council of Ministers in order to protect the interest of the sportspersons in its meeting held on 23.02.2010 authorized the Chief Minister to create requisite number of posts in the Police Department. The State Government vide order dated 18.05.2011 created 207 posts in the District Cadre. The post-wise details is as below:-

S. No.	Name of Post	No. of Posts
1.	Deputy Superintendent of Police	8
2.	Inspector	15
3.	Sub-Inspector	54
4.	Assistant Sub-Inspector	65
5.	Head Constable	65

7. In the order dated 18.05.2011, it was noted that these posts are created for sports quota officials as a personal measure and the additional posts would be automatically abolished on further regular promotion of the officers. These are posts of dying cadre but if they are promoted in their own sports quota, next post will be created as a personal measure by abolishing the first post. The relevant extracts of order dated 18.05.2011 are reproduced as below:-

“2. Keeping in view the meritorious service and to extend entire benefit of past service to the sportspersons who are in excess of 10% of the fixed Quota, the Governor of Punjab is pleased to sanction 207 additional posts for sports persons in

*addition to existing cadre strength from the dates of appointments of the officers/officials in the Police Department (details as per Annexure). These posts have been created as a personal measure to the officers belonging to sports quota and **on promotion of an officer to the next post on regular basis, this additional post will be automatically abolished.** These posts will be of dying cadre but if their promotion is done within their sports quota, then while abolishing his previous post, creation of next post will be as personal measure. **This system will continue till the officers get promotions on regular posts.** The creation of these posts is done as per details given in the Annexures.*

[Emphasis added]

8. The petitioners by aforesaid order dated 18.05.2011 came to be protected. They, at that point of time, were holding post of Superintendent of Police. It is apt to notice here that order dated 18.05.2011 has not been set aside by any Court. The order dated 18.05.2011 created 207 posts which included 8 posts for DSP. It was a dying cadre. On the promotion of an officer or otherwise vacation of position, the post already held by him was bound to be abolished. The aforesaid order did not create posts of Senior Superintendent of Police or any other higher post. Petitioners were holding rank of Deputy Superintendent of Police on the date of issuance of aforesaid order.

9. The private respondents objected to inclusion of petitioners in the seniority list of Inspectors. Their objection was turned down by way of speaking order dated 06.11.2009. The respondent challenged said order by way of representation dated 05.08.2010 before the Principal Secretary,

Government of Punjab, Department of Home Affairs. Petitioner No.2 was further promoted to the post of DSP on 20.10.2010 and respondents challenged his promotion by way of *CWP No.21214 of 2010, Jatinder Singh Khaira and others v. State of Punjab and others*. The said writ petition was disposed of as infructuous because of impugned order dated 03.07.2020 wherein petitioners were not included in the seniority list of DSP.

10. The respondent in 2013 prepared general seniority list of DSP wherein names of petitioners were included. The said seniority list was challenged before this Court by way of *CWP No.6801 of 2013, Gurdial Singh and others v. State of Punjab and others*. This Court set aside seniority list of 2013 vide judgment dated 02.11.2018. In compliance of orders of this Court, the respondent prepared a fresh tentative list wherein names of the petitioners were included. The private respondents objected to inclusion of name of petitioners in the tentative seniority list. The respondent-State considered objection of private respondents and in the final seniority list, excluded names of the petitioners which has led to instant petitions.

11. Mr. V.K. Jindal, Senior Advocate submits that after finalization of impugned seniority list, internal communication took place between different sections of State Government. Department of Home vide communication dated 30.07.2020 opined to include names of 6 officers of dying cadre in the seniority list of DSP. A similar opinion was formed by Department of Personnel. The matter was referred to Office of Advocate General who also opined that names of petitioners should be included in seniority list of DSP. The respondent after seeking opinion of Department of

Personnel and Office of Advocate General again sought opinion of Home Department which again opined that name of petitioners should be included. The competent authority repeatedly sought opinion of Home Department and Department of Personnel. The opinion of both the departments was in tandem still the respondent did not include names of the petitioners in the seniority list. The respondent created 8 posts of DSP and petitioners on the date of creation of additional posts were holding position of DSP. The notification dated 18.05.2011 makes it clear that process of promotion within sports quota was to continue till the officer reaches on regular promotion. In memo dated 09.06.2011 issued by the Department of Home, it was made clear that officers appointed against 207 additional posts will not be required to be included in the seniority list of lower cadre instead when they are successful in getting promotion to the post of DSP on regular basis then it will be proper to show them in the seniority list. This letter makes it clear that petitioners were bound to be made part of seniority list on attaining post of DSP. The memo dated 14.06.2011 further clarifies that by memo dated 09.06.2011 earlier promotions on all ranks were regularized and new posts had to come into existence automatically. The process of promotion within quota had to continue upto the post of DSP and thereafter, all the officers had to be considered as per seniority.

12. *Per contra*, Mr. Chetan Mittal, Senior Advocate appearing for private respondents submits that by order dated 18.05.2011, 207 additional posts were created for sportspersons. It was a dying cadre. It was like ex-cadre or could be called as diminishing cadre. The members of dying/ex-cadre could

not be merged with regular employees. They could never become part of regular cadre. It is axiomatic in service jurisprudence that post held by an officer against diminishing cadre/dying cadre abolishes as soon as said officer vacates the post. It is personal in nature. There were 207 sportspersons in 2011 who were holding different posts like Head Constable, Assistant Sub-Inspector, Sub-Inspector, Inspector and DSP. The Government created as many posts as many officers belonging to sports quota were in excess of 10% promotion quota and working with District Cadre. There were 8 officers who were posted as DSP, thus, 8 posts of DSP were created. Similarly, 15 sportspersons were holding posts of Inspector, thus, 15 posts of Inspector were created. This was a one time arrangement. The aforesaid 207 sportspersons were promoted in excess of 10% quota and their promotion was declared illegal by this Court in *Swaran Singh (supra)*. They were bound to be reverted as per judgment of this Court. To avoid their demotion, the Government made one time arrangement whereby their position as held on 18.05.2011 was protected. They could get promotion out of their sports quota means a Head Constable could be promoted to the post of Assistant Sub-Inspector within aforesaid quota. He could never become part of regular District Police Cadre. The last post created by aforesaid order was of DSP, thus, any officer beyond the said post could not be promoted. They could not be merged with seniority list of DSP. The competent authority has rightly rejected petitioners' claim. The inclusion of names of petitioners in the seniority list of Inspectors or their subsequent promotion contrary to judgment of this Court in *Swaran Singh (supra)* does not create any legal, vested or fundamental right in favour of the petitioners. Every promotion is governed

by applicable rules and regulations. A Full Bench of this Court in *Jaskaran Singh Brar v. State of Punjab and others, 2004 SCC OnLine P&H 1029* with respect to diminishing cadre has clearly held that officers of diminishing cadre cannot become part of regular cadre. Post of diminishing cadre abolishes as soon as an officer vacates the post.

13. Mr. Aman Dhir, Deputy Advocate General, Punjab, during the course of hearing produced copy of file noting dated 18.05.2021, which is taken on record as Annexure 'A'. Registry is directed to tag the same at an appropriate place. He submits that opinion of Advocate General, Special Principal Secretary (Home) and Department of Personnel was placed before the Additional Chief Secretary (Home) who vide file noting dated 18.05.2021 concluded that officers belonging to dying cadre cannot be merged with the regular cadre, however, posts of SP/SSP/AIG/DIG and ADGP would be created for them as a personal measure. Taking note of the said order, a communication was made to the Director General of Police vide letter dated 13.07.2021. In view of these facts and circumstances, representation of petitioners was consigned.

The position of petitioners and other sportspersons was protected by order dated 18.05.2011 and promotions, made prior to the said date, of sportspersons crystallized on the said date. As per order dated 18.05.2011, last post created was of DSP. It was dying cadre, thus, the petitioners could not become part of seniority list of DSP. The position of petitioners was like another bank of the river. They could never merge at any stage in the regular cadre.

14. I have heard arguments of learned counsels for the parties and perused the record with their able assistance.

15. The conceded position emerging from the record is that the petitioners, on the basis of their achievement in sports, were appointed as Constables in February' 1990. On the basis of their achievements in sports, they were promoted out-of-turn till the rank of Inspector. They were further promoted to the rank of DSP, however, the said promotion was not made on the basis of their achievements in sports. A seniority list of DSP was prepared in 2013 wherein their names were included. On the direction of this Court, a fresh tentative seniority list was prepared wherein their names were included, however, on account of objection raised by private respondents, their names were deleted from the final seniority list. This Court in *Swaran Singh (supra)* declared out-of-turn promotion beyond 10% illegal, thus, all police officials who were promoted beyond 10% quota were bound to be reverted. The State did not implement aforesaid judgment of this Court rather continued to further promote sportspersons in District Cadre. In 2011, there were 207 sportspersons prior to 18.05.2011 who had been promoted beyond 10% quota and were holding position of either Head Constable or Assistant Sub-Inspector or Sub-Inspector or Inspector or DSP. The respondent, in order to wriggle out of judgment of this Court in *Swaran Singh (supra)* and protect sportspersons who had already got promotions in excess of sports quota vide order dated 18.05.2011, created dying cadre. In the said cadre, 207 posts were created. The number of posts of each rank was corresponding to number of sportspersons occupying the rank e.g. at that point of time, there were 8

officers who were holding rank of DSP and 15 were holding rank of Inspector. Accordingly, 8 posts of DSP and 15 posts of Inspector were created. The respondent-State vide letter/memo dated 06.06.2011, 09.06.2011 and 14.06.2011 attempted to clarify future status of the aforesaid officers qua promotion. The competent authority by impugned order has excluded petitioners from the seniority list of DSP. The Office of Advocate General, Department of Home as well as Personnel after passing of impugned order had opined that petitioners should be included in the seniority list of DSP. The State Government vide order dated 18.05.2021 has concluded that members of the dying cadre would not be made part of seniority list and they would not merge with main cadre.

16. Rule 13.8(2) of 1934 Rules permits filling of 10% posts of the cadre of Head Constable from amongst Constables who might excel in various fields which includes sports. The respondent-State promoted Constables in excess of 10% quota and litigation ensued. The matter came up before a Division Bench of this Court in *Swaran Singh (supra)* which vide judgment dated 21.04.1998 declared out-of-turn promotions in excess of 10% quota illegal.

17. A Full Bench of this Court in *Jaskaran Singh Brar (supra)* has adverted with concept and purport of ex-cadre posts. The Court has held that these posts are created for specific purpose and diminish as soon as persons holding posts retire. These posts do not form part of regular cadre. The relevant extracts of the judgment are reproduced as below:-

“82. This takes us to question No. 4, namely, what is an ex-cadre post and where does it stand vis-a-vis a cadre post. “Cadre” is a well defined connotation in the service jurisprudence. Invariably, a service and/or posts created in relation to the affairs of the Union and/or States, are governed by either the legislative enactments or the Rules framed by the subordinate legislation in exercise of its powers under proviso to Article 309 of the Constitution of India. In the Acts/Rules, as the case may be, the “service” and the “posts” which are governed by such Acts/Rules are defined. Since the posts are created for running an efficient administration, namely, in public interest, the total strength of such posts is also invariably reflected in the Acts/Rules governing such posts. The strength of “service” or the posts, namely, a part of “service”, along with their identified nomenclature as well as the mode of their recruitment and/or eligibility conditions required to be possessed to man the same, are normally known as the “cadre posts”. However, in the administrative exigencies and to meet urgent requirements and/or to deal with a situation having arisen due to unforeseen circumstances, sometimes posts are created which appear to be similar to some existing cadre posts either due to their deceptive nomenclature or in the nature of the duties attached to such posts, which are known as the “ex-cadre posts”. Since these posts do not form a part of the total strength of posts governed under the Act/Rules, as the case may be, obviously these posts are not treated as cadre posts and are thus strictly not governed by the Act/Rules meant for the cadre posts. Normally, an “ex-cadre post” is a diminishing cadre and once the incumbent goes, the post also stands abolished. It is for this precise reason that the incumbent of an “ex-cadre post” is always an outsider to the “cadre” and does not have any right either for fixation of inter se seniority in the cadre nor can claim pay scale, promotions and other incidental perks admissible to the incumbents of the cadre posts for the obvious reason that both are not governed by the same set of Act/Rules.

83. *The immediate question which arises for our consideration is as to whether the seven posts of D.S.Ps can be termed as “ex-cadre posts”? During the course of hearing and on a specific query by the Bench, Shri Rakesh Dweivedi, learned Senior Counsel for the State of Punjab, on instructions, stated at the Bar that according to the State Government, the incumbents of these seven ex-cadre posts of D.S.Ps shall be entitled to be posted against the cadre posts of D.S.Ps, their seniority will also be fixed vis-a-vis the holders of the cadre posts of D.S.Ps strictly in accordance with the provisions of the Punjab Police Service Rules, 1959, their confirmation will also take place against the permanent cadre posts and after the completion of the prescribed length of service and as per their seniority, they shall also be entitled to be considered for promotion to I.P.S under the I.P.S (Appointment and Promotion) Regulations, 1954. In other words, Shri Dweivedi fairly conceded that the posts in question are “ex-cadre” only for the limited purpose of recruitment and once the recruitments have been made, the incumbents stand inducted into the mainstream cadre and that there is nothing illegal per-se in the afore-mentioned recourse adopted by the State. We, however, do not appreciate the stand taken by the State of Punjab and reject the same outrightly. If the contention of Shri Dweivedi is taken to its logical end, either it amounts to a back-door and fraudulent entry of the newly recruited D.S.Ps into the main cadre and/or it amounts to adding seven more posts to the total cadre strength. If these posts are in addition to the cadre strength, there can be no escape but to fill up 75% of the newly created posts by promotion and rest of the posts by direct recruitment through the Public Service Commission as per the 1959 Rules. The Respondents cannot be permitted to have the cake and eat it too. Once they opted to be appointed against the ex-cadre posts and if their appointments were held to be valid in law as well, there is no question of their intruding into the cadre of D.S.Ps or to man the cadre posts. The Notification*

dated January 23, 2004 (Annexure R-1) is crystal clear that the newly created posts are temporary in nature and the same not having been created as permanent posts, the question of confirming these D.S.Ps, by usurping the permanent cadre posts of D.S.Ps, does not arise? In our view, the expression “ex-cadre” has been used as a cloak to induct the private respondents into the cadre of D.S.P to give legitimacy to the bye-pass method adopted in their recruitments. This is totally impermissible in law and is wholly unfair to the existing members of the cadre. We, accordingly, hold that the incumbents of “ex-cadre posts” have no right in law to man the cadre posts as a matter of right or for fixation of their seniority vis-a-vis the cadre officers and/or to place them in the pipeline for future promotions alongwith the incumbents of the cadre posts.”

18. Concededly, the respondent had promoted Constables more than 10% quota, thus, respondent was bound to revert police officers who had got promotion in excess of 10% quota. The respondent ignoring 1934 Rules as well as judgment of this Court instead of reverting officers who had been promoted in excess of 10% quota granted further promotions e.g. an officer who was holding rank of Head Constable in excess of 10% quota was required to be reverted to the rank of Constable whereas respondent further promoted him to the rank of Assistant Sub-Inspector. This process continued till 2011 and on 18.05.2011, the State Government accorded sanction to 207 additional posts for sportspersons who were promoted in excess of 10% quota. Order dated 18.05.2011 protected position and rank of sportspersons. They were protected on the rank they were holding. The petitioners, at that point of time, were holding rank of DSP and State Government had created 8 posts of DSP,

thus, their rank of DSP stood protected. It is apt to notice here that aforesaid order regularized petitioners' promotion from the rank of Constable to Head Constable, Head Constable to Assistant Sub-Inspector, Assistant Sub-Inspector to Sub-Inspector and Sub-Inspector to Inspector. They were granted promotion till the rank of Inspector out-of-turn. The order dated 18.05.2011 created a dying cadre and it started running parallel to existing cadre like another bank of the river. The sportspersons started getting promotion in their dying cadre. Their seniority was separate and independent from regular cadre. As per normal rule of creating dying cadre and as held by Full Bench of this Court in ***Jaskaran Singh Brar (supra)***, no sportsperson could be promoted beyond the rank of DSP. The rank of DSP was last rank and all 207 officers were bound to retire on the rank of DSP or below thereto. The respondent on the asking of stakeholders issued various instructions/clarifications which are discussed hereinafter.

19. The Director General of Police vide letter dated 06.06.2011 sought clarification from the Principal Secretary, Government of Punjab with respect to seniority of 15 Inspectors. The Department of Home Affairs and Justice vide memo dated 09.06.2011 issued following clarifications with respect to different issues:-

“2. The clarification demanded vide your aforementioned letter is as mentioned hereunder and you are requested to take pains to take appropriate action as advised hereunder :-

(A) 207 additional posts which were created, that is a dying cadre. Here, it will be worth mentioning that when any

Officer of Feeding Cadre is promoted on the higher cadre, then the post of Feeding Cadre will automatically be finished/come to an end.

- (B) These posts have been created for each Officer/ employee for 207 sportspersons, have been shown in the Enclosure to Government's letter No. 1/40/2011-2H1-1990 dated 18.05.2011. These posts have been created for them as a personal measure.*
- (C) These additional 207 employees needs to be considered for promotion as D.S.P./S.P. on the basis of their seniority.*
- (D) Here, it is also clarified that no relaxation of any type in the Rules regarding experience and educational qualifications will be given. The Departmental Training and Department Test will have to be passed as per Rules.*
- (E) These employees/ Officers will not be required to be included in the Seniority List of lower cadre, instead when they are successful in getting promoted to the posts of D.S.P./S.P. on regular basis, then it will be proper/ appropriate to show them in the seniority.*
- (F) The date from which these Officers/ employees have been given the lower rank, if an ordinary employee/ Officer, from that date, gets promoted, then these Officers will also have to be promoted on their newly created posts as a personal measure, so that no injustice be caused to any employee/officer.”*

[Emphasis added]

20. The Director General of Police vide letter dated 13.06.2011 asked Department of Home Affairs and Justice to clarify as to whether 207 sportspersons are holding cadre posts or ex-cadre posts. The Department of Home Affairs and Justice vide communication dated 14.06.2011 clarified that

newly created posts are not ex-cadre and these posts are in separate dying cadre. An employee who has been promoted in excess of 10% quota would be considered for further promotion at that time when a general employee who matches with his appointment is promoted. The process of promotion of these persons would continue upto the rank of DSP and thereafter, they will be considered as per seniority. The relevant extracts of memo dated 14.06.2011 are reproduced as below:-

“2. The clarification sought vide your afore-mentioned letter under reference, is given hereunder :-

Those sports employees/officers, who were promoted in excess of 10% quota of C-2, the Government vide its letter dated 18.05.2011, have been created new posts explicitly as a personal measure, which will not be having any connection with the sanctioned posts continuing earlier in the Punjab Police, instead this is a separate cadre as personal measure, as per which at the time of next promotion, the posts of feeding cadre will be abolished as per Orders dated 18.05.2011. These newly created posts are not ex-cadre and these posts are in separate dying cadre. For example, as the Para Military Forces Rules, 2005 have been framed, likewise these posts have been created. The employees who are in excess of the 10% quota, they will have to be considered at that time for promotion when the general employee, who matches with their appointment is promoted, but the difference between the two is that, when general Police employee will be promoted against the sanctioned posts, the employees working on the posts falling in excess quota in sports are promoted, then this promotions will be considered against the newly created posts in the present rank. The post of the Feeding Care will be automatically come to

*an end and the post on which he is promoted, the said post will be automatically created. The benefit of promotions is to be given from the present rank of posts created for Sports persons. Here, it is worth mentioning that only the earlier promotions on all ranks and promotions have been only regularized and new posts will come into existence automatically. **Such provision has been made, though this process will be implemented on their initial appointments, but the next promotion has to be done from the present rank and this process will continue upto promotion to the posts of D.S.P. Thereafter, they will be considered as per seniority.** Here, it is worth mentioning that when any general employee is working on the post of Inspector and any Sports employee is available of the same date and both the employees are fulfilling the prescribed qualifications, then both of them have to be promoted to the post of D.S.P. on the same date, but there will be a difference in these i.e. the general employee will be appointed as per his seniority against the sanctioned post, but the Inspectors who are from Sports quota, their promotion will be made from his post of Inspector which will come to an end and at the same place, by creating the post of D.S.P., he will have to be promoted on that post. In this way, no category will get an opportunity to show his resentment against promotion on the additionally created posts.”*

[Emphasis added]

21. The aforesaid letter made it clear that 207 sportsperson holding different ranks are part of dying cadre carved out by order dated 18.05.2011. It further clarified that promotion upto the rank of DSP would be in dying cadre and thereafter, it will be considered as per seniority.

22. In the wake of above noted clarifications, the respondent prepared seniority list in 2013 which came to be challenged before this Court. This Court set aside seniority list of 2013 and directed the respondent to prepare fresh seniority list. In the tentative seniority list the names of petitioners were included, however, were deleted from the final seniority list on account of objection raised by private respondents.

23. In view of representation made by the petitioners, the matter was considered by Special Principal Secretary (Home) who vide letter dated 30.07.2020 clarified that names of petitioners should be included in the seniority list. The said letter is reproduced as below:-

“9. It is accordingly submitted that seniority list dated 03.07.2020 would require amendment and the names of 6 officers i.e. Sh. Satvir Singh, Smt. Amandpeet Kaur, Sh. Manjit Singh, Sh. Daljit Singh, Sh. Sukhdev Singh, Sh. Bahdur Singh will have to be included in this seniority list for the reasons explained above. They were already included in the previous seniority list of 2013 and as per Home Department letters dated 09.06.2011 and 14.06.2011, 6 officers of dying cadre on their promotion as DSP would acquire common seniority along with the main/general cadre of PPS officers.

Their names would appear at numbers 212, 214, 215, 216, 217 and 218. Seniority officers earlier at number 212 and 214 below onwards would be pushed down further accordingly. A copy of the revised seniority list (Part-III) is placed below for approval.”

24. The letter was considered by Department of Personnel which formed an opinion that petitioners should be included in the seniority list of

PPS Officers. The extracts of said letter which are reproduced in the paperbook are as below:-

“20. Based on the facts explained above, we may agree with the proposal of Department of Home Affairs and Justice as per the order dated 18.05.2011. These six sports persons should be included in the seniority list of PPS officers. The legality of this order dated 18.05.2011 is subject to the outcome of pending court case, (if any) regarding out of turn promotions beyond C-II quota given to these sportspersons.”

25. The respondent found it appropriate to seek opinion of Office of Advocate General which also opined that petitioners should be included in the seniority list from the post of DSP onwards. The extracts of opinion of Office of Advocate General, as reproduced in the paper book, are as below:-

“4. In the course of personal hearing, certain objections have been raised to inclusion of such sportsperson in the seniority list, on the ground that the original appointments beyond the 10% quota, were challenged and held illegal by the Supreme Court. Nevertheless, from the file, it appears that neither the notification of 28.12.2006 (creating 295 posts in the PAP Battalion) nor the notifications of 18.05.2011 (creating 207 posts in a dying cadre) read with the clarifications issued by the State Government on 09.06.2011 and 14.06.2011 (allowing for inclusion of these officers in the seniority list from the post of DSP onwards) have been challenged.

5. In view of these orders of the State Government, at present, the sportspersons may be included in the seniority list of DSPs.”

26. Despite opinion of Special Principal Secretary (Home), Department of Personnel and Office of Advocate General, the competent authority vide office noting dated 18.05.2021 which was approved by the

Chief Minister formed an opinion that it would not be appropriate to merge members of dying cadre with main cadre, however, posts of SP, SSP, AIG, DIG, IGP and ADGP would be created for the members of dying cadre and these posts would be personal in nature. The file noting dated 18.05.2021 is reproduced as below:-

“1. Office note of SPS(Home) at NP/107-110 ante may kindly be perused.

2. I generally agree with SPS (Home).

3. Briefly, the case is that sportspersons initially recruited constables were given 'out of turn' accelerated promotions. Some of them were given promotions 'in excess' of prescribed 10% promotion quota' which was subsequently challenged in the High Court. As per orders of the High Court, they should have been reverted.

*4. However, the Council of the Ministers at that time, with a view to preventing their anticipated reversions as per court orders and protecting their extant seniority/ranks, decided to create equal number (207) of posts of different cadres (details at NP/93) to accommodate all such sportspersons who were promoted in excess of permissible 10% promotion quota; **as a measure personal to them.***

5. Thus, the issue is as to whether they can be merged with the regular (PPS) cadre of DSPs and given seniority?

6. I do not agree with the recommendations made by the then SPS (Home) in his note dated 30.07.2020 of at NP:82-87 and the view-point of Personnel Department and that of AG. However, the Chief Secretary has, vide her note dated 16.09.2021 (at NP 94), correctly captured the real issue.

7. Now, there are 2 (two) options before us for these sportspersons who were initially recruited as constables and later on, given accelerated promotions.:-

- (i) *Since Dying cadre was only upto the DSP level, they should remain DSPs and retire as such.*
- (ii) *Further promotion channels for these sportspersons of dying cadre may be created in the higher ranks of SP, SSP, AIG DIG, IGP and ADGP. [It may be noted that some of these candidates who were initially recruited as constables may go upto the level of IGP/ADGP]. These posts would be created as a 'measure personal' to them and must stand automatically abolished with the respective superannuation of the person (belonging to Dying Cadre) holding such an elevated rank and also in no case, be merged with main cadre and get selected to PPS/IPS cadre.*

For orders.

*Sd/-
ACS (Home)*

Chief Minister

*Sd/-
27.05.2021*

*Sd/-
26.05.2021”*

27. From the perusal of memo dated 09.06.2011 and 14.06.2011, the Department of Home and Justice was of the opinion that promotion of the members of dying cadre upto the post of DSP would be within dying cadre. The promotion of these officials would not affect promotion of regular cadre. The promotion of a member of dying cadre was to be granted as soon as similarly situated officer of a regular cadre is promoted. By order dated 18.05.2011, dying cadre was created. The said order was passed to wriggle out of judgment of this Court in ***Swaran Singh (supra)***. The said order was never challenged by the petitioners or private respondents. In the order dated 18.05.2011, it was noted that process of promotion within dying cadre would continue till the officers get promotions on regular posts. It was further observed that these posts have been created as a personal measure to

the officers belonging to sports quota and on promotion of an officer on the next post on regular basis, the additional post will automatically abolish. This letter itself talks of promotion on regular posts. The confusion was further clarified by memo dated 09.06.2011 and 14.06.2011. In memo date 09.06.2011, it was mentioned in Para 2(E) that officers will not be required to be included in seniority list of lower cadre but when they are successful in getting promoted on the posts of DSP on regular basis then it will be proper to show them in the seniority list. At the cost of repetition, the said paragraph is reproduced as below:-

“(E) These employees/ Officers will not be required to be included in the Seniority List of lower cadre, instead when they are successful in getting promoted to the posts of D.S.P./S.P. on regular basis, then it will be proper/ appropriate to show them in the seniority.”

28. In memo dated 14.06.2011 again, it was clarified that arrangement of promotion within cadre would continue upto the post of DSP and thereafter, they will be considered as per seniority. At the cost of repetition, the relevant extracts of memo dated 14.06.2011 are reproduced as below:-

“Such provision has been made, though this process will be implemented on their initial appointments, but the next promotion has to be done from the present rank and this process will continue upto promotion to the posts of D.S.P. Thereafter, they will be considered as per seniority.”

29. The Department of Home and Justice not only in 2011 was of the opinion that promotion of members of dying cadre would be made within dying cadre upto the post of DSP and thereafter as per seniority but also the notes dated 30.07.2020 and 08.12.2020 are self-speaking. The Department of Personnel as well as Office of Advocate General after passing of impugned order have formed an

opinion that name of 6 officers should be included in the seniority list of DSP. These communications collectively prove that respondent was always of the opinion that on attaining the post of DSP, the members of dying cadre would form part of regular cadre. The respondent in 2013 as well as while preparing tentative list included name of petitioners in the seniority list of DSP. The respondent without any fresh material formed an altogether different opinion and ordered to exclude name of petitioners from the seniority list. No new material was available and all the documents on record as well as clarifications were speaking otherwise.

30. There is another aspect of the matter which needs to be examined. The petitioners are sportsperson and on account of their achievements at National and International Level, they were appointed as well as out-of-turn promoted. The petitioners were appointed in 1990 and reached to the rank of DSP in 2001. They were holding posts of Inspector in 1994 and thereafter, promoted to the rank of DSP without out-of-turn promotion. Their promotion was regular promotion. Later on, they got rank of DSP in 2001 and if it is held that they cannot be further promoted, it would amount to stagnation of their rank and post. An officer cannot be expected to hold a post forever especially when persons holding same rank are promoted. If they are retained on the post of DSP, it would indirectly amount to de-recognition of their achievements in sports. This Court is not oblivious of the fact that different State Governments in recent past have even made initial appointments on the post of DSP.

31. The respondent by noting dated 18.05.2021 has formed an opinion that petitioners cannot be made part of regular cadre, however, posts of higher ranks of SP/SSP/AIG/DIG and ADGP would be created as a measure personal. The said opinion was formed in 2021 and it was duly approved by the Chief Minister,

however, till date the respondent has not created additional or ex-cadre posts of higher ranks for the petitioners.

32. In the wake of above discussion and findings, this Court is of the considered opinion that respondent should create posts of higher ranks i.e. SP/SSP/AIG/DIG and ADGP for 207 sportspersons belonging to dying cadre created by order dated 18.05.2011. The needful shall be done within six months from today. In case, the respondent fails to create aforesaid posts within aforesaid period, the petitioners shall form part of seniority list of regular cadre of DSP.

33. The petitions stand disposed of in above terms.

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

(JAGMOHAN BANSAL)

JUDGE

24.09.2024

Mohit Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No