

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

208 (3 cases)

CWP-23866-2019 (O&M)
Date of Decision: 12.01.2024

Mohandeep Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

With

CWP-21693-2019

Mohandeep Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

And

CWP-10313-2021

Mohandeep Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:-

Mr. B.S. Patwalia, Advocate with
Mr. Abhishek Masih, Advocate for the petitioners
(in all the petitions)

Mr. Aman Dhir, DAG, Punjab

Mr. Yagyadeep, Advocate for respondent Nos.14, 40 &42
(in CWP No.23866 of 2019)

Mr. Rajiv Atma Ram, Senior Advocate with
Mr. Ranjit Kalra, Advocate and
Mr. Rajat Khanna, Advocate and
Mr. Vishal Saini, Advocate and
Mr. Vijay Pratap Singh, Advocate
for respondent Nos.9, 12, 24, 29 & 36

JAGMOHAN BANSAL, J. (Oral)

1. As the issue involved is common, with the consent of contesting parties, all the captioned petitions are taken up together. For the sake of brevity and convenience, facts are borrowed from *CWP No.23866 of 2019*.

2. The petitioners through instant petition under Articles 226/227 of the Constitution of India are seeking setting aside of order dated 16.08.2019 (Annexure P-11) whereby claim of the petitioners that they are seniors to the private respondents has been declined.

3. The petitioners joined respondent-department as Corporal Instructors during 2001-02. They came to be promoted to the post of Havildar Instructors vide order dated 10.09.2010 (Annexure P-3). They came to be further promoted to the post of Platoon Commander vide order dated 28.11.2013 (Annexure P-5). It is apt to notice here that vide order dated 02.09.2013 (Annexure P-4) the petitioners were promoted to the post of Havildar Instructors w.e.f. 03.05.2007 meaning thereby they were given retrospective promotion from the post of Corporal Instructors to Havildar Instructors. The private respondents joined respondent-department as Platoon Commanders on 29.11.2013 though their final selection list was prepared on 05.11.2013. The private respondents were directly recruited as Platoon Commanders whereas petitioners became Platoon Commanders on 28.11.2013 by promotion.

4. The respondent vide order dated 21.05.2019 (Annexure P-9) released tentative seniority list of Platoon Commanders. In the said list, the private respondents have been shown seniors to the petitioners. The respondent invited objections from all the affected parties. The petitioners filed their objections to aforesaid tentative seniority list. The respondent by impugned order has turned down objection of the petitioners and declared private respondents senior to the petitioners.

5. From the above noted facts, it is evident that dispute in the present petition is confined to date of appointment of petitioners vis-à-vis private respondents on the post of Platoon Commanders.

6. Learned counsel for the petitioners submits that order dated 02.09.2013 whereby petitioners were granted promotion from back date and order dated 28.11.2013 whereby they were promoted to the post of Platoon Commanders have not been re-called. The act of the respondent amounts to re-calling of aforesaid orders without issuing show cause notice followed by opportunity of personal hearing. The respondent while passing impugned order has relied upon instruction dated 30.08.1996 (Annexure P-12) which are not applicable to petitioners. The petitioners are governed by Punjab Home Guards and Civil Defense (Field) Class III Service Rules, 1983 (for short the 'Rules'). As per Rule 10 of the Rules, the seniority *inter se* of the members of the service in each cadre shall be determined by the length of continuous service on a post in that cadre of the service.

7. *Per contra*, Mr. Rajiv Atma Ram, Senior Advocate for private respondents submits that petitioners were promoted to the post of Platoon

Commanders subject to various conditions which included change in seniority list as well as change in their position on account of administrative grounds. As per Rule 8(2) of the Rules, a person can be promoted to the post of Platoon Commander subject to working on the post of Havildar Instructor for a minimum period of 5 years. The petitioners concededly actually worked on the post of Havildar Instructors for a period of 3 years, thus, they could not be promoted to the post of Platoon Commanders. The private respondents indubitably joined on 29.11.2013, however, the selection process was initiated in 2012 and final list of selected candidates was released on 05.11.2013. There was intentional or unintentional mistake on the part of authorities which promoted the petitioners from the post of Havildar Instructors to Platoon Commanders though they were not eligible for the said post

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

9. Rule 8(2) and 10(1) of the Rules which are relevant to controversy in hand are reproduced as below:

“Rule 8. Method of appointment and qualifications. - All appointments to the Service shall be made in the following manner :-

(1) xxxx xxxx xxxx

(2) In the case of Platoon Commander. - (i) Forty per cent by direct appointment from amongst graduates of a recognised university and the persons having the following qualifications will be preferred:-

(a) N.C.C. 'C' or 'B' Certificate

(b) International Sportsmen; or

(c) All India Sportsmen:

Provided that five per cent of the posts may be filled from amongst sportsmen who have represented the State or Country.

(ii) Five per cent of the posts from amongst Assistant Sub Inspectors or Sub- Inspectors of the Department of Home Affairs and Justice [Police organisation] on deputation;

(iii) Forty-five per cent by promotion from amongst Armourers [Assistant Sub-Inspectors rank], Havildar Instructors, Quarter Master Sergeants, Sergeant Mechanics and Sergeant Armourers, who have an experience of working as such for a minimum period of five years in the ratio of the sanctioned strength in these ranks :

Provided that the posts of the Assistant District Commanders in the offices of the District Commanders shall be filled from amongst Clerks with at least five years service; and

(iv) Ten per cent of the posts by promotion from amongst Clerks who have an experience of working as such for a minimum period of five years.”

XXXX XXXX XXXX XXXX

Rule 10. Seniority of members of Service. - The seniority inter se of the members of the Service in each cadre shall be determined by the length of continuous service on a post in that cadre of the Service”

10. Concededly, the petitioners were initially promoted to the post of Havildar Instructors vide order dated 10.09.2010, however, by order dated 02.09.2013, they were extended promotion w.e.f. 03.05.2007. The petitioners were further promoted to the post of Platoon Commanders vide order dated 28.11.2013. The impugned order as well as tentative seniority list amount to re-calling of order dated 02.09.2013 as well as order dated 28.11.2013. The respondent has every authority to rectify its mistake and no one can claim

right contrary to the Rules governing service. Authorities as well as employees are bound by Rules, however, no one can be denied already granted benefit without issuing show cause notice followed by opportunity of hearing. The respondent has re-called orders dated 02.09.2013 and 28.11.2013 without issuing show cause notice and granting opportunity of hearing to the petitioners.

11. In the wake of above discussion and findings, this Court is of the considered opinion that respondent-State should issue show cause notice to the petitioners and thereafter grant opportunity of hearing to them before finalizing seniority list.

12. As conceded by both sides, the petitioners as well as private respondents have already been promoted, thus, till the passing of final order/final seniority list, the already made promotions shall not be disturbed.

13. Let the needful be done expeditiously and in any case within 6 months from today.

14. Disposed of in above terms

15. Pending applications(s), if any, shall also stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

12.01.2024
Mohit Kumar

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