



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Reserved on : 15.05.2024
Date of Decision : 27.05.2024

1.

LPA No. 402 of 2016 (O&M)

Siri Bhagwan and others

Union of India and others

Versus

... Appellant

... Respondents
2.

LPA No. 1263 of 2016 (O&M)

State of Haryana and others

Kuldeep Singh (now deceased)
through his LRs and others

Versus

... Appellants

... Respondents
3.

CWP No. 12225 of 2013 (O&M)

ASI Jagpal Singh and others

State of Haryana and others

Versus

... Petitioners

... Respondents
4.

CWP No. 3589 of 2015 (O&M)

Virender Kumar

State of Haryana and others

Versus

... Petitioner

... Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Ms. Shruti Jain Goyal, Senior Deputy Advocate General,
Haryana, for the State.

Mr. Mahabir Singh, Senior Advocate assisted by
Mr. Sunil K. Nehra, Mr. Mahesh Babu,
Mr. Gaurav Mohunta, Mr. Veerendra Kumar, Advocates
for the petitioners in CWP No. 12225 of 2013 and
for LRs of deceased respondent no. 1 in LPA No. 1263 of 2016.

Mr. D. S. Patwalia, Senior Advocate assisted by
Mr. Gaurav Rana, Advocate, for the appellants
in LPA No. 402 of 2016 and respondent nos. 3, 4 and 7
in LPA No. 1263 of 2016.

Mr. Shubhkaran Singh Gill, Advocate for
Mr. Kshitij Sharma, Advocate, for the petitioner
in CWP No. 3589 of 2015.



SANJEEV PRAKASH SHARMA, J.

1. This case has a chequered history. Initially vide judgment dated 08.10.2015, the writ petition filed by Kuldeep Singh (since deceased) was allowed by Single Bench and the State was directed to consider his case for the post of Assistant Sub-Inspector with effect from the date his juniors had been promoted in the cadre of Commando Police Force. The Division Bench set aside the order in LPA No. 402 of 2016 vide its judgment dated 20.02.2017 and remanded the matter to Single Bench for fresh consideration. The remand order was challenged by the deceased-writ petitioner/ Kuldeep Singh before the Supreme Court. Civil Appeal Nos. 375-376 of 2022 were decided by the Supreme Court observing that the matter must receive the attention of the Division Bench itself which will go into the merits of the case. It has disposed of the case and the order of remanding the case to the Single Judge was set aside. We have, therefore, heard learned counsel at length.

2. The Division Bench had earlier posed the following questions for determination:-

“The crucial issue which is required to be determined and which has not been gone into by the learned Single Judge is (i) Whether Commando Unit is a separate Regular Cadre?; (ii) If so, whether a police personnel beyond the age of 30 years can be retained into the Commando Police? And (iii) Whether the appellants or some other officials have been permanently absorbed in the Commando Cadre and if so, in what special circumstances?

The effect of the promotions, if any, earned by the respondent-writ petitioner or the appellants within and



outside the Commando Unit, also requires determination.”

3. Learned counsel for the State has stated candidly that the issue whether the Commando Unit is a separate regular cadre does not require any further determination as now it is settled that the Commando Police Force is a separate unit and a separate cadre altogether. The seniority of Commando cadre is prepared separately and the terms and conditions of service in the Commando Police Force were governed by the Standing Order No. 49 of 1988 issued by the Administration of the Police Department for administration of Haryana Police Commando Force. The Standing Order was issued for raising maintenance, General Administration, Training and Operation of the Commando Coys sanctioned by Haryana Government vide memo dated 18.11.1987. It is further informed that promotions are made in the cadre separately. Thus, we find that we are no more required to address the said issue.

4. Respondent Kuldeep Singh has expired. Before he expired, he was granted the benefit of the order passed by the learned Single Judge. It is informed that the issue needs to be finally adjudicated as there are several writ petitions filed on the same subject matter which are pending and await the result of the present appeal.

5. The Single Bench of this Court had allowed the writ petition relying on judgment passed by the Full Bench of this Court in **Niranjan Singh vs State of Punjab** 1999 (2) SCT 154 and judgment of the Supreme Court in **State of Haryana and others vs Kashmir Singh and another** 2010 (13) SCC 306. The Single Bench reached to the conclusion that the transfer



of Kuldeep Singh outside his cadre would not affect his seniority and other consequential benefits would continue to be available to him in his parent cadre. The Single Bench relied on the amendments made in the Standing order and held writ petitioner- Kuldeep Singh entitled to be promoted as Assistant Sub-Inspector in his parent cadre, namely, the Commando Police Force.

6. Brief facts of the appeals which require to be noticed are that writ petitioner- Kuldeep Singh (respondent in LPA Nos. 402 and 1263 of 2016) was appointed as a Constable in the Haryana Police in the Commando Police Force on 15.04.1992 and after having worked in the cadre for more than 10 years, on 22.08.2002 he was transferred along with others to the civil police cadre and posted in District Panchkula. He was further promoted as Head Constable with effect from 20.07.2004. On 21.04.2006, his juniors (respondent nos. 8 to 11 in writ petition no. 16618 of 2008) in the cadre of Commando Police Force were promoted to the rank of Assistant Sub Inspectors. He was confirmed on the post of Head Constable with effect from 31.08.2006 in District Kaithal and was further promoted as Assistant Sub-Inspector on 12.06.2013 while serving in District Kaithal.

7. The appellants in the connected appeal bearing LPA No. 402 of 2016 were promoted Head Constables with effect from 10.09.1994 in the Commando Police Force. As per writ petitioner – Kuldeep Singh, he was senior to respondent nos. 7 to 13 (appellants *ibid*) but they were promoted earlier as Assistant Sub-Inspectors in the Commando Unit on 21.04.2006, while the writ petitioner – Kuldeep Singh was promoted on 12.06.2013 while working in District Kaithal.



8. In CWP No. 12225 of 2013, prayer of the petitioners is for quashing the impugned order dated 07.01.2013 vide which their claim for seniority and all consequential benefits in their parent cadre i.e. Commando Wing at par with their juniors was rejected. Further prayer of the petitioners is that the respondents be directed to promote them as Sub-Inspectors/Inspectors from the date their junior have been promoted.

9. In CWP No. 3589 of 2015, petitioner Virender Kumar also makes a similar prayer. The petitioner was enrolled as Constable in Commando Wing on 20.03.1988. He appeared in the test and passed the Lower School Course in the year 1994. He was brought on promotion list C-1 on 15.03.1994. He was promoted as Head Constable on 28.03.1994. On 16.09.1998, the 2nd Battalion of the Commando Wing was disbanded. Thereafter, the petitioner was forcibly transferred from Commando Wing to District Police. The grievance of the petitioner is that the persons junior to him, who had attained the age of 30 years at the time of disbandment of battalion and retained in Commando Wing, got various promotions upto the rank of Inspector. They are now posted in District Police. As a result thereof, the petitioners were forced to work under their juniors as Sub-Inspectors.

10. The writ petitioner/ Kuldeep Singh feeling aggrieved submitted an application dated 12.07.2006 for considering his name in his parental Commando Cadre for promotion to higher rank of Assistant Sub-Inspector but no decision was taken on his application. Thereafter, he moved another application in October, 2006 for being posted in the Commando Unit because his juniors respondent nos. 8 to 11 had been promoted to the rank of Assistant Sub-Inspectors. He also gave an example of respondent no.7, who



had earlier been transferred to District Panchkula along with him but had been transferred back to Commando Unit and promoted as Assistant Sub-Inspector vide order dated 21.04.2006.

11. The request of the writ petitioner – Kuldeep Singh was, however, rejected vide order dated 10.11.2006 stating that everyone is to be transferred out after certain age in view of Standing Order No. 49/1988 and there is no provision for permanent posting in the Commando Wing. The writ petitioner, therefore, prayed for quashing of the order dated 10.11.2006 whereby he was denied transfer to his parental cadre and also prayed to promote him as Assistant Sub-Inspector with effect from the date his juniors had been promoted by considering him in his parental cadre from the date they so promoted.

12. Reply was filed on behalf of the State and it opposed the prayer. It was submitted that the writ petitioner was governed by the Standing Order No. 49/1988 which had been issued for administration of Haryana Police Commando Force. It was further stated that although the petitioner had been selected in the B- Test in the Commando Wing held on 20.01.2002 and had been deputed to undergo Lower School Course at Haryana Police Academy, Madhuban against the seat allotted to Commando Wing but after having passed the Course, he was sent back to District Police Panchkula as he had crossed the age of 30 years on 31.12.2002. As per the Standing Order, all the Constables, who had attained the age of 30 years, had been transferred to the other wings of the Haryana Police. Certain number of officials had been retained in terms of the Standing Order itself to maintain administrative continuity, which included respondent nos. 7 to 13.



13. It was further stated that 31 Constables in all had been transferred at the relevant time. It is asserted that the writ petitioner would not have lien in the Commando Wing after his permanent transfer to District Police.

14. Learned senior counsel for the appellants/ respondents submitted that the writ petitioner had not challenged his transfer. Thereafter, he had been promoted as Head Constable in the civil wing of the police. He had accepted his promotion as Assistant Sub-Inspector in the civil wing of the police in the year 2013 and cannot be allowed to turn around to challenge the promotion awarded to the appellants. The provisions of the Standing Orders had also not been challenged by the writ petitioner and cannot be allowed to shift his track merely because he found the grass being greener on the other side when the promotions were granted to the appellants.

15. It is stated that the Head Constables who are enrolled as Constables in the Commando Force, enlisted in List-B and deputed to Lower School Course on the seats allocated to Commando Force are not sent to any other unit/ cadre. They are retained in the Commando Force and got their service benefits including promotion upto the rank of Sub-Inspector in the Commando Force itself. It is also stated that the respondents to the writ petition, namely, respondent nos. 7 to 13 appeared in the promotional course from Commando Force and got all further promotional benefits from the Commando Force. Respondent nos. 8, 10, 11 and 13 were never transferred from the Commando Unit, while respondent nos. 9 and 12 were transferred to District unit but were not relieved from the Commando Force and their



transfer orders were cancelled. Respondent no.7 had been transferred to the civil wing at Panchkula but he made a request for continuing in Commando Wing and the Director General posted him back to Commando Wing on permanent basis vide order dated 19.05.2004 and has been, therefore, promoted.

16. The second portion of Clause 7 related to retaining of 1/4th of the Force and transferring the remaining constables who are more than 30 years of age. It is also stated that during the year 2003, 409 Constables were recruited in the Commando Force. During the period from 2014 to 2018, total 328 Constables, who were recruited in the year 2003, were transferred to District police but were retained on temporary duty in the Commando Force. Out of them 245 Constables were relieved in phased manner. Thereafter, 197 Constables from district police have been taken on deputation in the Commando Force, however, their lien has been retained with the district police. 520 Constables have been selected in the Commando Force in the year 2022-2023 and, therefore, those who have been brought on deputation from district police, shall be repatriated after the recruitment course is over. It is also stated that in view of the judgment passed in **CWP No. 18904 of 2005 – Megh Pal and others vs State of Haryana**, decided on 07.02.2006, the persons, who were transferred without their request to another range, their orders have been kept in abeyance and orders were issued on 10.08.2010 relating to fixing of seniority upto the rank of Sub-Inspector with direction that it may, therefore, be ensured that all ASIs/ SIs who have been transferred from one Range to another are considered for



their promotion/ confirmation and consequent fixation of their seniority only in their parent Range.

17. It is also informed that in exercise of powers conferred under Article 309 of the Constitution of India read with Section 92 (1) of the Haryana Police Act 2007, service Rules have been framed in 2017 and notified on 08.05.2017. The same lays down the seniority rule for each cadre.

18. The learned Single Judge has, however, after considering the aspects found that the Full Bench of this Court in Niranjan Singh's case (supra) had answered a question that "*the unilateral act of transfer by the department of a member of the Police Force from one cadre to another cannot alter his seniority or right to be considered for being deputed for the course or promotion.*"

19. The learned Single Judge also relied on Kashmir Singh's case (supra), wherein it was held as under:-

"13. Thus, a plain perusal of the Punjab Police Rule shows that transfer can be done from one district to another district or even to another range, and there is no absolute prohibition for doing so. However, in such a case, the seniority of Constable and Head Constables at the district level and of ASI and SI at the range level is maintained in the parent district/range despite the transfer. Promotion/confirmation is also given strictly as per the seniority in the parent district/range level, as per Memo No. 43515-22/E-(III) dated 10.8.2010."

20. The matter travelled upto the Supreme Court. The Apex Court after noticing the various aspects, observed as under:-



“We are of the view in the state of pleadings and the orders passed and the ramifications it may have that it is in the interests of justice particularly taking note of the fact that there are other cases also pending and that the matter must receive the attention of the Division Bench itself instead of it being remanded back to the Single Judge. Without expressing any view either way, we are of the view the matter must go back in the fitness of things. Accordingly, the appeals are allowed. We set aside the judgment of the Division Bench by which it remits the matter to the learned Single Judge and the Division Bench will hear the appeals and will go into the questions which it itself has posed. We also make it clear that it will be open to the appellant to contend that his case can be decided without even deciding these issues. It is entirely for the Division Bench to consider all aspects which it would consider appropriate but it should be the Division Bench itself which is to take decision in the matters.”

21. In the aforesaid background, we find following issues which need to be addressed to:-

- (a) Whether the Commando Police Force is a separate cadre and if so what would be the consequence relating to seniority and promotion of those who are directly recruited in the Commando Unit;
- (b) Whether the deceased respondent was wrongfully denied transfer back to Commando Police Force vide order dated 10.11.2006;
- (c) Whether the writ petitioner was entitled to be considered for promotion to the post of Assistant Sub-Inspector when respondent nos. 8 to 11 were promoted in 2006 ?



- (d) Whether the writ petitioner is entitled to be considered for promotion in the Commando Police Force to the post of Assistant Sub-Inspector from the date his juniors were promoted with effect from 21.04.2001
- (e) Whether the Standing Order No. 49 of 1988 will have governing conditions and what would be the effect of judgment passed by the Full Bench of this Court in Niranjan Singh's case (supra) and judgment of the Supreme Court in Kashmir Singh's case (supra) on it.

22. As has been admitted at bar and also from a perusal of the affidavit filed by the official respondents, it is apparent that the State has always been treating the Commando Police Force as a separate cadre. Earlier a separate Standing Order No. 49 of 1988 was issued for Commando Police Force which governed the method and manner of the services of the Constables working in the Commando Police Force. During the pendency of these appeals, the Haryana Police (Non-Gazetted and other Ranks) Service Rules, 2017 (for short, 'the Police Rules 2017'), came into force which reflect that the Commando Police Force is a separate cadre, different from General cadre of all districts and ranges, General cadre of Government Railway Police and Haryana Armed Police. Rule 12 of the Police Rules 2017 reads as under:-

“12. Seniority of enrolled police officers. (1) The centralization of seniority for determining the lien, inter-se seniority and promotion of police personnel borne on the following cadres shall be governed as per the provisions contained in this rule.”



- (i) General cadre (men and women) of all districts and ranges;*
 - (ii) General cadre (men and women) of Government Railway Police;*
 - (iii) Haryana Armed Police;*
 - (iv) Commando Police Force.*
- (2) The Centralization of seniority shall apply to matters relating to the lien, seniority and promotion of all Constables borne on the aforementioned cadres who pass the Lower School Course after the commencement of these rules and the Sub-Inspectors who have been appointed through direct recruitment after the commencement of these rules.*
- (3) The promotion lists B, C, D, E and F shall be maintained for each of the aforementioned cadres centrally at the State Police Headquarters. The lists shall be shared with all units at district and range level and shall also be uploaded on Haryana police official website.*
- (4) There shall be a Gradation list of inter-se-seniority in each rank in each cadre and shall be published on the 1st January every year by the State Police Headquarters.*
- (5) The seniority of all Lower School Course pass Constables shall be determined as per merit achieved by them in the Lower school course; which shall then become the foundation for preparing the subsequent gradation lists and further promotions to higher ranks.*
- (6) The Lower School Course passed Constables shall undergo Intermediate School Course on their turn as per their seniority under sub- rule (5) above and Intermediate School Course passed member of Service shall undergo Upper School Course on their turn.*
- (7) No promotion shall be given to Head Constables to the higher rank unless he/she passes the prescribed mandatory Intermediate School Course as prescribed for promotion.*



Seniority in the rank of Assistant Sub-Inspector shall be determined after passing the Intermediate School Course only. Whereas, the Upper School promotion course shall only be qualifying in nature and shall have no bearing on promotion and the inter-se-seniority of police personnel.

(8) No benefit of seniority shall be given for any service rendered by a police personnel either on adhoc basis or in his own pay scale against a senior post.

(9) As and when sufficient number of posts in any rank under promotion quota falls vacant, the Director General of Police may constitute one or more Departmental Promotion Committees as required for filling up vacant posts. Each of the Departmental Promotion Committees shall be headed by an officer not below the rank of a Deputy Inspector General of Police for promotion to the rank of Assistant Sub-Inspector and Sub-Inspector and by a Superintendent of Police for promotion to the rank of Head Constable. The Departmental Promotion Committee shall examine the record of all eligible candidates and make recommendations for promotion as per their seniority and in accordance with the instructions and guidelines prescribed by the State Government from time to time. The Departmental Promotion Committee shall ensure that,-

(a) any minor or major punishment having a bearing on integrity of the candidate during the last ten years or reliability during the last two years of service shall be a bar on promotion, irrespective of the grading in the annual confidential report;

(b) during pendency of a regular departmental enquiry under the rules, no promotion shall be granted.

(c) pendency of an appeal against an order of acquittal by a competent court in a criminal case against a candidate shall not be a bar on promotion;



(d) during pendency of an appeal against an order of conviction, no promotions shall be granted;

(c) the period for which a candidate remains out of service due to discharge or dismissal from service or absence from duty etc. shall be deducted from the qualifying service prescribed for promotion to the higher ranks;

(f) the seniority of reserved category candidates shall be in accordance with the instructions and guidelines prescribed by the State Government from time to time;

(10) In order to remove stagnation in promotion in various ranks and as a welfare measure in respect of those officials who have served the department for considerable time with clean service record but could not get promotion through the regular channel prescribed under the rules, the Director General of Police may, with the approval of Government prescribe any alternative scheme of promotion other than the regular promotion. This alternative scheme of promotion shall not in any way affect the seniority of Lower School Course passed constables.”

23. Thus, an employee appointed in Commando Police Wing would have separate seniority and promotion in the said particular cadre. Prior to coming into force the Police Rules 2017, there were standing order which govern the method and manner of appointment of police personnel in Commando Police Force. In terms of the affidavit filed by the State authorities (supra), we are satisfied that the petitioner was selected and appointed in the Commando Police Force and his transfer to the civil police at District Panchkula was not at his own request. In view thereof, as per the judgment of the Supreme Court in **Kashmir Singh**'s case (supra), writ petitioner – Kuldeep Singh was entitled to be continued to be governed by



the Commando Police Force Rules and Regulations. The statement, as recorded herein above, and the counter affidavit of the official respondents reflects that the writ petitioner had been treated as a member of the Commando Police Force. He was sent to Lower School course as a member of the Commando Police Force but was transferred against his wishes to the civil police where he was promoted much later than his juniors. The junior persons, who were retained by the official respondents, had been promoted in 2007 itself, while the name of writ petitioner – Kuldeep Singh was not considered, although he was senior.

24. The contention of the official respondents that writ petitioner – Kuldeep Singh was transferred along with others, who had completed 30 years of service and could not be allowed to continue in Commando Police cadre, is found to be misconceived. The officials, who were retained by the State, were later on promoted while writ petitioner – Kuldeep Singh was transferred to the civil police.

25. An employee may not have a right of promotion but right of consideration is always available to him and if persons junior to him are considered for promotion, the claim of senior person cannot be denied merely because he has been transferred on account of administrative exigencies to another wing or separate cadre. In such circumstances, the writ petitioner is held to be entitled for being considered for promotion from the date his juniors have been so promoted.

26. The contention of learned Senior counsel that the writ petitioner had not challenged his transfer and therefore he is estopped for claiming promotion in Commando Police Force cadre, is found to be without basis. A



person cannot be said to have waived off his right, if he does not challenge an administrative order. We also find that the transfer order was not at his request. He, therefore, as an obedient police constable was required to join duties wherever he is asked to. If the Respondent-State is faulted in transferring him while keeping juniors in the Commando cadre, the writ petitioner cannot be allowed to suffer. The criteria of 30 years retaining in Commando cadre does not find place in the Rules framed by the respondent-State. Thus, element of arbitrariness can always be noticed in the cases of the police officials who are retained in Commando cadre while others are shunted out. In view thereof, the contention of the appellants in LPA No. 402 of 2016 is rejected.

27. In view of the above and considering the law laid down by the Supreme Court in Kashmir Singh's case (supra) and by Full Bench of this Court in Niranjan Singh's case (supra) we hold that denying writ petitioner-Kuldeep Singh's claim for being transferred back to Commando Police Force vide their order dated 10.11.2006 is bad in law and declare it illegal. We further direct that writ petitioner – Kuldeep Singh shall be treated to be continued in Commando Police Force with right to claim his seniority in the cadre of Commando Police Force for the purpose of promotion to the post of Assistant Sub-Inspector. The official respondents would now consider his case for promotion from the date the persons junior to him were promoted i.e. from 2006 with all consequential benefits. Since writ petitioner Kuldeep Singh has expired, his retiral benefits shall be calculated and actual arrears of salary and retiral benefits shall be released in favour of his legal representatives, in accordance with law.



28. In view of the above **LPA No. 1263 of 2016 is dismissed** and the writ petition filed by Kuldeep Singh (since deceased) is allowed. The respondents now conduct the aforesaid exercise within a period of three months.

29. CWP Nos. 12225 of 2013 and 3589 of 2015 have been tagged along with LPA Nos. 402 and 1263 of 2016 as the prayer made by the writ petitioners is identical to writ petitioner – Kuldeep Singh. In view of our findings relating to writ petitioner – Kuldeep Singh (since deceased), we allow these two writ petitions and hold the writ petitioners entitled to be treated as members of the cadre of Commando Police Force and their transfer to the other wings would not affect their seniority in their parent cadre of Commando. They would be entitled to all service benefits as available to others. **Accordingly, CWP Nos. 12225 of 2013 and 3589 of 2015 are allowed.** The order rejecting their prayer for being brought back to the Commando Wing dated 07.01.2013 is quashed and set aside. They would be entitled to promotion to the post of Sub-Inspectors/ Inspectors from the date their juniors were promoted.

30. Keeping in view the above findings, we do not accept the contention raised by the appellants in LPA No. 1263 of 2016, who were admittedly appointed much later to writ petitioner – Kuldeep Singh. There is no occasion to revert to the appellants and their promotion shall remain protected. They will be treated as juniors to writ petitioner – Kuldeep Singh in the cadre of Commando for further promotions and other benefits. **Accordingly, LPA No. 402 of 2016 is partly allowed.**

31. All pending applications shall stand disposed of.



32. No costs.

To sum up:-

- i) **LPA No. 1263 of 2016 is dismissed** and the writ petition filed by Kuldeep Singh (since deceased) is allowed. The respondents now conduct the aforesaid exercise within a period of three months.
- ii) **CWP Nos. 12225 of 2013 and 3589 of 2015 are allowed.** The order rejecting their prayer for being brought back to the Commando Wing dated 07.01.2013 is quashed and set aside. They would be entitled to promotion to the post of Sub-Inspectors/ Inspectors from the date their juniors were promoted in the Commando Police Force with all consequential benefits.
- iii) **LPA No. 402 of 2016 is partly allowed.** There is no occasion to revert to the appellants. Their promotion shall remain protected. They will be treated as juniors to writ petitioner – Kuldeep Singh in the cadre of Commando for further promotions and other benefits.

(SANJEEV PRAKASH SHARMA)
JUDGE

27.05.2024
VS

(SUDEEPTI SHARMA)
JUDGE

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