

2025:PHHC:018876-DB



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

CWP-11815-2021 (O & M)

Reserved on: 24.01.2025

Pronounced on: 10.02.2025

UNION TERRITORY AND OTHERS

.....Petitioners

Versus

**CENTRAL ADMINISTRATIVE TRIBUNAL, CHANDIGARH
BENCH, CHANDIGARH AND OTHERS**

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Argued by: Mr. Amit Jhanji, Sr. Advocate
(Senior Standing Counsel), U.T., Chandigarh with
Ms. Madhu Dayal, Advocate
for the petitioner – non-applicant.

Mr. Arjun Pratap Atma Ram, Advocate
for the applicant-respondent No. 3.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioners herein-
Union Territory, Chandigarh, prays for the setting aside of the order
dated 24.11.2020 (Annexure P-1), whereby, the learned Central
Administrative Tribunal (hereinafter for short called as the CAT),
Chandigarh Bench, has quashed letter dated 16.09.2017 and has
directed the petitioners to consider the case of the applicant-respondent
No. 3, thus for promotion from the post of DSP to that of SP, against the
existing vacancy of Deputy Commandant IRB and if found fit to
provide all consequential benefits of arrears of pay and allowances and

2025:PHHC:018876-DB



seniority within a period of two months from the date of receipt of a certified copy of the said order.

Factual Background

2. Respondent No. 3 initially joined Union Territory Chandigarh Police as ASI on 16.03.1991. He was promoted as officiating Sub Inspector on 11.06.1996 and vide order dated 29.10.1998, he became further promoted as Inspector on Adhoc basis. Further, in pursuance to the directions passed by this Court on 10.12.2015, upon, CWP-20706-2011 titled as Kehar Singh Versus U.T., Administration and Others, respondent No. 3 was promoted as Deputy Superintendent of Police on regular basis vide order dated 04.01.2016. The said promotion was granted notionally w.e.f. 22.02.2011, but subject to the conditions mentioned in the order dated 04.01.2016, including the outcome of the seniority issue pending for determination in CWP No. 2802 of 2013 and CWP No. 24976 of 2012.

3. Respondent No. 3 was further brought on List 'G' and was promoted to the rank of DSP w.e.f. 01.06.2009 vide order No. CC/06-HIII(1)-2019/2521 dated 19.02.2020, as, became issued by the Chandigarh Administration.

4. It is apt to mention here that there is a provision in the State of Punjab, for promotion from the post of DSP, to that, of the Superintendent of Police (SP), but in Chandigarh Police, there are only four sanctioned posts of SPs meant only for the IPS Officers. There is no sanctioned post of SP for non IPS officers in Chandigarh Police. The

2025:PHHC:018876-DB



Chandigarh Administration in terms of Article 309 of the Constitution of India has framed a uniform policy dated 31.07.2015 with regard to giving ORP (Own Rank Promotion) vis-a-vis the rank of Superintendent of Police, thus to the DSPs of Chandigarh police, who are non IPS. As per the said policy, the eligibility for ORP rank of Superintendent of Police, is that, those non IPS DSPs, who are otherwise fit for promotion and have completed 12 years of service as DSP, will be granted Own Rank Promotion and will be re-designated as SP in their own way. For the remaining posts, Chandigarh Administration has not framed any separate rule, thus governing the Chandigarh Police, and, pursuant to the notification dated 13.01.1992, the Chandigarh Administration is following the provisions of Punjab Police Service Rules, 1959 (hereinafter for short called as the PPR, 1959).

5. The Government of Punjab amended the PPR, 1959 on 26.12.2006, and held that promotion to the rank of SP shall be made from the rank of DSP (both promoted from the rank of Inspector and also directly recruited), yet with the supra having six years continuous service in the rank of DSP (substantive), thus, on the basis of merit-cum-seniority subject to the availability of the sanctioned posts of SP rather by the Finance Department from time to time.

6. The said amendment made by the Government of Punjab was never adopted by the Chandigarh Administration, in view of the fact, that with respect to the promotion from the post of DSP to SP,

2025:PHHC:018876-DB



rather the Chandigarh Administration, has framed its own policy dated 31.07.2015. Therefore, the amendment made in PPR, 1959 by the Punjab Government was not applicable to the Chandigarh Police.

7. The Chandigarh Administration has raised the Indian Reserve Battalion (IRB), thus with the approval of the Government of India, thus, to control law and order situation. The Ministry of Home Affairs, Govt. of India had sanctioned one post of Commandant and three posts of Deputy Commandant in the IRB. The post of Commandant is equivalent to Superintendent of Police and the post of Deputy Commandant is equivalent to the post of Additional Superintendent of Police. Since the Chandigarh Police does not have officers of the said ranks in its cadre, therefore, the post of Commandant in IRB, is filled by an IPS Officer of AGMUT cadre, and, the posts of Deputy Commandant were being filled by taking suitable officers of Additional SP rank from Punjab, Haryana and Delhi Administration, but on deputation.

8. Respondent No. 3 submitted representation dated 27.02.2017 to the Advisor to the Administrator, Union Territory Chandigarh, for consideration and promotion to the post of Deputy Commandant IRB, on the ground, that the same fell in the rank of Superintendent of Police (non IPS) and since respondent No. 3 was promoted as DSP w.e.f. 22.02.2011, and, further w.e.f. 01.06.2009, therefore, he is eligible for the same.

2025:PHHC:018876-DB



9. The request of respondent No. 3 for promotion to the rank of Superintendent of Police, was rejected by the Administration vide order dated 17.12.2018, on the ground, that there is no vacancy in the rank of SP (non IPS) in Chandigarh police, thus meant for promotion from the rank of DSP and that the Punjab Rules governing the promotion from the rank of DSP to SP are still pending adoption.

10. Thereafter, respondent No. 3 filed O.A., before the Central Administrative Tribunal, Chandigarh Bench, whereby, he made an espousal that the respondents (petitioners herein) be directed to consider his claim for promotion as Superintendent of Police, against the existing vacancy of Deputy Commandant IRB, thus, in the rank of Superintendent of Police, his being the senior most and eligible aspirant, in terms of the PPR, 1959 as amended on 26.12.2006.

11. The said O.A. became allowed vide order dated 24.11.2020. The relevant paragraphs as occur in the said verdict are extracted hereinafter.

10. We have considered the submissions made on behalf of both sides minutely. From the pleadings of the parties, the moot points for consideration in this case are as under : -

(1) As to whether the cadre of Chandigarh Police service and Indian Reserve Battalion in U.T. Chandigarh is common?

(2) As to whether the applicant is eligible for promotion to the post of Superintendent of Police/Deputy Commandant in IRB, Union Territory, Chandigarh.

(3) As to whether the Rules of 1959 would apply to the DSPs of U.T. Chandigarh for promotion to the higher post without formal adoption?

(4) As to whether the post of Deputy Commandant in IRB, Union Territory, Chandigarh, is available for being filled up by way of promotion or is deemed to have been abolished?

2025:PHHC:018876-DB



(5) As to whether a person who is granted ante-dated promotion, is entitled to count such period as "experience" for the purpose of eligibility for promotion to the higher post?

11. First of all, we proceed to consider the issues No.1 & 2 simultaneously. It is apparent from the pleadings that the respondents themselves admit in letter dated 26.10.2010 (Annexure A-22) written by Government of India to Chandigarh Administration conveying a decision for merger of cadre of Indian Reserve Battalion with the existing cadre of Chandigarh Police. The *cadre* of Chandigarh Police is governed by the Rules of 1959 according to which promotion to the rank of Superintendent of Police is to be made from the rank of DSP having six years continuous service. The applicant was promoted as DSP w.e.f. 01.06.2009 and as such became eligible for promotion w.e.f. 01.06.2015. It is also not in dispute that he is the senior most DSP in the feeder cadre. Once it is recognized that he was eligible for promotion but was not given promotion for one or the other reason and ultimately promoted retrospectively, then such period has to be counted as experience for seniority and eligibility also for promotion to higher post. The respondents cannot be allowed to turn around and claim that his ante-dated period of promotion would not be counted as experience. In view of these facts, it is held that cadre of Chandigarh Police and Indian Reserve Battalion in U.T. Chandigarh is common and applicant is eligible for promotion to the post of Superintendent of Police/Deputy Commandant in IRB, Union Territory, Chandigarh. **In so far as absence of Recruitment Rules, as pleaded by respondents is concerned, by virtue of Notification dated 13.1.1992, the Rules of 1959 would apply to the post of Deputy Commandant, which is part of the Chandigarh Police Cadre.** Be that as it may, the fact is that it is well settled law that the Recruitment Rules which are applicable at the time of vacancy would apply and not the subsequently framed Recruitment Rules for promotional purposes. **Thus, we have no hesitation in upholding the plea of the applicant that since the applicant became eligible for promotion in 2015, so the Recruitment Rules of Punjab would be applicable to him.**

12. The question as to whether the Rules of 1959 would apply to the category of the applicant or not is no longer res-integra and

2025:PHHC:018876-DB



stands settled by apex dispensation in the case of RAJESH KUMAR BASANDHI (supra) holding that even formal adoption is not required for its implementation. The Court has held in clear terms that "The appellant having itself given effect to the rules amended after 1.4.1991, cuts against its own argument to say that amendment subsequent to 1.4.1991 would not be applicable unless specifically adopted by the Union Territory of Chandigarh. It may not be open for the appellant to pick one amendment in the Punjab Rules and implement the same and refuse to apply the other amendment. It is clear that no adoption of the amended provision was necessary and by assigning the general meaning to the expression "for the time being" it would be applicable without being specifically adopted by the Chandigarh Administration. The general meaning of the phrase "for the time being" seems to be reasonable since the position as existing at the time the rule is applied that would be taken into account unless of course context may indicate otherwise. We find no such context by reason of which we may assign meaning to the phrase other than the meaning understood in general sense that such an expression is indefinite in time and refers to state of facts which may arise and exist at the time rule is applied which may vary at different times.". Not only that, in terms of para No. 7 of Standing Order no. 83/2015 relating to Organisation and deployment of India Reserve Battalion, U.T. Chandigarh "All acts, Rules, Instructions and guidelines applicable to the Chandigarh Police will be applicable to the employees of IRB and as per para 8 "Cadre", IRB, U.T. Chandigarh is an integral part and parcel of Chandigarh police and would form one cadre.

13. Now we proceed to consider the question (4) as to whether the post of Deputy Commandant/IRB is deemed to have been abolished in view of having remained unfilled for such a long time. **On this issue, the stand taken by applicant and in our view rightly, is that deeming abolition of the post of Deputy Commandant (IRB) is not borne out from the record as admittedly salary against one of the three posts in the rank of Superintendent of Police had been drawn and paid to Mr. Pardeep Kumar, ACFA from August 2014 to 19.01.2017 and afterwards from 20.01.2017 to 19.04.2017 to Mr. Khagesh Bhandari ACFA. Thus, the post cannot be treated**

2025:PHHC:018876-DB



as abolished more so when the applicant claims to be eligible for promotion on 01.06.2015 itself having been given seniority as DSP w.e.f. 01.06.2009. Another half hearted plea taken by the respondents is that the applicant is not drawing grade pay of Rs.6600/- and as such is not eligible for promotion to the post of Addl. SP/SP. The record shows that applicant was drawing pay in PB III of Rs.15600-39100 + Grade Pay Rs.6600/- (Annexure A-26). In any case, the date of promotion of the applicant stands antedated to 01.06.2009, thereby he has been granted Grade Pay of Rs.6600/- w.e.f. 01.06.2013 and GP of Rs.7600/- w.e.f. 01.06.2018. Thus, even this plea is no longer available to the respondents. It is not in dispute that applicant is the senior most Deputy Superintendent of Police, Chandigarh Police having seniority in the said cadre w.e.f. 01.06.2009. In any case, the concept of abolition of post is applied in direct recruitment posts and not promotional post which fact goes unrebutted and as such it has to be held that the post has not been abolished under deeming fiction more so when applicant was available for such promotion. In any case, this issue was considered and decided in O.A.No.469/2010 titled D.K. MOHANAN VS. UNION OF INDIA & OTHERS, decided on 6.12.2010 by Ernakulum Bench of this Tribunal holding that there is no question of abolition of posts to be filled up for promotional quota. The deemed abolition of post concept is applicable to the direct recruitment quota only. Similar view was taken in O.A.No. 902/2013 titled ISSAC K.J. VS. SUPERINTENDENT AND OTHERS, decided on 23.1.2017 by Ernakulum Bench of this Tribunal.

14. xxxx

15. xxxx

16. In view of the aforesaid discussion, this O.A. merits acceptance and as such is allowed. The impugned order, Annexure A-1 is quashed and set aside. The respondents are directed to consider the case of the applicant for promotion to the higher post in terms of above observations and if found fit promote him from due date with all the consequential benefits of arrears of pay and allowance and seniority, within a period of two months from the date of receipt of a certified copy of this order. The parties are, however, left to bear their own costs.”

2025:PHHC:018876-DB



12. Feeling aggrieved from the aforesaid order, the petitioners-Union Territory and others have filed thereagainst the instant writ petition.

Inferences of this Court.

13. The specific stand taken by the present petitioners, is that, for non adoption by the Chandigarh Administration, thus qua the amendment made by the Punjab Government to the PPR, 1959, on 26.12.2006, whereby, there is a right conferred only upon the non IPS Officers, serving only in the Punjab Police, to become promoted to the post of Superintendent of Police, rather makes the claim of the respondent No. 3, who is a member of the Chandigarh Police, to be extremely weak.

14. However, the said facet became countervailed by the learned Tribunal through its drawing succor from a judgment made by the Apex Court in case **Civil Appeal No. 2731 of 1997** titled as **Union Territory of Chandigarh and Others Vs. Rajesh Kumar Basandhi and Another**, reported in **2004 (1) S.C.T. 680**. The reliance as made upon the said judgment is an inapt reliance, as therein, the Hon'ble Supreme Court was faced with the facet of making an interpretation of the therein existing Rule, relating to determining the age criteria, vis-a-vis the recruitment to the post of Assistant District Attorney/Law Officer. The said Rule as became fell for interpretation, becomes extracted hereinafter.

"Conditions of service of persons appointed to the Central Civil Services and posts under the administrative control of

2025:PHHC:018876-DB



Administrator.- *The conditions of service of persons appointed to the Central Civil Services and posts in Groups A, B, C and D under the administrative control of the Administrator of Union Territory of Chandigarh shall, subject to any other provision made by the President in this behalf, be the same as the conditions of services of persons appointed to corresponding posts in Punjab Civil Services and shall be governed by the same rules and orders as are for the time being applicable to the latter category of persons.*

Provided that in the case of persons appointed to the services and posts under the administrative control of the Administrator, Chandigarh so far as they are drawing pay on the rates admissible to the corresponding categories of employees of the Government of Punjab, it shall be competent for the Administrator to revise their scales of pay from time to time so as to bring them at par with the scales of pay which may be sanctioned by the Government of Punjab from time to time to the corresponding categories of employees."

15. The Hon'ble Supreme Court in the judgment (supra), while making an interpretation of the above extracted Rule, appertaining to the regimen governing the conditions of service of the persons, appointed to the Central Civil Services and posts in Groups A, B, C and D, under the administrative control of the Administrator of Union Territory of Chandigarh, thus concluded that the conditions of service of supra, when thereins becomes stipulated to be regulated by the conditions of service appertaining to those persons who become appointed to corresponding posts in Punjab Civil Services.

a) Resultantly therebys, but subject to the conditions as made in the supra extracted Rules, inasmuch as, their yet being no Rule to the contrary formulated by the President of India, thus, the Punjab

2025:PHHC:018876-DB



Civil Services Rules, when are deemed, as expressed by the coinages ***“as are for the time being applicable to the latter category of persons”*** to become applicable to those persons, who are appointed under the Punjab Civil Services, whereupons, they are also but *mutatis mutandis* hence applicable to the persons appointed to the supra posts rather under the control of the Administrator of Union Territory of Chandigarh.

b) The expression ***“as are for the time being applicable to the latter category of persons”*** naturally whereby, the Rules (supra), unless altered, are but made applicable to the persons appointed to the apposite posts in the Punjab Civil Services, whereupons, they are also but to be readable to the extent, that upto their apposite alterations, they are so applicable not only to the persons covered within the Rules but also to the persons appointed to civil posts under the administrative control of the Union Territory of Chandigarh. In other words, the supra expressions ***“as are for the time being applicable to the latter category of persons”***, but thus are also workable for operation qua the apposite service conditions of those persons who are appointed against corresponding posts under the control of the Administrator of Union Territory, Chandigarh. However, again if the expression ***“as are for the time being applicable to the latter category of persons”***, as appertaining to the apposite corresponding posts in Punjab Civil Services, if loose their force through theirs undergoing a change through an amendment thereto

2025:PHHC:018876-DB



becoming made, besides if the said made amendment thereto remains unadopted by the Central Government. As such, either the Central Government is to formulate its independent rule regimen or is to formulate some policy covering the relevant subject. In other words, therefore, there is a requirement of either adoptions thereto being made or some other Rule regimen being brought on the Rule Book rather for controlling the service conditions of the persons concerned, who are appointed under the Chandigarh Administration.

16. Resultantly, the application of the supra interpretation afforded to the supra extracted Rules by the Hon'ble Apex Court, thus, to the instant case, rather would emerge only when, even in the instant case, as was in the supra rules, there was thus existing an alike therewith provision. However, there are no such alike provision(s) in the extant rules, as, appertaining to the supra posts, wheretos, the Rules relating to the service conditions governing the appointees to the Punjab Civil Service, but were made made applicable to the corresponding posts in the Chandigarh Administration, unless they became repealed or unless at the relevant time, a contra thereto Rule became promulgated by the President. If so, the necessary corollary therefrom, is that, the non adoption of the amendment (supra) by the Union of India, thus completely enfeebles the claim of the present respondent No. 3, that the stipulated therein conferment of a right to non IPS Officers in the Punjab Police, to become promoted to the rank

2025:PHHC:018876-DB



of SP in the Punjab Police, but is also required to be endowed/applied qua him, and/or qua the members of the Chandigarh Police.

17. Be that as it may, yet in terms of the instant policy (ORP) drawn by the Chandigarh Administration, with respect to the promotion of respondent No. 3, from the post of DSP to SP, in the Chandigarh Police, the petitioners were required to confer the benefit of the said policy. It appears that the benefit of the said policy, has not been taken to be conferred upon the present respondent, thus, on the ground that the post of Deputy Commandant, is deemed to have been abolished, on the ground that it remained unfilled for a long duration of time. The said argument has also been aptly dealt with by the learned Tribunal while making an apt reliance upon the judgments rendered by the Ernakulum Bench of the Tribunal in case **O.A. No. 469/2010** titled as **D.K. Mohanan Vs. Union of India and Others**, and, in **O.A. No.902/2013** titled as **Issac K.J. Vs. Superintendent and Others**, wherein, it has been clearly expostulated that the concept of abolition of posts is applicable only when direct recruitments are to be made and is not applicable when recruitment through promotion to the purportedly abolished posts are to be made.

18. Since the said view has not been established to be reversed either by the High Court concerned, or by the Apex Court, therebys, vis-a-vis the instant case, even if the post of Deputy Commandant remained unfilled for a prolonged duration of time, therebys, it is not deemed to be abolished nor therebys the present respondent can be

2025:PHHC:018876-DB



declared to be ineligible to be considered for promotion to the post of Deputy Commandant, thus equivalent to the rank of Additional S.P, as he has in terms of the relevant policy, rather completed the qualifying period of service, wherebys, he becomes rendered eligible to be considered for promotion to the post covered within the relevant policy. In consequence, that part of the impugned judgment, wherebys, the petitioners have been directed to constitute a DPC, to thus consider the eligibility of the present respondent No. 3 to become promoted to the post of Deputy Commandant, does not suffer from any infirmity.

19. Be that as it may, the relief as claimed by the present respondent to the extent, that he is to be endowed ante dated promotion became also granted to the present respondent, but with a limitation, that the said conferred benefit of ante dated promotion, only confers the right of eligibility for being considered for promotion. The said view is well anchored upon a judgment rendered by the Apex Court in case titled as **Union of India and Others Vs. K.B.Rajoria**, reported in **AIR 2000 SC 1819**, wherein, it has been expostulated that any relief qua ante dated promotion would include grant of seniority and eligibility for promotion. Therefore, there is no indefeasible right conferred upon the respondent No. 3, to even without facing the constituted DPC, to claim a right of promotion, but definitely the present respondent No. 3 has acquired the requisite eligibility for his being considered, to be promoted to the aspired rank, thus in terms of the policy (ORP), as, drawn by the Chandigarh Administration.

2025:PHHC:018876-DB



20. As such, to the above extent, the impugned order is affirmed and upheld and the present petitioner is directed to forthwith conduct a DPC for considering the present respondent No. 3 for being promoted under the relevant policy to the promotional post concerned. The said be convened within two weeks from today and the decision thereons be positively be made within a week thereafter but in terms of the policy (supra).
21. Further, in terms of the said decision, forthwith action be drawn by the present petitioner. Disposed of accordingly.
22. Since the main case itself has been decided, thus, all the pending application(s), if any, are disposed of as such.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

10.02.2025
kavneet singh

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