



107 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-13068-2025

Date of Decision: 11.08.2025

Vikash Kaushik and Another

....Petitioners

Versus

State of Haryana and Others

....Respondents

CORAM:- HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Arjun Sheoran, Advocate (Through VC) and
Mr. Manish Boora, Advocate for the petitioners.

Ms. Rajni Gupta, Addl. A.G., Haryana.

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioners through instant petition under Articles 226/227 of the Constitution of India are seeking setting aside of order dated 10.09.2024 whereby their claim for promotion as Deputy Superintendent of Police (DSP) w.e.f. June' 2019 has been declined.

2. The petitioners joined Haryana Police Force as Inspectors in 2008. The respondent issued communication dated 27.05.2019 calling record of 39 Senior Most Inspectors to fill up 18 posts of DSP through promotion. The petitioners No.1 and 2 were at Serial No.21 and 18 respectively. The State Vigilance in June' 2019 confirmed that no vigilance inquiry is pending against them. DGP sent letter confirming petitioners' eligibility for promotion. Meeting of Departmental Promotion Committee (DPC) took place in September' 2019, however, due to interim order passed by a Division Bench of this Court in ***CWP No.13496 of 2009***, the process was cancelled. The said petition was finally dismissed vide order dated 27.07.2020. The petitioners submitted

representation dated 22.11.2019 clarifying their entitlement to promotion and seniority over directly recruited DSPs. The respondent issued memos dated 04.12.2019 and 26.12.2019 proposing out of turn promotions from Inspector to DSP which prompted petitioners to file representations. The Additional Chief Secretary, Home Department vide letter dated 17.12.2019 asked DSP to furnish name of 18 directly recruited Inspectors of 2008 Batch for promotion. DGP vide letter dated 18.12.2019 sent a list of Inspectors which included name of petitioners. The respondent issued letter dated 16.01.2020 clarifying that pendency of writ petitions i.e. **CWP No.6220 of 2008** and **CWP No.13496 of 2009** would not affect seniority for promotion of directly recruited Inspectors. DPC met on 27.06.2020 and considered 41 Posts for promotion. 35 Inspectors were found eligible which included petitioners. A communication took place between Office of Chief Minister and DGP with respect to eligibility of 03 candidates. The petitioners were finally promoted by order dated 05.08.2020, however, from prospective effect. They preferred representation dated 20.07.2021 seeking ante dated promotion. They preferred **CWP No.24189 of 2023** seeking ante dated promotion. The said petition was withdrawn with liberty to file afresh with better particulars. They preferred **CWP No.4053 of 2024** which was disposed of with a direction to respondent to decide their representation within 08 weeks. The respondent did not act upon, thus, they preferred **COCP No.2516 of 2024** which was disposed of because during the pendency of contempt petition, respondents passed impugned speaking order dated 10.09.2024.

3. Mr. Arjun Sheoran, Advocate submits that respondent intentionally delayed promotion of petitioners. On account of delay many

others also came to be promoted with them. This would affect their future prospects i.e. consideration for IPS.

4. On being asked, Mr. Arjun Sheoran, Advocate confirmed that no junior has been promoted prior to petitioners. The writ petition No.13496 of 2009 was pending before this Court which was cause of deferment of DPC.

5. I have heard learned counsel for the parties and perused the record with their able assistance.

6. The respondent has passed a detailed and speaking order wherein law laid down by Hon'ble Supreme Court has been appreciated.

The relevant extracts of impugned order dated 10.09.2024 read as:

“4. So far as the averments of the petitioners that the proposal for out of turn promotions was issued in order to grant benefits to certain Inspectors, it is observed that the State Government took a policy decision and finally vide notification dated 08.10.2021 an amendment was carried out in rule-6 of the Haryana Police Service Rules, 2002, wherein a provision has been made to fill up 5% posts of DSP by out of turn promotion. The fact remains that no person junior to the petitioners has been promoted to the rank of Deputy Superintendent of Police.

5. It is further observed that the right of an employee is only for consideration of case of promotion, which commences only when process of selection/promotion starts and not earlier thereto. No person can insist upon an employer to take immediate action for filling in the post or vacancy as soon as it occurs, unless it is shown that non filling of vacancy is on account of mala fide, which is not the case in hand. It is for the employer to initiate the process of promotion and to fill up the posts, keeping in view its requirements. The employee has no right to claim promotion from a particular date. The claim of the petitioner for ante-dated

promotion from the date the post became vacant as put forth in legal notice Annexure P/4 dated 10.03.2021 is not legally permissible. Rather, the legal position is to the contrary effect that even if a post is vacant, the employer has right to keep it vacant and no promotional right is vested with the employee for claiming promotion from the date the post become vacant. The legal position in this regard is as under:-

(i) In CWP No. 17079-CAT of 2013 (O.&M)-Union Territory vs Tarlochan Singh And Others, by relying upon various judgments passed by the Hon'ble Supreme Court of India, the Hon'ble Punjab and Haryana High Court was pleased to held that:-

“In view of the various judgments referred to above, we find that a person is not entitled to seek promotion from the day vacancies arises. It is for the employer to initiate the process of promotion and to fill up the posts, keeping in view its requirements. The employee has no right to claim promotion from a particular date or for a direction that the vacancy in the promotional post should be filled up. However, if the decision of the employer is to fill up the promotional post is actuated by the considerations other than administrative, such action or inaction can be subjected to the judicial review, but there cannot be any direction to grant promotion from the date the vacancy arises.”

(ii) In T.N. Administrative Service Officers Assn. v. Union of India, (2000) 5 SCC 728, it was held as under:

“The question then arises whether there is any such right in the

petitioners to seek such creation of additional posts. It is a well-settled principle in service jurisprudence that even when there is a vacancy, the State is not bound to fill up such vacancy nor is there any corresponding right vested in an eligible employee to demand that such post be filled up. This is because the decision to fill up a vacancy or not vests with the employer who for good reasons, be it administrative, economical or policy, can decide not to fill up such post(s). (See State of Harvana v. Subash Chander Marwala).....”

(iii) The Hon'ble Supreme Court in the case reported as Union of India and others v. K.N. Vadera and others, AIR 1990 SC 443, held that there is no law or rule under which a promotion is to be effective from the date of creation of a promotional post and that after a post falls vacant for any reason whatsoever a promotion to that post should be from the date the promotion is granted and not from the date when such post falls vacant.

(iv) Similar is the view taken in ‘Nirmal Chandra Sinha v. Union of India’, (2008) 14 SCC 29, when it was held to the following effect:

“7. It has been held in a series of decisions of this Court that a promotion takes effect from the date of being granted and not from the date of occurrence of vacancy or creation of the post vide Union of India v. K.K. Vadera, AIR 1990 SC 442, State of Uttaranchal v. Dinesh Kumar Sharma, (2007) 1 SCC 683, K.V. Subba Rao v. Govt. of A.P., (1988) 2 SCC 201,

Sanjay K. Sinha-II v. State of Bihar,
(2004) 10 SCC 734."

6. *In view of the facts narrated above coupled with the above legal position, it can safely be concluded that the claim of the petitioners for ante-dated promotion to the post of Deputy Superintendent of Police from a particular date i.e. June, 2019, as put forth in their representation dated 20.07.2021 (Annexure P-9) is not legally permissible especially when no junior person to the petitioners has been promoted to the post of Deputy Superintendent of Police. Hence, there is no merit in the claim made in the representation dated 20.07.2021 (Annexure P-9) of the petitioners."*

7. From the perusal of impugned order and arguments of learned counsel for the petitioners, it is evident that there is neither any allegation nor evidence of fraud against the respondents. The respondent has not promoted any junior of petitioners prior to their promotion. The sole grievance of petitioners is that in 2019, a small batch was going to be promoted, however, in 2020 a larger batch was promoted which is going to affect their future prospects. The reason advanced by petitioners is neither convincing nor plausible. Promotion is not a matter of right even though part of conditions of service and governed by Article 16 of Constitution of India. In the absence of favouritism, fraud or misuse of power on the part of respondents, the petitioners cannot be granted promotion from retrospective date.

8. In the wake of above discussion and findings, the instant petition deserves to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

11.08.2025
Prince Chawla

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No