

**Office of the Addl. Director General of Police, Information Technology & Telecommunication,
Punjab, Chandigarh.**

No.17727/E-1

Dated Chandigarh, the 11.05.11

Subject:- Final Seniority List of Inspectors to Head-Constables (Tech.) Of Punjab Police Telecommunication Wing .

This is continuation to this office order No.1854-1918/E-1 dated 21.1.2011 on the subject cited above.

The tentative Seniority lists of Inspectors to Head-Constables (Tech.) of Punjab Police Telecommunication Wing was prepared on 20.1.2011 and circulated vide this office No. 1854-1918/E-1 dated 21.1.2011. A period of 21 days was afforded to the concerned persons for filing objections, if any. In this regard 43 representations were received from Inspectors to Head-Constables.

Inadvertently, it could not be mentioned in the circular letter that only reserve points are to be determined by the Committee (Therefore, the objections have also been submitted raising the other points relating to inter-se-seniority of the promotees as well as probationers, application of Punjab Police Act, 2007, confirmation etc.). In fact the Committee has been constituted for determining the reserve points and further promotions. Since the Committee is only determining the reserve points, therefore, the Committee is not considering the other objections of the personnel for their seniority & further promotions

Objections raised by Inspectors to HCs (Tech.) General Category

- a. That The Punjab Police act. 2007 notified by Punjab Govt. in Feb, 2008 and the common seniority list is to be prepared by merging the sub cadres of Telecommunication wing.
- b. That consider them in the promotion list " F " and "G" in General line on the grounds of decision rendered in CWP 4913/2010 titled as Sat Avtar Singh Sub-Inspector V/s of Punjab alongwith CWP 19854/2004 by the Hon'ble Punjab and Haryana High Court.
- c. That the Punjab Police act 2007 is notified vide dated 5.2.2008 and entire police is divided in to four cadres. The seniority of each cadre shall be maintained at state level. As per the new Punjab Police act. 2007 merge the seniority list of Technical and Support on 5th Feb, 2008 and issue a common seniority list of Technical & Support cadre.

Their Objections have been considered & decided as follows:

- a. All the personnel of the Police Telecommunication Wing are governed under the PPR-1934 ever since the Civil Radio Persons were converted into Police Rank vide Punjab Govt. Memo No. 6238-5H-60/17180 dated 18.05.1960. However, it is also a fact that as per the adopted practice so far, the seniority of the Operator & Technical cadres are separate from very beginning and it is also up-hold by the Hon'ble Punjab & Haryana High Court in CWP No. 6059 of 1990. Therefore, it cannot be merged as common cadre at this juncture. Hence, the objection is ignored.
- b. The decision of Hon'ble Punjab & Haryana High Court in CWP No. 4913 of 2010 is still under consideration of the department and this issue will remain open to be decided after assessing the legal position in this connection.
- c. On the same matter the decision of Hon'ble Punjab & Haryana High Court in CWP No. 4913 of 2010 is still under consideration of the department and this issue will remain open to be decided after assessing the legal position in this connection.

Objections raised by Inspectors to HCs Tech. (Reserve Category)

- a. That the final seniority lists issued in the year of 2008 & 2009 were finalized after hearing objection and representation from the concerned and cannot be reopened as per law led down in "Malcom Lawrence Cecil D'Souza versus

union of India and others” AIR 1975 S.C 1269 and “ Vinod Kumar Gupta versus State of Haryana and others “2007 (2) RSJ 454 (D.B.)

- b. That the Seniority list prepared on 20.1.2011 after implementation the Ajit Singh Janjua which is not in vogue in any of the office Punjab Govt. as per Govt. instruction issued vide letter dated 15.12.05 for implementation of 85th amendment of constitution of India.
- c. That the D.O letter vide dated 9.7.09 from Chief Secy. Punjab for the implementation of Punjab SC/BC reservation act 2006 not considered while preparing the tentative seniority list.
- d. That the officials (Inspr to ASIs) belonging to reserve Category raised common objections that the officials of General Category are junior to them as they are promoted next rank earlier to them.
- e. Articles 16(4A) of the Constitution of India 1950 empowers the state from making any provision for reservation in matter of promotion, with consequential seniority to any class.

Their Objections have been considered & decided as follows:

- a. The judgement so quoted in the in the Para did not debar the department for correcting the wrong/irregularities which has put majority of the officials of general Category to gross disadvantages. There is no illegality for placing the Roster point Promotees in the seniority at the appropriate places by applying catch up rule as per judgement of Hon’ble Supreme Court in the case of Ajit Singh Janjua, and Govt. notification dated 22.10.1999. As per Govt. Instructions dated 22.10.1999 Roster point promotees (Reserved Category) cannot claim their seniority in the promoted Category from the date of their continues officiation in the promoted post, vis-à-vis the general candidates who were senior to them in the lower Category and who were later promoted, On the other hand , the senior general candidate at the lower level if he reached the promotion level later but before the further promotion of the reserve candidate, he will have to be treated as senior, at the promotional level to the reserved candidate even if the reserved candidate was earlier promoted to that level (Para 76 of Ajit Singh -II). Hence, the objection is ignored.
- b. Vide executive instructions No.3/34/99-3PP1/17646 dated 15.12.2005 the consequential seniority on roster promotion was ordered prospectively with effect from 17.11.2005 in the following manner:-

“After the careful consideration of the matter and also keeping in view the interim orders of Hon’ble Supreme Court and the present status of the case pending in the apex court, it has been decided that scheduled caste employees promoted to any class or classes of posts under the reservation policy, will be prospectively entitled to “consequential seniority” on the post to which they are promoted.

These instructions shall come into force w.e.f. 17th November, 2005 and shall be applicable to the posts falling vacant in future in all cadres. They are also subject to the final decision of the Hon’ble Apex Court in I A No. 2 in writ petition (Civil) No. 61/2002-M.Nagraj and others V/s Union of India and others and writ petition (Civil) No. 234/2002-All India Equality Form and others V/s Union of India and others and other allied cases.”

These instructions were considered in CWP No. 1960 of 2008- Pritpal Singh v/s State of Punjab and it was decided by Hon’ble Punjab and Haryana high Court that the reservation act 2006 does not contain any provision for consequential seniority. Govt. Instructions dated 15.12.05 and Govt. circular dated 4.5.1974 has been quashed. SLPs filed by Govt. of Punjab and Sh. Tara Singh belonging to reserve Category have been dismissed on 13.5.2010 and 16.11.10 respectively. The decision of Hon’ble Punjab and Haryana High Court dated 9.9.2009 in the case of Pritpal Singh is based on the final decision of M. Nagraj & Others in Civil Wirt Petition No. 61/2002 dated 19.10.2006. CWP No. 16733 of 2006(O&M) decided on 01.04.2011 titled as Hari Singh V/s State of Punjab & others wherein the petitioner seeking of implementation of the 85th Constitutional amendment. The same has been dismissed on the plea that State has not enacted or made any provision for grant of consequential seniority to roster promotees as mandated by Article 16(4A).

However, this judgment has also been referred to the reporter. Hence, the objection is ignored.

- c. The Seniority has been prepared in accordance with the Govt. instructions dated 22.10.1999 and provision of the Punjab Scheduled Castes and Backward Classes (Reservations in Services) Act-2006 has been complied with. Hence, the objection is ignored.
- d. Though the official belongs from General Category promoted later in the next rank but they are senior to officials of Reserve Category in the feeder cadre i.e. Constable.

Therefore, these officials have regained their seniority as per Govt. instructions dated 22.10.1999 & their names have been rightly placed above the officials belonging to reserve categories. Hence, the objection is ignored.

- e. The Hon'ble Supreme Court concluded in the case of M.Nagraj and Others V/s Union of India on 19.10.2006 as under:-

The impugned constitutional amendments by which Articles (16 (4A) and 16 (4B) have been inserted flow from article 16 (4). They do not alter the structure of Article 16 (4). They retain the controlling factors or the compelling reasons, namely, backwardness and inadequacy of representation which enables the States to provide for reservation keeping in mind the overall efficiency of the State administration under Article 335. these impugned amendments are confined only to SCs and STs. They do not obliterate any of the constitutional requirements, namely, ceiling-limit of 50 % (quantitative limitations), the sub-classification between OBC on one hand and SCs and STs on the other hand as held in Indra Sawhney, the concept of post-based Roster with in-built concept of replacement as held in R.K Sabharwal.

We reiterate that the ceiling-limit of 50% the concept of creamy layer and the compelling reasons, namely, backwardness, inadequacy of representation and overall administrative efficiency are all constitutional requirements without which the structure of equality of opportunity in Article 16 would collapse.

However, in this case, as stated, the main issue concerns the "extent of reservation". In this regard the concerned State will have to show in each case the existence of the compelling reasons, namely, backwardness, inadequacy of representation and overall administrative efficiency before making provision for reservation. As stated above, the impugned provision is an enabling provision. The State is not bound to make reservation for SC/ST in matter of promotions. However if they wish to exercise their discretion and make such provision, the State has to collect quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment in addition to compliance of Article 335. It is made clear that even if the State has compelling reasons, as stated above, the State will have to see that its reservation provision does not lead to excessiveness so as to breach the ceiling -limit of 50% of obliterate the creamy layer or extend the reservation indefinitely.

Subject to above, we uphold the constitutional validity of the constitution (Seventy-Seventh Amendment) Act, 1995, the Constitution (Eighty-First Amendment) Act 2000, The constitution (Eighty-Second Amendment) Act, 2000 and the Constitution (Eighty-Fifth Amendment Act, 2001)."

From the above decision of Hon'ble Supreme Court, it is clear that provision for reservation in the matter of promotion with consequential seniority to any class is only an enabling provision. Hence the objection is ignored.

An opportunity of personal hearing has also been granted to the Sub-Inspectors who have opted for the same and heard by the seniority committee on 26.04.11. **Sub-Inspr Mohan Lal 1966/W & Vinod Kumar 14/W** of SC Category raised following objections:-

- Stated that they were promoted in the Roster points but placed at the bottom in the tentative seniority list which is incorrect.

- SI Mohan Lal 1966/W stated that he passed Technical Grade First in the year of 2003 but he was promoted in the year of 2008. He may be granted deemed date of promotion of Sub-Inspr from which date he was eligible for such promotion.
- SI Vinod Kumar 14/W stated that Jaswant Singh 1838/W belongs to Rai Sikh Category and as per Govt. instructions which came in existence in the year 2007 in the SC Category. The official placed over and above him is incorrect whereas, he belongs to SC Category by birth.

SI Mohan Lal 1966/W stated that he passed Technical Grade First in the year of 2003 but he was promoted in the year of 2008. He may be granted deemed date of promotion of Sub-Inspr from which date he was eligible for such promotion

SI Mohan Lal No. 1966/W was verbally directed at the spot to submit his representation for deemed date of promotion as Sub-Inspector and will be dealt separately.

SI Vinod Kumar 14/W stated that Jaswant Singh 1838/W belongs to Rai Sikh Category and as per Govt. instructions which came in existence in the year, 2007 in the SC Category. The official placed over and above him is incorrect whereas, he belongs to SC Category by birth.

The committee has observed that SI Jaswant Singh No. 1838/W belongs to Rai Sikh Category is senior from SI Vinod Kumar No. 14/W as he was enlisted on 13.6.88 whereas SI Vinod Kumar No. 14/W on 03.02.89. Subsequently all the promotions from HC to SI get by the Jaswant Singh prior to SI Vinod Kumar 14/W. Hence the objection made by the Vinod Kumar is ignored.

An opportunity of personal hearing has also been granted to the Sub-Inspectors who have opted for the same and heard by the seniority committee on 26.04.11. The points raised at the time of appearance were the same as already mentioned in their representations. No new points were raised hence the objections have already been considered and rejected.

All the pleas raised by the officials in their representations have been considered objectively keeping in view the Judgments of Hon'ble Supreme Court in the cases of R.K. Sabharwal, Ajit Singh Janjua and writ petition (Civil) No. 61 of 2002 M.Nagraj V/s Union of India and others. The Judgement of Hon'ble Punjab & Haryana High Court in CWP No. 1960 of 2008 and CWP No. 16733 of 2006(O&M) decided on 01.04.2011. Some other parameters taken for the finalization of the seniority are mentioned below:-

- The Punjab Schedule Castes and Backward Classes (Reservation in Services) Act, 2006.
- Punjab Govt. instructions issued vide no. 3/34/99/3-PPI/12565, dated 22.10.1999.
- On the basis of their date of promotion, enlistment and inter-se-seniority in the rank of Constable which was circulated by the Telecommunication Wing in the year 1978.
- The Officials who are not placed (projected) in the seniority list of 1978, their promotion, enlistment & inter-se-seniority in the rank of Constable/ASI (Probationers) which was circulated by the Telecommunication Wing Year 1991.
- The Officials who are not placed (projected) in the seniority list of 1978 & 1991, their promotion, enlistment & inter-se-seniority in the rank of Constable / ASI (Probationers) which was circulated by the Telecommunication Wing Year 2008.

All the clerical mistakes which are brought in the notice by the representationists have been corrected in the Final Seniority list, on the basis of record available in this office.

No other material illegality irregularity or discrepancies but so ever have been pointed in the tentative seniority list. Accordingly representations submitted by the

officials of this wing are disposed off and the seniority list is finalized. However, the seniority is subject to the final decision of the Hon'ble Punjab and Haryana High Court in CWPs No. 15365/1998, 2228/2000, and other court cases.

However, the Government reserves the right to revise the same in case of any administrative exigencies arising out of any judicial pronouncement.

A copy of the final seniority list is enclosed herewith.

This be brought to the notice of all the concerned.

Sd/-

For Addl. Director General of Police
Information Technology & Telecommunication,
Punjab Chandigarh.

No. 17728-88/E-1 Dated:Chandigarh the: 11.05.2011

A copy of the above is forwarded to the following for information and necessary action within stipulated period, please acknowledge receipt.

1. Director General of Police, Punjab, Chandigarh.
2. Director General of Police, Vigilance Bureau Punjab, Chandigarh.
3. Addl. Director General of Police, Intelligence, Punjab, Chandigarh.
4. O/o the Addl. Director General of Police Information Technology & Telecommunication, Punjab, Chandigarh.
5. The Supdt. Of Police, Telecommunication Punjab Chandigarh.
6. I/C CM Security Punjab, Chandigarh.
7. All Dy. Supdt. Of Police, Telecommunication, Punjab, Chandigarh.
8. All SDCs in Punjab.
9. I/C IT Stations Bahadurgarh, Jahan Khelan, Phillaur, PAP Jalandhar, Ladda Kothi, Kasauli And Sri Naina Devi Ji (HP)
10. Training Inspector (wireless) PPA Phillaur.
11. MI, CI, I/C Cipher Cell, Inspr. Technical Stores, Inspr. HQRs. RI Police lines IT&T Mohali & Supdt./E, Supdt./ Acct. Supdt./Mod.
12. E-2, E-3, E-5, CRC, Legal Assistant, I/C RTI .

Sd/-

For Addl. Director General of Police
Information Technology & Telecommunication,
Punjab Chandigarh.