

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

CWP No.1122 of 2002(O&M)

C.Randhir Singh and others ...Petitioners

Versus

The State of Haryana and another ... Respondents

AND

CWP No.7968 of 2005(O&M)

Joginder Singh Constable and others ...Petitioners

Versus

State of Haryana and another ...Respondents

Date of Decision: **July 22, 2015**

**CORAM: HON'BLE MR. JUSTICE SATISH KUMAR MITTAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: - Mr.Bikramjit Singh Patwalia, Advocate
for the petitioners in CWP-1122-2002.

None for the petitioners in CWP-7968-2005.

Ms.Kirti Singh, DAG, Haryana for the respondents.

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HARINDER SINGH SIDHU, J.

This judgment shall dispose of two writ petitions i.e.
CWP Nos.1122 of 2002 and 7968 of 2005, as common
questions of law are involved in these cases.

For decision, the facts are being taken from CWP
No.1122 of 2002.

Prayer is for quashing the amended Rule 13.7 of the
Punjab Police Rules, 1934 (for short 'PPR') as substituted by

Punjab Police (Haryana Amendment) Rules, 2001.

The petitioners No.1 to 39 are Constables in Haryana Police. Petitioner No.40 is the Haryana Police Constables and Head Constables Association. It is stated that Petitioners No.1 to 39 have been discharging duties in the State of Haryana for about 15 to 20 years. Most of them are stagnating on the post of Constable despite having served for almost two decades. Some have been promoted as exemptee Head Constables by orders of Superintendents of Police of various districts. Exemptee Head Constables have no power of investigation under the Code of Criminal Procedure.

The grievance of the petitioners against the amended Rule is that the unamended Rule 13.7 did not envisage any test to be passed by a constable for being deputed to the Lower School Course. Constables were deputed to the Lower School Course on the basis of their seniority subject to some marks being allocated for educational qualifications, training courses and commendation certificates. But as per the amended Rule 55% of the seats are to be filled on the basis of a competitive examination, 35% on the basis of seniority and 10% for consistent outstanding performance in job or sports or exceptional display of bravery etc. It is argued that this selection process before being deputed for the Lower School Course is contrary to a Full Bench decision in **Head Constable Sardul**

Singh v. Inspector-General of Police Punjab and others, ILR

(1970) 2 P&H 489.

Before proceeding further the existing and amended Rule 13.7 of the PPR may be referred to :

The existing Rule 13.7 as per Punjab Police (Haryana First Amendment) Rules, 1995:

“13.7. Selection of candidates for admission to courses at the Police Training College-List B (On Form 13.7) shall be maintained by each Superintendent of Police. It shall decide the names of all constables selected for admission to the lower school course to be held at the Police Training College. Selection to the list shall be made in the month of January, each year and shall be limited to the member of seats allotted to the district for the year. For reasons to be recorded, the number of seats can be increased by 20 percent. Allotment of seats to each district, shall be done on the basis of existing vacancies and the number of vacancies which are likely to occur during the next one year. Names shall be entered in the list the order of merit determined by the Departmental Promotion Committee on the basis of service record.

(a) All Constables irrespective of their educational qualification shall be eligible for admission i.e. List B-I, if they are under the age of 50 years and have completed 10 years of service on the 1st day of July of the year which immediately precede the year, in which the selection is made.”

As amended by Punjab Police (Haryana Amendment) Rules, 2001:

“13.7-Selection of candidates for admission to courses at the Police Training College. (1) List B (in Form 13.7) shall be maintained by each Superintendent of Police. It shall include the names of all constables selected for admission to the Lower School Course to be held at the Police Training College. Selection to the list B shall be made in the month of January each year and shall be limited to the number of seats allotted to the district for the Year. The number of seats in Lower School Course in a year shall be allotted on the basis of existing vacancies and the vacancies likely to be created within one year in the respective unit. 55% of the seats allotted to a unit in the Lower School Course shall be filled in on the basis of a competitive examination 35% on the basis of seniority-cum-fitness and 10% on the basis of consistent outstanding performance in job/obtaining Gold or Silver Medal in All India Police Games/ Duty Meet/National Games or exceptional display of bravery during the course of performance of official duty. Selection of persons against 55% seats in B list/Lower School on the basis of merit shall be done by a Departmental Promotion Committee on the basis of –

(i) Examination of service record; and

(ii) a competitive test (hereinafter called “B-I test) in, –

(a) Parade;

(b) law and practical police work, and

(iii) an interview,

(2) (i) All constables irrespective of their educational qualifications shall be eligible to appear

for B-1 test if they are under the age of 35 years and have completed 5 years of service the 1st day of January of the year in which selection is made. However, if a constable belonging to reserved categories who is recruited after attaining the age of 27 years as per Government instructions/orders then he shall be allowed to appear for minimum three consecutive chances after completion of five years even if he has crossed the age of 35 years upto maximum of 40 years of age.

(ii) All constables irrespective of their educational qualifications shall be eligible to be brought on list B-1, seniority-cum-merit basis if they are under the age of 40 years and completed 5 years of service on the first day of January of the year in which selection is made.

(iii) All constables irrespective of their educational qualifications shall be eligible to be brought on list B-1 on the basis of consistent outstanding performance in job/obtaining Gold or Silver Medal in All India Police Games/Duty Meet/National or International Games or exceptional display of bravery during the course of performance of official duty if they are under the age of 40 years and have completed two years of service on the 1st day of January of the year in which selection is made. Only those constables shall be brought on list B-1 after 2 years of service, but before 5 years of service who have won a medal in International Sports events like Olympics, Asian Games, Commonwealth games or similar International event. Constables who have won medals in National Games/All India Police Games/Duty Meet and who are being considered for

exceptional bravery or consistent outstanding performance shall be considered only if, they have put in the minimum 5 years of service.

(3) The Departmental Promotion Committee for conducting the B-I test for each district/battalion shall be constituted by the Director General of Police and shall consist of an officer of the rank of Superintendent of Police of the concerned unit and two officers of the rank of Deputy Superintendent of Police. Out of which one shall be from the same district or unit and other from outside. The members of the Departmental Promotion Committee shall be announced only 24 hours before the examination. The minimum pass marks individually in written and parade test shall be 50%. Only those constables who have obtained 50% marks both in written test and parade separately shall be interviewed by the Board, the marks for the interview shall be 10.”

In the written statement filed by the respondents, the amended Rule has been sought to be justified as being necessary in the interest of the police force as it provides fair and equal chance to young, energetic and better qualified constables to compete for the B-I test and become good and efficient investigating officers at a younger age. It ensures efficiency and competency in the higher ranks.

It has been stated that over the years, the Rule has been amended from time to time keeping in view the needs and exigencies of the police force. From 1980 to 1994 selection of the candidates for List B-I was made on the basis of written test

in general of law (Indian Penal Code, Criminal Procedure Code, Indian Evidence Act and such other local and special Laws as may be specified.) As per this Rule all the constables who were under the age of 35 years and had completed three years of service on the first day of July for the year in which selection was made were eligible for B-I test. The Rule was amended in September, 1992 vide which the age and service of the candidate for appearance in B-I test had been extended to under the age of 40 years and 5 years of service was substituted in place of three years of service on the first day of January of the year. In the year 1995 Rule 13.7 of PPR was amended providing for selection for candidates for list B-I to be on the basis of seniority-cum- fitness. As per amended Rule in 1995 all constables irrespective of their educational qualification would be eligible for admission in list B-I if they were under the age of 50 years and had completed 10 years of service on the 1st day of the July of the year in which the selection is made.

But owing to the limited chances which a constable has for promotion to the post of Head Constable due to many factors such as overage, low qualifications and also lack of vacancies, the State Govt. decided to promote all such constables to the post of Head Constables who had completed more than 16 years of qualified service subject to certain conditions e.g. their record being in order like there being no criminal case etc. registered against the constable concerned.

This was done vide DGPs Standing No.76/2000 . However, the constables so promoted on the basis of seniority alone i.e. completion of 16 years of qualified service, were not entitled to be made investigating Officer.

In the written statement it is further stated that the main object behind the present amendment in Rule 13.7 of PPR was to give fair and equal chance to young, energetic and better qualified constables to compete in the B-I test and become good and efficient Investigating Officers rather than waiting up to the age of 45 to 50 years for promotion as Head Constable. Such officers were required by the police force. The earlier policy of promotion only on seniority-cum-merit basis bred inefficiency resulting in most of the Investigating Officers being in the age group of 45 to 50 years. To remedy this, it was decided by the State Government to induct young and well qualified constables to compete in the B-I test as the age for the test is upto 35 years and there are separate marks for persons with higher qualifications. Thus, these constables being young, energetic and well qualified would become better Investigating Officers after passing the Lower School Course and the Investigation would be carried out in a fair, just and proper manner, which is the need of the hour.

It is further stated that the amended Rule would bring efficiency and competency in higher rank of Police force besides providing a fair representation to each category.

According to amended Rule 13.7, 55% seats are to be allotted on the basis of competitive examination, 35% seats on the basis of seniority-cum-fitness and 10% on the basis of performance in sports and bravery etc. As per the Rule the age limit for those who are to be admitted to list B-I on the basis of seniority-cum-fitness, is upto 40 years of age, as opposed to 35 years in the case of those who have completed in the competitive test. Thus those who have not been able to make it upto the age of 35 years in the test still have a chance upto 40 years of age on the basis of seniority-cum-basis. Additionally, at as per standing order No.76/2000 every constable who has completed 16 years of service shall be eligible to be promoted as Head Constable if they meet the criteria/conditions given therein.

We have heard learned Counsel for the parties and find that there is no merit in the petition.

The argument of the Ld. Counsel for the petitioner based on **Sardul Singh's** case (supra) that there can be no selection test for being deputed to the Lower School Course cannot be accepted. In that case, the Court was interpreting Rule 13.9 of the PPR which deals with promotion from the post of Head Constables to Assistant Sub- Inspectors. Accordingly, the question that was posed in that case was as under:

“10. As we have stated above, the main question to be determined in these cases is whether the process of selection for promotion of a Head

Constable to the rank of Assistant Sub-Inspector of Police starts after the Head Constable qualifies in the Intermediate School Course or a step prior thereto when he is to be sent for that course.”

Analysing Rule 13.9 the Hon'ble Court observed :

“This rule deals with the preparation of list ‘D’ for promotion to the rank of Assistant Sub-Inspectors. The Head Constables eligible for being admitted to the list are those who have passed the Lower School Course and the Intermediate School Course and unless they are so qualified, they have no right to be considered for being admitted to that list. Once a Head Constable qualifies by passing both the courses, his case is placed before the Deputy Inspector General of Police for being brought on list ‘D’ and it is at that time that his efficiency and integrity come up for consideration along with other relevant factors, one of them being whether he is fit for officiating or substantive promotion to the rank of Assistant Sub-Inspector. Merely because a Head Constable has passed the Intermediate School Course does not give him the right of being admitted to list ‘D’. By passing that course, he only qualifies himself for being considered for admission to list ‘D’. It can well happen that when a Head Constable passes an Intermediate School Course, he may not be considered thoroughly efficient in all branches of the duties of a Constable or Head Constable and some time later he attains that efficiency. He will then become eligible for being brought on list ‘D’ which will open the way for him to be promoted to the rank of officiating or substantive Assistant Sub-Inspector of

Police. It is contended on behalf of the respondents that when he becomes efficient, he will be sent for the Intermediate School Course, but it may happen that at that time he is unable to qualify in that examination either because of advanced age or physical unfitness. In that case it will mean that such a Head Constable is condemned for ever to remain as a Head Constable and cannot seek promotion to the next higher rank.”

Accordingly it was concluded as under:

“We are, therefore, of the opinion that it is inherent in rule 13.9 and a legitimate inference can be drawn from the language of this rule that every Head Constable on list ‘C’ has the right to be deputed for the Intermediate School Course on his turn and no obstacle can be placed in his way by any of the authorities because it is necessary qualification prescribed by that rule and there is no other institution from where this qualification can be acquired.”

While holding that as per Rule 13.9, no selection process has been envisaged for deputing Head Constables for the intermediate school course, the Hon'ble Court referring to Rule 13.7, as then existing, held that in Rule 13.7 a method of selection has been provided for sending of constables in List A for the Lower School Course, that is suitability of each constable on List A has to be seen by the Superintendent of Police of the District concerned and the same has to be approved by the Deputy Inspector General of the Range. It was held that as there

was no provision for selection in the Rule at the stage of sending of Head Constables for the Intermediate School Course, hence the most appropriate course would be that the Head Constables be sent for the Intermediate School Course in order of seniority as determined in accordance with Rule 13.8. Thus, this judgment is of no help to the petitioner as it has been clearly held therein in the context of the then existing Rule 13.7, that it envisages a process of selection for being deputed to the Lower School Course. By the impugned amendment the Rule making authority has only elaborated and provided for different percentages for selection in different categories.

The question is, can this process of selection be said to be arbitrary and unconstitutional? To our mind, the answer is in the negative.

As explained in the written statement, in the amended Rule three categories have been carved out and a fair representation has been given to each category. The test has been introduced to give a chance to young, energetic and capable persons to move ahead and thereby enhance the efficiency and competency at the higher ranks of the police force. It is in the interest of the police force to have competent, young, energetic officers. Besides the 55% to be filled on the basis of competitive test, there is a fair percentage of 35% seats fixed on the basis of seniority-cum-fitness and 10% seats are for those who have outstanding performance in sports, bravery

etc.

It is well settled that questions relating to prescription of qualifications and other conditions of service including avenues of promotion are in the exclusive discretion of the executive and that it is open to the State to alter, amend the existing Rules subject only to safeguarding rights or benefits already earned, acquired or accrued at a particular point of time.

Reference may be made to **P.U. Joshi v. Accountant General,**
(2003) 2 SCC 632 :

“10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the

administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing the existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.”

Accordingly, we do not find any merit in these petitions and the same are dismissed.

(SATISH KUMAR MITTAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

July 22, 2015
Atul