

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.11378 of 2011

Date of decision: 19.12.2015

Sukhwinder Singh and another

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr. Kanwaljit Singh, Senior Advocate with
Mr. S.K.Liberhan, Advocate for the petitioners.

Mr. L.S.Virk, Addl. Advocate General, Punjab.

G.S.SANDHAWALIA, J. (Oral)

The petitioners challenge the order dated 1.7.2011 (Annexure P/7) whereby their names have been struck off from the list of Constables of District Sangrur and they have been reverted back to the unit from which they had joined during the period of training at P.R.T.C., Jahan Khelan.

It is the pleaded case of the petitioners that initially they had joined with the Indian Reserve Battalion at Kapurthala since year 2006. In view of the advertisement for the District Police Cadre for the rank of Constables they had applied after taking no objection. No Objection Certificates have been appended as Annexures P/3 and P/4 from the Commandant of the Indian Reserve Battalion. After proper selection which was conducted on 25.5.2010 and as per interview held on 2.7.2010, appointment letters were issued on 10.8.2010 (Annexures P/5 and P/6) and they joined on 17.9.2010. Vide impugned order dated 1.7.2011 without any notice during their period of training they had been reverted back. The said order was stayed by this Court on 7.7.2011.

The respondents in their reply tried to justify the reversion on the ground that the petitioners were overage at the time of their recruitment as Constables and departmental action has been taken against various

delinquent officials who were part of recruitment staff. It is admitted that NOCs were taken from the Commandant of the Indian Reserve Battalion but on account of ineligibility and overage of the petitioners they were reverted back.

A perusal of the impugned order would also go on to show that the reasoning that they were overage was not the consideration which weighed with respondent no.4 while passing the impugned order. However, pendency of Civil Writ Petition No.1498 of 2011 was the ground that their appointments had come under scanner. A perusal of the prayer clause of the said writ petition would go on to show that the said petitioner was aggrieved that the similarly situated persons had been selected being over age whereas he had been denied the said benefit and thus had challenged the appointments of the petitioners. It is a matter of fact that the said writ petition now stands withdrawn on 21.11.2011 (Annexure R/4). It is also not disputed that while passing the impugned order, the petitioners were never even associated with the same neither any show cause was issued to them where they could show that they were entitled for benefit of their earlier service with Indian Reserve Battalion and that they had applied through proper channel. The principle of natural justice has thus been patently violated and only on account of one candidate having approached this Court in order to justify the defence which was to be taken in the said writ petition, the impugned order has been passed.

In such circumstances, the explanation which has now been offered in the written statement is also not the reasoning which is given in the impugned order of being over age. It is settled principle that this Court is to examine the order impugned and same cannot be improved by the respondents by filing reply. The said principle was laid down by the Apex Court in **Mohinder Singh Gill and another vs. The Chief Election**

Commissioner, New Delhi and others, 1978 (1) SCC 405. The relevant observations read thus:-

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. In Gordhandas Bhanji case :

"Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself".

Orders are not like old wine becoming better as they grow older.”

Accordingly, the present writ petition is allowed. The impugned order dated 1.7.2011 is set aside. However, liberty is granted to the respondents to take action, if necessary, against the petitioners by resorting to proper procedure after issuing show cause notice to them. Needless to say that if such action is to be taken respondents would take into consideration sympathetically the fact that the petitioners were already appointed with the Indian Reserve Battalion since 2006 and had necessary experience and had applied through proper channel.

December 19, 2015
Pka

(G.S.SANDHAWALIA)
Judge

