

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CWP No.21762 of 2013 (O&M)
Date of Decision: 19.02.2015**

Pal Singh and another

... Petitioners

Versus

State of Punjab and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Gurminder Singh, Sr. Advocate,
with Mr. Jatinder S. Gill, Advocate,
for the petitioners.

Mr. Sushant Maini, Sr. DAG, Punjab.

1. To be referred to the Reporters or not? **Yes.**
2. Whether the judgment should be reported in the Digest? **Yes.**

RAJIV NARAIN RAINA, J.

This petition has been filed under Article 226 of the Constitution by two petitioners seeking a mandamus to the State to promote them to the post of Sub-Inspectors in Punjab Police from the date juniors have been promoted. This prayer is based on a claim for issuance of a writ of certiorari quashing the two identical show cause notices dated April 28, 2013 issued to the petitioners by the Senior Superintendent of Police, Faridkot as to why their promotion as Head Constables within the 10% quota of promotion list C-II should not be re-considered. If the notice is put through the mechanical motions it aims at, it will cause the reversion of the petitioners and change their dates of promotions in successive cadres.

The facts are that petitioners belong to the scheduled caste category. They were recruited as Constables in 1985. On December 27,

1989 both the petitioners were placed in list C-II which would bring about their promotions as Head Constables. Factually, they were not promoted from list C-II. They were promoted to Head Constables instead by operation of list C-I on July 26, 1990 as there was a backlog of SC candidates in list C-I. They continued to work on the promoted post of Head Constables when they were deputed to the intermediate course on October 01, 1994 and completed it in April 1995 when they were placed in list D-1 to earn them promotion to the next higher post of Assistant Sub-Inspectors against available vacancies.

Trouble started in October 1998 when a show cause notice was issued to them warning that they were promoted in excess of C-II list and why should they not be reverted to their original posts. They replied to the show cause notices stating that they were not promoted from C-II list but from C-I. Within a fortnight, the show cause notice was dropped by the Police Department on being satisfied by the reply filed. The petitioners pursued their careers and were promoted to the post of Assistant Sub-Inspector [ASI] in September 2001. In the years 2007 and 2008 they were sent to the Upper School Course which they successfully completed in the year 2008. A seniority list of ASIs was drawn and circulated in the department. The name of the 1st petitioner figured at Sr. No.1198 whilst the name of the 2nd petitioner fell at 1361. Their cases for further promotion as Sub-Inspectors got entangled on the wrong premise that they had been promoted in excess of 10% quota as Head Constables. They were unable to retrieve themselves from the predicament while candidates junior to them in the seniority list of ASIs were promoted to the next higher post. They raised

a demand for justice by making a representation to the Director General of Police, Punjab on August 25, 2011 on which a report was called from the Additional Director General of Police (Administration) but no response came forth. They appeared personally before the Director General of Police, Punjab to apprise him of their grievance upon which the SSP, Moga was directed to examine the entire matter again. The SSP, Moga in his recommendations cleared the doubts by informing the DGP, Punjab that the petitioners were promoted not from list C-II but from list C-I due to unfilled backlog of candidates from the scheduled caste category and were not available at the time when the petitioners were available for promotion on their roster point seniority amongst the scheduled caste category. The recommendations of the Senior Superintendant of Police, Moga appear to have had no effect on the Police Department for which the petitioners they approached this Court by CWP No.508 of 2012 titled *Paramjit Chand and others vs. State of Punjab and others*. The matter came on for hearing on January 09, 2012 and this Court was pleased to refer the matter to the Officers' Committee constituted as per the directions of the High Court by order dated March 04, 2010 in an early litigation in CWP No.566 of 2010 titled *Ranjit Singh and others vs. State of Punjab and others* to look into the grievances of the Punjab Police personnel. They were asked to appear before the Officers' Committee on July 17, 2012 and then again on February 22, 2013 to respond to the notices issued by the Committee. They appeared before the Committee and brought to its mind the factual positions their cases were in are being misread by erroneously tying them up with list C-II respecting 10% quota. It was brought to bear before the Committee that the

Senior Superintendent of Police, Faridkot on an earlier occasion had had the matter examined after obtaining the opinion of the District Attorney (Legal) which had led to the dropping of the 1st show cause on December 12, 1998. The Officer' Committee ignored their pleas and rejected the case and recommended review of their promotions as Head Constables and as Assistant Sub-Inspectors of Police by serving them show cause notices. This has resulted in issuance of the impugned show cause notices. The Committee ostensibly took action on the basis of the judgment passed by this Court in CWP No.13788 of 1997, *ASI Swarn Singh vs. State of Punjab and others* decided on April 21, 1998. The facts of this case are inapplicable to the present one since the petitioners were never promoted in excess of 10% quota but to fill up the backlog of scheduled caste category vacancies from which source promotions were granted on the recommendations of the duly constituted Departmental Promotion Committee. The report of the Officers' Committee is dated March 19, 2013 (P-14). It is argued by the petitioners that the recommendations of the Officers' Committee were without quorum as the Committee consisted of three persons but the decision was taken by the Chairman and one member. Leave of the Court was not sought to vary the Committee for authorizing decision making by only two members and without substituting the third member. The decision was, therefore, defective by virtue of its lack of numerical strength. It is this report which has led to the impugned show cause notices.

On notice of motion being issued, the State has filed a sketchy reply by way of affidavit of the Deputy Superintendant of Police (Headquarters), Moga. It has been candidly admitted in the preliminary

submission that though the petitioners were placed in list C-II on December 27, 1989 but they were promoted to the rank of Head Constable through list C-I (SC category) [not from list C-II] and they were accordingly confirmed on July 26, 1992 on the said post. In the face of this admission, the report of the Officers' Committee and the show cause notices lose their teeth which can no longer bite the petitioners.

Mr. Gurminder Singh, learned Senior counsel draws attention of this Court to the Special letter from the SSP, Faridkot to the SSP, Moga dated November 04, 2010 where it is recorded in the memo on the subject of promotion as follows:-

*“This has reference to your office letter
No.11968/B dated 29.10.2010 on the subject cited above.*

*The below mentioned officials were promoted to
the post of Head Constable vide his office order No.13572-
92/B dated 26.7.1990 in order to complete the reserve
category (scheduled caste) backlog, since at time, there was
no candidates from C-I Schedule caste category. A copy of
order No.13572-92/B dated 26.7.1990 is being sent to you
with this letter for further necessary action:-*

*1. Head Constable Pal Singh No.55/Faridkot (presently
posted as Assistant Sub Inspector No.705/Moga).*

2. xxxx

3. xxxx

Encl : As above

Sd/-

*Sr. Superintendent of Police,
Faridkot.”*

It may be mentioned that the name of the 1st petitioner falls at Sr. No.1 of the memo but the name of the 2nd petitioner (Bhagmal) does not fall therein but it is the assertion of Mr. Gurminder Singh, that the case of the latter is identically situated to that of the 1st petitioner. He too is a member of the scheduled caste and came to list C-II but whose case was also

considered in list C-I to fill the demands of backlog of reserved vacancies. In similar strain is the correspondence between the SSP, Moga to the DGP, Punjab a few days later beginning November 26, 2010 (P-10). It was re-affirmed that the petitioners were considered not from C-II list but from C-I to fill up backlog of vacancies in the quota of reserved category candidates (SC) on recommendations made to promote them from ASIs to Sub-Inspectors. The primary document which certifies the factual position is the order dated July 26, 1990 (P-1) which is a decision on the recommendations of the Departmental Promotion Committee which examine the service record of all Constables. The name of the 1st petitioner is at Sr. No.26 No.55/Faridkot at roster point 466 (SC) where it has been recorded on the right margin as follows:-

"Brought from serial no.31 of promotion list C-II (Consts) due to non-availability of SC candidates on promotion list C-I"

In the face of this crucial entry which has not been refuted either in the report of the Officers' Committee or in the show cause notice or in the written statement filed in response to this petition, the impugned report and the impugned show cause notice cannot be sustained. The impugned report which gave birth to the impugned show cause notice clearly suffer from non-application of mind. There can be no doubt that the names of the petitioners found mention in list C-II but they did not go forward from that door but were inducted from list C-I. The reasoning in both the documents is misdirected and an irrelevant consideration has crept into the decision making process which vitiates both the documents. It is well settled that where the reasons assigned in an administrative order which has adverse civil consequences on a person are not germane to the subject matter, then

the administrative order must fall and cannot be supported by fresh reasons. The Supreme Court has said so emphatically in **Mohinder Singh Gill v. Chief Election Commissioner**, 1978 1 SCC 405: AIR 1978 SC 851, the two relevant extracts of which can be profitably quoted:-

"Classification of functions as "judicial" or "administrative" is a stultifying shibboleth discarded in India as well as in England"

"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-:[Commissioner of Police, Bombay, AIR 1952 SC 16]

"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 actings 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."

There is another reason why I would support the case of the petitioners as reserved category candidates because they were picked up due to non-availability of scheduled caste candidates to accord them promotions from list C-I. This is fortified by the reason that the rights of scheduled caste category candidates are special rights constitutionally protected for their

promotion on reserved roster points earmarked for them in policy circulars if the prescribed percentage in promotion cannot be fulfilled for want of availability of reserved category candidates then the expectations of members of the reserved category (SC) can be balanced by bringing the eligible and available names on the panel close enough to the zone of consideration, if they are found qualified and deserving then backlog of SC quota can be exhausted. Then their names can be included in the panel for consideration by the Departmental Promotion Committee. On promotion, they would take their seniority from the panel position, the earlier panel being senior to the next, then their promotions cannot be interfered with or they reverted, if they were otherwise made in accordance with law then prevailing. This principle has been enunciated by the Supreme Court in **Union of India vs. Virpal Singh Chauhan**, (1995) 6 SCC 684 while dealing with selection and non-selection posts in the Railways *vis-à-vis* rights of the reserved category candidates. I endorse the views put forth by Mr. Gurminder Singh on behalf of the petitioners that the impugned actions are contrary to record and fresh blood cannot be supplied to save them. The challenge would remain in judicial review to the reasons recorded in support of adverse actions taken.

For the foregoing reasons, this petition is allowed. The impugned part of the report of the Officers' Committee (P-14) qua the petitioners is quashed by certiorari. The show cause notices (Annexures P-15 & P-16) are set aside. A mandamus is issued to the respondent-State to consider promoting the petitioners from the date their juniors were promoted to the higher post of Sub-Inspector because the petitioners were wrongly ignored

for an incorrect reason recorded by the Committee which filtered into the show cause notices. The point of retroactivity would be with reference to the name of general category candidate Swarn Singh, Sub-Inspector, when he was promoted. If there are no other impediments in the way of promotion as Sub-Inspectors from the due dates, with their service record reckoned from prior to the date when the juniors were promoted, then the petitioners would take all monetary benefits flowing from the setting aside of the impugned actions and they would be placed at par and in all respects with their juniors including arrears of difference of salary, ante-dated seniority, difference of arrears of annual grade increments etc., subject, however, to the laws and policies of the State Government on reservation in promotion of members belonging to the scheduled castes.

(RAJIV NARAIN RAINA)
JUDGE

19.02.2015
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