

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

CWP No.26101 of 2013

Date of decision: 20.07.2015.

ASI Jai Pal and others

..Petitioners

Versus

State of Haryana and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see judgment? Yes**
- 2. To be referred to reporters or not? Yes**
- 3. Whether the judgment should be reported in the Digest? Yes**

Present: Mr. R.K. Malik, Sr. Advocate with
Ms. Rimple Sohi Kadyan, Advocate
for the petitioners.

Mr. Harish Rathee, Sr. D.A.G., Haryana
for the respondents – State.

Daya Chaudhary, J. (Oral)

The present writ petition has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of certiorari to quash impugned show cause notice dated 13.11.2013 issued to petitioner No.1 and also the similar show cause notices issued to other petitioners as well.

Learned counsel for the petitioners submits that upto 29.09.2011, District Karnal was part and parcel of Rohtak Range. Thereafter, it was bifurcated from Rohtak Range and was made a

separate range i.e., Karnal Range. The petitioners were promoted as ASIs with effect from 09.09.2011 and their claim was that as since their juniors were promoted in Rohtak Range, so after creation of new Range, the petitioners were also entitled for promotion from the date their juniors were promoted. Learned counsel further submits that subsequently, show cause notices were issued to the petitioners inspite of the fact that they were entitled to promotion in Rohtak Range only but nothing was mentioned regarding their seniority at the time of bifurcation of Rohtak Range and Karnal Range. A letter was issued by Director General of Police, Haryana to Inspector General of Police, Rohtak Range stating therein that subsequent order dated 24/25.10.2011, whereby, the petitioners were promoted from the back date was not correct, legal or justified and all promotion orders be withdrawn. Subsequent thereupon, a show cause notice like Annexure P-4 was issued to all the petitioners. Learned counsel also submits that neither any opportunity of hearing was given nor any notice prior to that was given and only on the basis of the communication sent by Director General of Police, Haryana, show cause notices were issued, which are not only illegal but unlawful as well. Learned counsel for the petitioners also submits that the petitioners were assigned seniority with effect from 09.09.2011 on the basis of Range Level and they were promoted with effect from the date i.e., 09.09.2011 when their juniors have been promoted in Rohtak Range. The petitioners were having a right to be promoted in Rohtak Range itself but subsequently,

on coming into existence of the Karnal Range, the action of passing of promotion orders was justified and lawful, yet show cause notices have been issued.

Learned State counsel submits that Karnal Range came into existence on 29.09.2011 and promotion orders were not passed by the Competent Authority as the same have been passed after 29.09.2011. Learned State counsel further submits that a reasoning has been given in the letter issued by Director General of Police, Haryana and on the basis of that letter, the impugned show cause notices were issued. Learned State counsel also submits that only one show cause notice issued to petitioner No.1 has been challenged and other notices have not been challenged in the present writ petition whereas the petitioners are more than one. In absence of those show cause notices, the same can not be quashed. Learned State counsel also submits that the present writ petition is liable to be dismissed as premature as reply to the show cause notice has not been submitted by the petitioners and without submitting their reply, the present writ petition has been filed.

Heard arguments of learned counsel for the petitioners as well as learned State counsel and have also perused the impugned show cause notice as well as other documents on the file.

Admittedly, the Karnal Range came into existence with effect from 29.09.2011 as District Karnal was separated from Rohtak Range after the creation of a new Range. Thereafter, promotion order

(Annexure P-2) was passed on 25.10.2011, whereby, the petitioners and other officials of District Rohtak were also promoted. It is also not disputed that the Director General of Police, Haryana has written a letter to the Inspector General of Police, Rohtak Range dated 15.10.2013 stating therein that Karnal Range was created on 29.09.2011 and promotion orders have been passed subsequently on 24/25.10.2011 from the back date and the same have been stated to be illegal. On the basis of that letter, show cause notices were issued to all the petitioners and the same have been challenged by the petitioners. It is also not disputed that the replies to the show cause notices were submitted by the petitioners and only show cause notice issued to petitioner No.1 has been challenged in the present writ petition by raising various grounds.

The claim over the seniority in Rohtak Range might have been considered when Karnal Range was bifurcated but nothing has been mentioned in the writ petition as well as in the written statement as to whether their seniority was to be fixed in Rohtak Range or Karnal Range. The juniors to the petitioners have been stated to be promoted much earlier and the petitioners were also claiming their promotion from the date their juniors were promoted. By considering the date of promotion of the juniors, the orders of promotion were passed by the competent authorities only but subsequently, the show cause notices have been issued. It has not been stated that whether the petitioners were having the right to be promoted from the date

their juniors were promoted or not, that issue can be decided by the authorities as some policy decision might have been taken by the concerned authorities but that is not on record.

Learned State counsel submits that the decision (Annexure R-2) has already been taken regarding seniority of the petitioners.

The Karnal District was part and parcel of District Rohtak upto 29.09.2011 but at the time of passing of promotion orders, separate District/Range has been created. The Policy decision dated 08.10.2012 has been taken subsequently whereas the same should have been taken at the time of bifurcation of Districts. The petitioners were promoted after the date of bifurcation and subsequently, the show cause notices have also been issued but nowhere it has been mentioned by the respondents that the petitioners were not entitled to be promoted from the date their juniors were promoted. The impugned show cause notice has been issued by the Inspector General of Police, Rohtak Range on the basis of directions issued by Director General of Police, Haryana on 15.10.2013. The Inspector General of Police had no choice except to follow the directions of senior Officer i.e., Director General of Police. Not only the dispute regarding competency of the authority is there but the dispute of seniority is also there. Hence, the issue of seniority should be settled by the Director General of Police, Haryana.

The Director General of Police, Haryana is not the

competent authority to pass the order of promotion of the petitioners and as such, the orders have been passed by the Inspector General of Police i.e., the competent authority.

The petitioners have not submitted any reply to the show cause notice and before submission of any reply, this petition has been filed. Accordingly, this writ petition is disposed of with a direction to the Inspector General of Police, Karnal who has issued show cause notices, to pass fresh orders after considering the reply to the show cause notices. Moreover, at the time of passing of impugned show cause notice, the petitioners were part of Karnal Range whereas the orders have been passed by the Inspector General of Police, Rohtak Range and that too only on the basis of letter written by Director General of Police, Haryana and even without deciding the issue of seniority.

Keeping in view the peculiar facts and circumstances of the case, the orders passed by the Inspector General of Police, Rohtak Range, who is not competent as now the petitioners are in Karnal Range. The show cause notices have been issued without deciding the issue of seniority.

Accordingly, the impugned show cause notice (Annexure P-4) issued to petitioner No.1 and other similar notices pertaining to the petitioners are hereby quashed and the Director General of Police, Haryana is directed to take fresh decision after considering the issue of seniority as well as the promotion of the petitioners without being

influenced by the orders passed by the Inspector General of Police, Rohtak. The necessary exercise be done after giving proper opportunity of hearing to the petitioners.

Disposed of accordingly.

20.07.2015
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(DAYA CHAUDHARY)
JUDGE