

CWP No. 10659 of 1994

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No. 10659 of 1994

Date of decision : January 13, 2016

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Satyavir Singh

.....Petitioner

Versus

The State of Haryana and others

.....Respondents

CWP No. 14978 of 1994

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Satyavir Singh

.....Petitioner

Versus

The State of Haryana and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. R.K Malik, Senior Advocate with
Mr. S.K Redhu, Advocate for the petitioner.

Mr. Gaurav Goel, AAG, Haryana.

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1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

RITU BAHRI, J

By way of this common judgment CWP No. 10659 of
1994 and CWP No.14978 of 1994 shall be decided as the similar

question of law and facts are involved in it. For the sake of convenience, facts are being extracted from CWP No.10659 of 1994.

The petitioner is seeking a writ of certiorari for quashing the order dated 1.8.1994 (Annexure P-11) by which his seniority has been refixed as a Constable and on revision of the dates of promotion as ASR, the petitioner has been reverted to the rank of ASI and deconfirmed in the rank of ASI. The period from 15.12.1986 to 2.6.1992 when the official functioned as ASR, on account of promotion he received earlier on the basis of seniority previously assigned to him, was ordered to be deemed as ad hoc promotion which will have no effect on his revised seniority. Further prayer has been made for quashing impugned orders dated 22.10.2003 (Annexure P-16) and order dated 31.3.2011 (Annexure P-18) which were passed during the pendency of present petition vide which claim of the petitioner for granting deemed dates seniority on the basis of standing all round first in Recruit Basic Course has been rejected. Further directions have been sought to the respondents to grant the benefit of deemed dates seniority in lieu of standing all round first in the Recruited Basic Course with all consequential benefits.

The petitioner was enrolled in Haryana Police as Constable on 29.3.1975 in the 5th Bn. Haryana Armed Police, Madhuban. The petitioner stood first in the basic recruit course completed in December 1975. In 1977 the petitioner took proficient Basic Course and stood first. He was selected for deputation to the

Lower School Course on 1.10.1980 and he had passed that course on 18.3.1981. The petitioner was given promotion list 'C' w.e.f 18.3.1981. The petitioner was therefore promoted as officiating Head Constable in H.A.P. In third Bn. on 14.5.1981 and was confirmed as such by the Dy. Inspector General of Police on 31.8.1985. He was sent on deputation to the Police Training College, Madhuban as Law Instructor in the Instructional staff on 6.7.1982. The petitioner was promoted as officiating ASI in Police Training College, Madhuban by the Director, Police Training College, Madhuban on 7.10.1982. The petitioner being confirmed as Head Constable and in view of his seniority in P.T.C. and seats allotted to the P.T.C was selected and deputed for Intermediate School Course by the Director, Police Training College, Madhuban on 1.4.1986. The petitioner passed the said course on 30.9.1986 and stood first in the batch. As per the Instructions issued by the Director General of Police vide letter No. 1001-1028/B-3 dated 1.2.1983 (Annexure P-1) the name of the petitioner should be brought on promotion list 'D' from the date of declaration of the result of the Intermediate School Course by the Director, P.T.C., Madhuban i.e 1.10.1986. The petitioner was admitted to the promotional list 'D' under rule 13.9 of Punjab Police Rules as applicable to the State of Haryana on 5.11.1986 instead of 1.10.1986 and was promoted as Officiating Assistant Sub Inspector by the DIGP, HAP, Madhuban on 15.12.1986.. Thereafter the petitioner passed and qualified the upper school course on 31.3.1988 and again stood first in the batch of 200 candidates. The petitioner

was repatriated from Police Training College to his parent unit on 31.3.1988 in third Bn. as offg. Assistant Sub Inspector and thereafter the petitioner was transferred from 3rd to 2nd Bn. and the petitioner was further transferred as officiating Asst. Sub Inspector to Distt. Rohtak vide order dated 30.12.1989 (Annexure P-3). The petitioner was admitted to the promotional list 'E' by the DIGP, Rohtak Range, Rohtak w.e.f 26.7.1990 and he was also promoted as Sub Inspector on 27.7.1990 by the DIGP. The petitioner has been confirmed in the Rohtak District as SI w.e.f 31.1.1991 by the order of DIGP, Rohtak Range, Rohtak (Annexure P-4). The petitioner was awarded commendation certificates (Annexures P-5 to P-7) for his exceptional performance in various forms.

The petitioner was served a show cause notice vide memo No. 13717/13/1992 dated 23.5.1992 by the DIGP, HAP, Madhuban, wherein he was called upon to show cause as to why his seniority should not be re-fixed in his parent unit in HAP in view of the fact that he had qualified intermediate School course in term ended in 1986 and Upper School course in the term ended on 23.3.1988 which were against special seats allotted to the Police Training College. The qualifications acquired by the petitioner while being on deputation with the Police Training College did not entitle him to out of turn promotion in his parent cadre. The respondent did not consider the detailed reply filed by the petitioner on 28.5.1992 to the aforesaid show cause notice. Vide order dated 29.7.1992 (Annexure P-8), the seniority of the petitioner has been re-fixed above one HC

Ramesh Chand. This order was challenged by the petitioner by way of filing CWP No. 11210 of 1992 in this Court and vide order dated 18.8.1992 a Division Bench issued notice of motion and operation of the order was stayed till further orders. In the petition filed by the petitioner, a direction was sought that the Director General of Police Haryana being the competent authority be directed to pass a fresh order regarding seniority of the petitioner. The petitioner was issued a show cause notice again on 27.4.1994 (Annexure P-9) to which he submitted a detailed reply on 4.5.1994 (Annexure P-10) in which, the petitioner explained that as per the provisions of PPR 12.2 (3), the seniority of the lower subordinate will be reckoned from the date of confirmation at the first instance. The promotion is always done in accordance with Rule 13.1 of the Punjab Police Rules i.e seniority cum merit, efficiency, honesty shall be main integer governing the selection. The petitioner had been sent to the intermediate school course against special seats allotted by the Director General of Police and many persons who were similarly situated like the petitioner have been allowed benefits of the Courses and they have not been issued any notice nor have been reverted. Thereafter, he has given the examples of Sh. Jagroop Singh DSP, HAP, Sh. Sube Singh now Inspector District Hisar, Mohinder Singh Inspector, PPT, Distt. Panipat and Sh. Daya Ram, Sub-Inspector, PTC Madhuban. The benefits granted to the petitioners eight years back cannot be withdrawn on account of delay and latches. The petitioner had given the example of six persons who were junior to him and had not even

passed the above said courses and they were not being reverted, whereas some of the sportsman had been promoted against the sports quota which is against the rules.

In view of the detailed reply filed by the petitioner, the order (Annexure P-11) is liable to be set aside.

The stand taken by the respondents, in their written statement, is that vide order dated 22.10.2003 (Annexure P-16), representation filed by the petitioner regarding fixation of seniority has been rejected by the Director General of Police, Haryana. His representation made to the Government of Haryana has also been rejected vide order dated 31.03.2011 (Annexure P-18), as the petitioner could not explain the inordinate delay of 28 years for reopening his case. The seniority of the petitioner had rightly been determined by taking into consideration his confirmation as Head Constable pursuant to the directions given by this Court in CWP No.11210 of 1992, which was decided on 15.10.1993. Seniority of the petitioner has been rightly refixed vide a detailed speaking order dated 01.08.1994 (Annexure P-11). In this order, it has been observed that the petitioner had proceeded on deputation to Police Training College, Madhuban and while on deputation, he had undergone Intermediate School Course against the seat allotted to the Police Training College, Madhuban in term ending 9/86. The petitioner could not get the benefit of passing the above mentioned test on account of out of turn promotion in his parent cadre. He could only be considered for promotion list 'D' and promotion as officiating

ASI on his turn based seniority and merit as Head Constable in his parent cadre. The petitioner superseded a number of officials on account of the seat allotted to him to the Police Training College, Madhuban. His name was brought in list 'D' w.e.f. 05.11.1986 and he was promoted as officiating ASI w.e.f. 15.12.1986 in his parent cadre of HAP. He passed the Upper School Course in term ending 3/88. While refixing the seniority of petitioner vide impugned order (Annexure P-11), he has been given the revised date of promotion in list 'D' and promotion to the rank of officiating ASI, which are detailed as under:-

	Present date	Revised date
Inclusion in list 'D'	05.11.1986	02.01.1992
Promotion as Offg. ASI	15.12.1986	02.06.1992
Date of confirmation as ASI	31.01.1991	-

On account of revision of dates of list 'D' and promotion as ASR, the petitioner was reverted to the rank of ASI and deconfirmed in the rank of ASI. The period from 15.12.1986 to 02.06.1992 was ordered to be treated as ad hoc promotion, which would have no effect on his revised seniority.

The respondents have further stated that similarly situated employees namely SI Hari Ram and SI Ombir Singh, whose seniority had been refixed, had challenged the same by filing CWP No.410 of 2006, titled as SI Hari Ram Vs. State of Haryana and others, and CWP No.409 of 2006, titled as SI Ombir Singh Vs. State of Haryana and others, which are pending consideration before this Court and the operation of the impugned order(s) have been stayed

in those petitions.

After going through the contents of the writ petition, written statement filed on behalf of the respondents and replication of the petitioner, the facts not in dispute are that the petitioner was confirmed as a Head Constable on 31.8.1985. He was sent on deputation to the Police Training College, Madhuban as Law Instructor in the Instructional staff on 6.7.1982. He was promoted as officiating ASI in Police Training College, Madhuban by the Director, Police Training College, Madhuban on 7.10.1982. In view of the special seats allotted to the PTC, Madhuban, he was selected and deputed for the Intermediate School Course by the Director, Police Training College, Madhuban on 1.4.1986 and he passed in this course and stood first in the batch. After passing this test, he was admitted to the promotional list 'D' under Rule 13.9 of Punjab Police Rules as applicable to the State of Harayna on 5.11.1986 and thereafter he was promoted as officiating Assistant Sub Inspector by the DIGP, HAP, Madhuban on 15.12.1986. Thereafter the petitioner passed and qualified the upper school course on 31.3.1988 and again stood first in the batch of 200 candidates. The petitioner was repatriated from Police Training College to his parent unit on 31.3.1988 as officiating Assistant Sub Inspector. After getting the benefit of promotion while on PTC, Madhuban, he was admitted to the promotional list 'E' by the DIGP, Rohtak Range, Rohtak w.e.f 26.7.1990 and he was also promoted as Sub Inspector on 27.7.1990 by the DIGP and consequently confirmed by order of DIGP, Rohtak

(Annexure P-4). The grievance of the petitioner is that the benefit granted to him of inclusion of his name in list 'D' w.e.f 5.11.1986 has been revised to 2.1.1992 and date of promotion as officiating ASI was revised from 15.12.1986 to 2.6.1992 and period from 15.12.1986 to 2.6.1992 was ordered to be treated as ad hoc promotion. This order was passed keeping in view that his seniority in parent cadre as Head Constable was to be maintained and even if he did his Intermediate School Course, it will not entitle him to out of turn promotion in his parent cadre.

On 19.9.2012, the petitioner filed an amended writ petition and stated that similarly situated persons have been granted the benefit of deemed date of promotion and their ad hoc promotion had also been made regular. Reference was made to similarly situated employees namely Hari Ram and Ombir Singh who had been granted benefit after a gap of 28 years by Inspector General of Police, Rohtak Range, Rohtak vide order dated 8.2.2002 and 20.3.2002 respectively. After seeking necessary comments on the representation made by the petitioner dated 1.7.2002, Director General of Police, Haryana Panchkula vide order dated 22.10.2003 rejected the same on the ground that after a gap of 28 years it would not be proper to re-open the issue. Thereafter he filed another representation on 1.12.2004 which has been rejected by the Financial Commissioner and Principal Secretary to Government of Haryana, Home Department, Chandigarh on 31.3.2011 (Annexure P-18). The petitioner is seeking benefit at par with the promotion

orders passed in favour of other employees i.e ASI, Rajbir Singh and ASI, Anoop Singh whose promotions have been regularised vide order dated 3.8.2010 (Annexure P-19) passed by the Financial Commissioner and Principal secretary to Govt of Harayna after a gap of 24 years. The order dated 3.8.2010 (Annexure P-19) has since been complied with by the Inspector General of Police, Rohtak Range, Rohtak vide order dated 26.11.2010 (Annexure P-20). Further after regularizing the ad hoc promotion of ASI, Anoop Singh, he has been promoted to the rank of DSP vide order dated 25.8.2011 (Annexure P-21) passed by the Financial Commissioner and Principal Secretary to Govt. of Haryana, Home Department.

The respondents in the written statement have not disputed that the order dated 3.8.2010 (Annexure P-19) regularizing the promotions of ASI, Rajbir Singh and ASI, Anoop Singh was passed and the same was subsequently implemented by the Inspector General of Police, Rohtak Range, Rohtak vide order dated 26.11.2010 (Annexure P-20).

In reply of paragraph 34-F of the amended writ petition, it has been stated in the written statement filed on behalf of the respondents that the claim of ASI Rajbir Singh and ASI, Anoop Singh was only based on regularization of their ad hoc promotion. On the other hand, the petitioner is seeking the benefit on the basis of qualification of passing of Intermediate School course which he had undergone against the seat allotted to the Police Training College, Madhuban while he was on deputation to Police Training College,

Madhuban.

The respondents have made a feeble attempt to separate the case of the petitioner from that of ASI Rajbir Singh and ASI Anoop Singh. A perusal of the order dated 3.8.2010 (Annexure P-19) shows that the Government had agreed to the proposal of the Director General of Police regarding regularization of ad hoc promotion of ASI Rajbir Singh and ASI Anoop Singh. Further Anoop Singh was granted deemed date of promotion in the year 1987 and as per order dated 25.8.2011 (Annexure P-21) was promoted as DSP w.e.f 29.8.2008 i.e the date on which his immediate junior Inspector Sunehra Singh was brought on list G and promoted to the rank of DSP. Anoop Singh has been given the notional benefit of ad hoc promotion and subsequently benefit of seniority by giving him promotion to the post of DSP w.e.f the date his immediate junior Sunehra Singh was promoted as DSP. The case of the petitioner is that his period of ad hoc promotion from 15.12.1986 to 2.6.1992 has not been regularized for promotion. Once the respondents have regularized ad hoc promotions of ASI Rajbir Singh and ASI Anoop Singh in the year 2010, the case of the petitioner could not be rejected that he was making a claim after 28 years.

Having regard to the aforesaid, the writ petitions are allowed and a direction is given to the respondents to regularize the ad hoc promotion of the petitioner w.e.f 15.12.1986 to 2.6.1992 with all consequential benefits.

January 13, 2016

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**(RITU BAHRI)
JUDGE**