

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

Date of decision: 18.05.2016

CWP No.17463 of 1998

Amarjit Singh

...Petitioner

Vs.

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Inderjit Singh, Advocate, for
Mr. Gurdev Singh, Advocate, for the petitioner.

Mr. Harkesh Manuja, Addl. AG, Punjab.

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

RAJIV NARAIN RAINA, J. (ORAL)

Having heard learned counsel for the parties, there are certain issues arise, which are not found in the impugned order (Annex P-1), which order simply rejects the case of the petitioner on the ground of being overage for employment. It is common ground that till 22.09.1992, an ex-serviceman qualified as an 'ex-serviceman' even he left the Army at his own request. Briefly stated, the petitioner was enlisted as an SPO/Auxiliary Constable on 08.08.1992 i.e. before the amendment was made to the Rules, which excluded such army personnel as were released otherwise than on their own requests. It is said that the amendment is prospective in operation and the petitioner was enlisted before the amendment and is governed by the old rules. Therefore, it is argued by the petitioner's counsel that his client has some semblance of

right, which may have accrued and vested in him for consideration for appointment as a Constable.

On the other hand, Mr. Manuja submits that it is the prevailing law when the consideration takes place from SPO/Auxiliary Constable to Constable in Punjab Police that is relevant, the petitioner would cease to be an ex-serviceman and, therefore, not entitled to weightage of 8 years, 11 months and 2 days to bring him within the maximum age ceiling which is required for recruitment of a Constable i.e. 22 years. The petitioner was discharged from the Army on 01.05.1991 and joined Civil Services on 08.08.1992.

Lamentably, the impugned order does not deal with these vital issues and therefore, the order is inadequate in reasoning. It is well settled proposition of law that if an administrative order is made up of one or many reasons, no further or extra reasons can be supplied either by a court of law or by the State in the written statement, which reasoning does not exist in the order which adversely affects the rights of the parties. The remedy against such order is to remit the case to the competent authority to pass a fresh order dealing with all the facets of the case as emerging and which may have a material bearing on the case.

It is also not clear from the record available on file, whether the petitioner was heard when the impugned order was passed. In case, it was not so then the order would additionally suffer from breach of principles of natural justice. Due to inadequacy of reasons given in the order, which simply discards the case of the petitioner being “overage”, then it is not possible to judicially review the adverse decision taken by accepting Mr. Manuja’s argument for the first time in writ proceedings against an administrative order. Therefore, justice may be better served if the matter is remitted to the

competent authority in the Police Department to reconsider the impugned order and pass a fresh one after noticing all the arguments, which were addressed by both the counsel at the hearing today, as recorded above and those to be raised on remand.

Consequently, without expressing any opinion on any of those contentions, the matter is remanded for fresh order to be passed in accordance with law. If the petitioner desires personal hearing, he may make a request, which shall be granted. The matter being an old one, a direction is issued that the competent authority would consider, deal with and decide the matter within two months from the date of receipt of certified copy of this order. Needless to say that the order must be not only speaking, but articulate enough so that the Court knows, in case judicial review is sought again, the mind of the competent authority and what weighed with to accept or decline the prayer of the petitioner for appointment as Constable in Punjab Police.

With these observations and directions, the instant petition stands disposed of.

Order dasti.

18.05.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE