

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 673 of 1999(O&M)

Date of decision:2.9.2016

Faqir Chand

... Petitioner

Versus

The Home Secretary to Govt. of Haryana & ors.

... Respondents

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

Present: None for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

RAJIV NARAIN RAINA, J.(Oral)

1. The petitioner has not come forward to argue his case despite notice but that would not deter me from disposing of the matter on merits after hearing Ms Shruti Jain Goyal, AAG, Haryana.

2. “The present petition has been filed with a twofold prayer, first, to consider his case for promotion to the rank of Inspector w.e.f. 5.12.1998 after placing his name on List “F” w.e.f. 6.11.1998 i.e. the date when his juniors Respondent No. 4 to 6 were promoted and second, to stay the impugned order dated 8.12.1998 (P-16) vide which the said juniors have been promoted.

3. In order to decide the controversy involved in the present petition, it is necessary to recapitulate the relevant facts of this case. The petitioner was enrolled as Constable in Haryana Armed Police on 2.11.1970. He was brought on List C-II and promoted as Head Constable by DIG of Police on the same day even though he was less than 30 years of age which was contrary to provisions of Punjab Police Rules, 1934. The Director General of Police, Haryana set aside that order and directed that the

name of the petitioner be considered for List B-I. The petitioner consented for the same and opted to undergo Lower School Training Course. His name was brought on List C-I on 19.3.1980 and thereafter, he was promoted as regular Head Constable on his turn on 17.4.1980 and confirmed as such on 31.01.1984. Then after a gap of 8 years since his promotion as a regular Head Constable, the filed *Civil Writ Petition No. 2910 of 1988*, claiming his seniority on the basis of his promotion as Exemptee Head Constable in the year 1977 and further prayed that he be deputed to undergo Intermediate School Course. The Writ Petition was allowed vide order dated 26.03.1990, in terms of Judgment rendered by this Court in *CWP No. 6863 of 1987* titled as *Jai Narain Vs. State of Haryana* decided on 14.01.1987. In compliance thereof, the DIG, Haryana Armed Police, Madhuban passed an order dated 21.05.1990 vide which the petitioner was granted following dates of promotions/confirmation:

	(Earlier)	(Modified)
Entry in promotion List 'C-II'	19.03.1980	27.07.1977
Promotion as Head Constb.	7.04.1980	03.09.1979
Confirmation as Head Constb.	31.01.1984	20.06.1980
Entry in promotion list 'D'	21.04.1989	15.04.1988
Promotion as ASI	12.04.1989	25.01.1989

4. Vide the aforesaid order, the petitioner was also promoted to the rank of Head Constable, for the period from 03.09.1979 to 17.04.1980 and deputed to undergo Intermediate School Course in 1988 in the term ending 3/89 (after counting the aforesaid period he served as Exemptee Head Constable). However, when this order was passed, the claim of the petitioner for deputation to Upper School Course has already been rejected

on the ground that the petitioner does not become eligible for deputation to upper school course even after counting his service as an Exemptee head constable and he had been intimated regarding the same vide letter dated 04.04.1990.

5. The petitioner thereafter, also filed CWP No. 12073 of 1990 praying for deputation to Upper School Course and in compliance of the interim order dated 27.09.1990, the petitioner was deputed to upper school course in 1991. The review petition bearing No. 305 of 1990 filed by the State against the interim order dated 27.09.1990 was disposed of. Thereafter, the petitioner made a representations dated 28.11.1991 and 20.2.1992 to Deputy Inspector General that he be given promotion at par with his juniors and the same was rejected by DIG vide order dated 26.3.1992. Thereafter, the petitioner filed an appeal dated 2.4.1992 which was accepted by Inspector General vide his order dated 08.04.1992, modifying thereby the order dated 21.5.1990 to the extent that the petitioner be brought on List 'D' w.e.f. 5.11.1986 and promoted as ASI w.e.f. 9.12.1986 and further directed that he be brought on List 'E' w.e.f. 12.10.1991 and be promoted as SI w.e.f. 12.10.91 (instead of 29.04.1994 and 8.05.94 respectively on his turn as per seniority granted by the High Court).

6. Subsequently, with a view to correct the anomaly which had occurred due to implementation of Court's Order dated 26.03.1990, the DIG/HAP/Madhuban passed an order dated 1.5.1992, granting thereby the ante-dated confirmation to 49 Head Constables who were originally senior to the petitioner but ignored due to Court's Order from w.e.f. 20.06.1980 instead of 10.3.1981. Again on a representation made by the petitioner for

grant of ante-dated promotions, the IG set aside the order of DIG dated 1.5.1992 granting notional promotions to 49 Constables. The DIG brought the aforesaid order to the notice of the DGP and requested for review of the aforesaid on the grounds, inter-alia, that the petitioner has already been granted seniority and promotions in compliance of the Court's orders and further that the 49 HCs were senior to the petitioners and setting aside of order of their notional confirmation had led to a spate of litigation. It was also pointed out that IG could not have decided a revision petition since the appellate powers of DCP were not delegated to the IG and this was the only petition on service matters entertained by IG therefore the IG had exercised powers beyond his jurisdiction.

7. During the pendency of the present writ petition, a show cause notice dated 01.07.1999 was issued to the petitioner by DGP against withdrawal of order of IG dated 12.10.1992 giving him ante-dated seniority and promotions. Said order was placed on record by the petitioner by moving CM No. 15687 of 1999. This Court vide an interim order dated 19.7.1999 issued a direction that if any adverse order is passed against the Petitioner, the same be not given effect to till further orders. The petitioner further moved CM No. 18548 of 2000 praying for stay of further promotion of juniors. While issuing notice on the CM, the Court vide an interim order dated 31.08.2000 made all the subsequent promotions subject to the orders passed in the case. Thereafter, the review was decided by the DGP vide an order dated 9.9.2000 and the order of IG dated 12.10.1992 was set aside and the order of DIG dated 21.05.1990 was restored. However, the same could not be implemented till date because of the interim order dated 19.07.1999. Petitioner amended the writ petition to challenge the order

dated 09.09.2000.

8. In the written statement filed by the respondents, the claim of the petitioner for retrospective promotions has been denied and all the impugned orders have sought to be defended on the ground that at the first instance, the petitioner had no right to claim seniority and promotions by considering the period from 27.7.1977 to 3.9.1979 in his favour, during which he officiated as Exemptee Head Constable since the law had already been settled by the Full Bench of this Court in Sardul Singh Vs. State of Haryana reported as 1970 SLR 505, wherein the Court upheld the principle of deputing the confirmed Head Constables first to undergo the Intermediate School Course in the order of seniority and then the Head Constables on probation would be sent and in the last officiating Head Constables will be sent. It has further been contended that in 1988, the petitioner's turn for undergoing Intermediate School Course would have come after 49 other confirmed Head Constables who were senior to him. However, in view of the interim order of the Court in the aforesaid writ petition, the petitioner was deputed to undergo intermediate school course, for which reason he got undue benefit of seniority over and above and ignoring 49 confirmed constables. It has further been submitted that the petitioner has been given the benefit of ante-dated promotions and confirmation only in compliance of the order dated 26.03.1990 passed in Civil Writ Petition No. 2910 of 1988 and that he cannot claim seniority over and above those Head Constables who were confirmed prior to him and therefore, were his seniors. Moreover, while passing the order dated 12.10.1992, no show cause notice was issued to any of the senior confirmed Head Constables, over and above whom, seniority has been claimed by the petitioner on the strength of IG's order

dated 12.10.1992 and who entered service even prior to the petitioner.

9. The Learned Law Officer submits that through this writ petition, the petitioner is in fact, seeking the implementation of orders of IGP dated 08.04.1992 and 12.10.1992 which if implemented would result in petitioner gaining seniority and promotions over and above the private respondents which would be in complete violation of the statutory rules and the law settled on the issue. In support of the above submission, the Ld. Law Officer has relied upon the Judgment of this Court in HC Suresh Kumar vs State Of Haryana, 2001(2) S.C.T. 174 . She has drawn my attention to para 6, 7 & 8 of the Judgment which is extracted herein below:

“6. The facts in this case are not in dispute, the petitioners had been appointed in the Haryana Commando Police Force as Constables and in view of the permanent vacancies of Head Constables which were available they were promoted as officiating Head Constables with effect from 17.7.1992 without their having passed the lower school course. They continued working in this rank until the orders for their reversion were passed on 29.6.1995. The petitioners submit that this order of reversion is illegal because they had already served for more than two years as Head Constables and for advancing this argument they relied on Rule 13.18 of the rules. They also assert that the order of reversion passed in their case is against the ratio of the judgment of the Apex Court in Rishal Singh's case (supra). According to them the sole criteria which has to be taken into consideration by the appointing authority in matters of promotion of Constables is efficiency and honesty as laid down in Rule 13.1

which reads as under:

*"13.1. Promotion from one rank to another. -
(1) Promotion from one rank to another and from one grade to another in the same rank shall be made by selection tempered by seniority. Efficiency and honesty shall be the main factors governing selection. Specific qualifications, whether in the nature of training courses passed or practical experience shall be carefully considered in each case. When the qualifications of two officers are otherwise equal, the senior shall be promoted. This rule does not affect increments within a time scale."*

In view of this, they submit that the order of reversion passed against them cannot be sustained and should be set aside. This submission which appears to be attractive at first sight does not stand to close scrutiny. It does not take into consideration the provisions of Rule 13.4(2) and (3), which specifically empower the authorities to make officiating promotions which read as under:-

"13.4(2) Officiating promotions to the rank of Sub-Inspector, Assistant Sub- Inspector (For Haryana) and Head Constable shall be made by Superintendent of Police and Assistant Superintendent, Government Railway Police. If the flow of promotion is unevenly distributed among districts, the Deputy Inspector General of Police shall make suitable transfers of Assistant Sub-Inspectors, Head Constables (for Haryana and Constable) on the promotion lists from one district to another.

(3) All promotions concerning Inspectors, Sub-Inspectors, Assistant Sub- Inspectors and Head

Constables made under this rule shall be published in the Police Gazette, and notifications by Superintendents shall be sent in through the Deputy Inspector General of Police, who shall have the power to revise such orders on recording reasons in each case. If any Superintendent has not enough men on lists C, D and E in his district to fill temporary appointments in either rank, which he is required to make, he shall apply to the Deputy Inspector General for a man from another District."

7. On perusal of the appointment order it is not clear that the petitioners have been made officiating Head Constables. The reliance which is being placed on Rule 13.18 of the Rules, reads as under :-

"13.18. Probationary period of promotion. -All Police Officers promoted in rank shall be on probation for two years, provided that the appointing authority may, by a special order in each case, permit period of officiating service to count towards the period of probation. On the conclusion of the probationary period a report shall be rendered to the authority empowered to confirm the promotion who shall either confirm the officer or revert him. In no case shall the period of probation be extended beyond two years and confirming authority must arrive at a definite decision within a reasonable time soon after the expiry of that period whether the officer should be confirmed or reverted. While on probation officers may be reverted without departmental proceedings.

Such reversion shall not be considered reduction for the purpose of rule 16.4."

is clearly mis-conceived. The petitioners cannot by any stretch of imagination be held to be promoted to the rank of Head Constables as envisaged in the above , rule so as to enable them to rely upon the completion of the period of probation of two years prescribed in the Rules for challenging the order of reversion.

8. The matter can be looked into from another angle also. There being no dispute that none of the petitioners had passed their, lower school course or were selection grade constables at the time when they were given officiating promotions nor there being any assertion to the effect that their promotions have been made on account of the fact that they were outstanding sportsmen no reliance can be laced on rule 13.8(2) of the Rules, which reads as under:

"13.8(2) Promotions to Head Constable shall be made in accordance with the principle described in sub-rule 13.1(0 and (2). The date of admission to list C shall not be material, but the order of merit in which examinations have been passed shall be taken into consideration in comprising (comparing?) qualifications. In cases where other qualifications are equal, seniority in the police force shall be the deciding factor. Selection grade constables who have not passed the Lower School Course at the Police Training School but are otherwise considered suitable may, with the approval of the Deputy Inspector General, be promoted to Head Constables up to a maximum of ten per

cent of vacancies."

for holding that the petitioners should be deemed to have been promoted against the 10% quota and that the promotions given to them were not officiating but regular promotions and, therefore, after the expiry of two years they should not be reverted without following the procedure prescribed by law. The promotions of the petitioners being ad hoc in nature will have to be considered to be fortuitous and not conferring any right on the petitioners as has been held by this Court in C.W.P. No. 2704 of 1996 : 1996(4) SCT 662 (P&H)(DB) H.C. Brij Lal v. State of Haryana and others, decided on 5.8.1996. To the similar effect are the observations contained in Food Corporation of India v. Thaneswar Kalita and others, 1995(3) RSJ 298 : 1995 (3) SCT 319 (SC) and Sarup Singh and others v. State of Punjab and others, 1991(1) SLR 381. For the reasons recorded above, the present petitions fails and are dismissed accordingly."

10. She further points out that even though the original promotion order dated 27.07.1977 (Annex P-1), wherein it was specifically mentioned that the promotion of the petitioner to the post of Head Constable is purely temporary and fortuitous, was partially modified vide letter dated 30.07.1977, granting approval of promotion of the petitioner to be one under Rule 13.8 (2), the same could not be taken as a regular promotion in view of the conditions incorporated under Rule 13.8 (2). In this regard, she places reliance on the judgment of the Division Bench in case of H.C. Brij Lal Vs. State of Haryana, 1994(4) SCT 662. In this case after considering

Rule 13.8(2), the Court held that the power of promotion under Rule 13. 8

(2) is not an absolute and unbridled power but is subject to certain conditions. The relevant paras of the Judgment in *H.C. Brij's case (supra)* are extracted as below:

“8. For promotion to the post of Head Constable under Rule 13.8 a Constable must have passed Lower School Course. List 'C' containing names of eligible Constables is required to be maintained in each district and the same is to be utilised for making promotions to the posts of Head Constables. On promotion as Head Constable a person is required to be placed on probation for a period of two years. The competent authority can revert such probationer Head Constable if his work and conduct is not found satisfactory during the period of probation. Second part of Rule 13.8 carves out an exception from the main rule which makes passing of the Lower School Course a condition precedent for promotion to the post of Head Constable. Under this exception, the competent authority can promote a selection grade Constable to the rank of Head Constable even without passing Lower School Course. However, this power is not absolute and unbridled. Rather, it is subject to the following conditions:-

- (i) such promotion can be given only to the Selection Grade Constables which necessarily means that the candidate has already satisfied the criteria enumerated in Rule 13.5;*
- (ii) he is otherwise considered suitable for such promotion ;*
- (iii) the Deputy Inspector General of Police of the Range concerned approves such promotion; and*

(iv) such promotion shall not exceed 10 per cent of the total vacancies.

9. To us it appears that the rulemaking authority has conferred power upon the competent authorities to make 10 per cent promotions from amongst those who have not passed Lower School Course realising that some Constables who may have been found fit for promotion as Selection Grade Constables but they may not have been able to clear the Lower School Course. Therefore, keeping in view their suitability determined on the basis of record, the competent authority can give promotion up to 10 per cent of the total vacancies. It is, therefore, logical to hold that no Constable, who has not got Selection Grade, can be promoted as Head Constable under second Part of Rule 13.8 (2).

11. On the strength of the statutory rules, as interpreted by this Court in *H.C. Brij Lal's case (supra)*, she submits that neither can it be discerned from the pleadings and the documents placed on record that the petitioner was a selection grade Constable nor was he eligible to be brought on List C-II being below 30 years of age and thereafter to be promoted as Head Constable on the same day in contravention to the Punjab Police Rules, 1934 and the relevant instructions which was the reason for his reversion to the post of Constable, therefore, his promotion cannot be deemed as a regular promotion under the exception carved out under Rule 13.8(2). She further submits that he has already been granted notional promotions and confirmations in compliance of this Court's order dated 26.03.1990, however, he cannot be allowed to steal a march over those Head Constables who joined the service prior to the petitioner and were

confirmed as Head Constables before the date he was brought on List C-II and confirmed as Head Constable. Therefore, the order of the Deputy Inspector General of Police dated 01.05.1992 and the Director General of Police, Haryana dated 09.09.2000 restoring the earlier order of Deputy Inspector General of Police dated 21.05.1990, is completely valid and is fully sustainable in law. She further apprises this Court that though the petitioner had already undergone the Upper School Course in compliance of the interim order passed in *CWP No. 12073 of 1990*, the same was dismissed for non-prosecution.

12. On perusal of the pleadings and the law cited at the bar, I fully agree with the submissions made by the Learned Law Officer. Therefore, I do not find any error in the order dated 09.09.2000, passed by the Director General of Police, Haryana which is rather based on equity, having been passed after taking into consideration cases of the Head Constables senior to the petitioner. Therefore, the claim of the petitioner does not merit acceptance and any intervention from this Court. Moreover, the petitioner has already availed all his promotions in accordance with the order dated 21.05.1990 and has superannuated from service as Deputy Superintendent of Police on 31.03.2008.”

13. In view of the above discussion, the petition is dismissed being devoid of merit.

14. Before parting with the order, this court records its appreciation for the valuable assistance rendered by Ms Shruti Jain Goyal, learned AAG, Haryana by helping prepare the draft order on request made by me in open Court which task has been performed so admirably, the product of which is this judgment from paragraphs 2 to 12. She has saved much valuable time of

the Court which would have been spent marshalling the facts, which time saved I could divert to writing opinions on the other matters listed for the day and heard for final disposal. By her logical and impressive draft she has fleshed out the crucial dates and events and the applicable law in the context of the twofold issues raised and resolved in Court at the hearing after debate at length and the petition dismissed with reasons to follow after hearing the parties. I have made only minor changes. The draft has become the judgment. That I am not accused of theft of intellectual property and plagiarism I have put the work candidly in inverted commas to be treated as judgment and order of this Court and open to appeal. I hope this experiment may become a signature tune in future in constructively and realistically dealing with arrears of old cases with quality assistance from the Bar and the law officers, whenever called upon by the Court, but after expressing its mind on all points involved and deciding finally a case with reasons to follow. This Court expresses its gratitude for her pioneering work in faithfully duplicating the line of reasoning adopted by me at the hearing in her draft as was guided to save precious time.

15. Office to send a copy of this order to the petitioner.

(RAJIV NARAIN RAINA)
JUDGE

2.09.2016
monika

Whether speaking/reasoned *Yes*

Whether reportable *Yes*