

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

CWP No.21397 of 2011

Date of decision: 08.07.2016

Jaswant Singh

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr.Vipul Jindal, Advocate,
for the petitioner.

Mr. Hitesh Pandit, Addl. A.G., Haryana.

Ritu Bahri, J.

The petitioner is seeking quashing of the orders dated 21.09.2007 and 13.04.2011 (Annexures P-6 and P-8). A further direction is sought to be issued to the respondents to consider his case for promotion as ASI w.e.f. 31.07.1991, as confirmed ASI w.e.f. 31.01.1998 and thereafter, consider his case for promotion as SI w.e.f. 12.08.1996/20.03.1998.

Petitioner was appointed as Constable on 28.05.1973 in Haryana Armed Police. In 1979, he was absorbed in District Police, Hisar. Keeping in view his performance as a Hockey Player, the DIG Ambala Range, considered his case for promotion to the rank of Head Constable. Thereafter, he was promoted as Head Constable on adhoc basis vide order dated 05.12.1980 (Annexure P-1) in the scale of Rs.450-700/-. This fact was mentioned in his posting order dated 17.12.1980 (Annexure P-2). While

performing his duties as Head Constable, the petitioner was further

promoted as ASI on 05.10.1989 (Annexure P-3) on adhoc basis w.e.f. 17.09.1989 on account of outstanding achievements in the field of sports. The petitioner has been working as ASI since 11.10.1989.

Learned counsel for the petitioner states that the petitioner has not been considered for promotion to the rank of SI/Inspector merely on the ground that he has completed intermediate school course in the year 2001. While promoting the petitioner as ASI on adhoc basis vide order dated 05.10.1989 (Annexure P-3), it had been observed that his adhoc promotion will not give him any right of seniority over and above his seniors and will be liable to reversion without any notice. Thereafter, the petitioner filed CWP No.14151 of 1998 claiming that he may be promoted as Head Constable w.e.f. 05.12.1980 on regular basis as adhoc promotion had been granted to him within 10% quota under Rule 13.8 (2) of Punjab Police Rules. The said petition was allowed vide order dated 01.12.2004 (Annexure P-4). During pendency of the said petition, the petitioner joined intermediate school course run by the respondents on 10.10.2000 and qualified the same as per result declared by the Director, PTC, Madhuban on 21.04.2001. After passing of the above said course, he has got essential qualification for promotion to list 'D' and further promotion to the rank of ASI as per Rule 13.9 of the Punjab Police Rules, as applicable to Haryana.

By way of present petition, the petitioner is seeking direction to the respondents to grant him regular promotion as ASI w.e.f. 11.10.1989 in view of Full Bench judgment in **Sardool Singh, Head Constable Vs. Inspector General of Police**, 1970 SLR 505 (Annexure P-5). Learned counsel for the petitioner has further given examples of Punjab Singh and Ami Chand, who were appointed as Head Constables on 21.08.1990 and 06.05.1981 respectively and were confirmed on the post of Head Constables

on 31.01.1985. They have been granted list 'D' w.e.f. 13.06.1991. Petitioner is senior to them, as he had been granted regular promotion to the post of Head Constables w.e.f. 05.12.1980. The petitioner being senior to Punjab Singh and Ami Chand is entitled for consideration for promotion as ASI on or before 31.07.1991. Petitioner also seeks benefit of confirmation as ASI on or before 31.01.1998 and further promotion as Sub Inspector. Vide communication dated 21.09.2007 (Annexure P-6) and office order dated 13.04.2011 (Annexure P-8), the respondents have declined the claim of the petitioner to extend the benefit of confirmation of ASI at par with Punjab Singh and Amit Chand on the ground that he (petitioner) after being confirmed as Head Constable was not willing to undergo intermediate school course, which commenced from October, 1999. As per his willingness, he went to the intermediate school course w.e.f. 10.10.2000, which he qualified on 21.04.2001, whereas Punjab Singh and Amit Chand, after undergoing the intermediate school course, were promoted as ASI w.e.f. 31.07.1991 as per Punjab Police Rules. It has been further observed that the petitioner cannot be considered for regular promotion as ASI earlier to 21.04.2001. Learned counsel for the petitioner has further argued that the orders dated 21.09.2007 and 13.04.2011 (Annexures P-6 & P-8) are liable to be set aside as the same are against the law laid down by the Full Bench in **Sardool Singh's** case (supra), which has been followed by this Court in **Head Constable Zile Singh Vs. State of Haryana**, 2002 (1) SCT 297 (Annexure P-10).

The stand taken by the respondents, in their written statement, is that when the petitioner was posted on guard duty at Civil Hospital, Ambala City, one accused namely Arun Kumar son of Gobind Ram, resident of

in case FIR No.171 dated 17.04.1998, under Sections 326/307 IPC, registered at Police Station Yamuna Nagar. He was admitted in Civil Hospital, Ambala City for treatment on 23.07.2003 and was handed over to the guard posted there. On 01.08.2003 due to the negligence of the petitioner and other Police officials, the said accused escaped from their custody. On account of this lapse, a criminal case bearing FIR No.224 dated 02.08.2003, under Sections 223/224 IPC, Police Station Baldev Nagar was registered against the petitioner and others. They were arrested in that case and produced in the Court. A regular departmental enquiry was also conducted against them and they were found guilty of the charges. Punishment of stoppage of five annual increments with permanent effect was imposed vide order dated 04.03.2009. Appeal preferred by the petitioner was rejected by the appellate authority vide order dated 16.07.2009. Revision petition filed by the petitioner was also rejected by the competent authority vide order dated 03.04.2011.

In another case, the petitioner while posted in Police Station, City Kaithal, carried out investigation of case FIR No.379 dated 10.07.2006, under Sections 419/420/467/471/120-B IPC. But, he did not submit the challan within stipulated period of 90 days, as a result of which, the accused succeeded in getting bail from the Court. In the departmental enquiry, he was found guilty of charges and consequently, the punishing authority awarded a punishment of stoppage of two increments with permanent effect vide order dated 09.07.2007. Appeal and revision filed by the petitioner were also rejected by the competent authority. It has been further explained in the written statement that the petitioner was not willing to intermediate school course, which commenced from October, 1999. As per his willingness, he was deputed to undergo intermediate school course w.e.f.

10.10.2000, which he qualified on 21.01.2001. In the case of Punjab Singh and Ami Chand, they were promoted as ASIs w.e.f. 31.07.1991, whereas the petitioner passed the intermediate school course on 21.04.2001.

A status report dated 25.03.2016 has been filed by the Superintendent of Police, Kaithal with regard to the comparative seniorities of the petitioner, Ami Chand and Punjab Singh. In this status report, it has been explained that Inspector Ami Chand, No.233/H, H/22 had passed the Intermediate School Course in Batch No.30 (from 15.11.1990 to 08.05.1991) held at PTC, Madhuban and his order of merit was 54/112. Accordingly, his name was brought on promotion list 'D' w.e.f. 13.06.1991 and thereafter, he was promoted as Assistant Sub Inspector w.e.f. 31.07.1991. Similarly, Sub Inspector Punjab Singh, No.H/98 had passed the Intermediate School Course in Batch No.30 (from 15.11.1990 to 08.05.1991) held at PTC, Madhuban and his order of merit was 52/112. His name was brought on promotion list 'D' w.e.f. 13.06.1991 and he was promoted as Assistant Sub Inspector w.e.f. 31.07.1991. On the other hand, the petitioner had remained unwilling to be deputed to Intermediate School Course upto 1999. He passed the said Course in Batch No.42, which was held at PTC Madhuban and his order of merit was 96/141. After passing Intermediate School Course on 21.04.2001, he cannot be brought on promotion list-D. Therefore, he cannot be further promoted as ASI prior to 21.04.2001.

The main question for consideration in the present petition is, 'whether the petitioner is entitled for re-fixation of his seniority in the cadre of ASI keeping in view his date of regularization as Head Constable as 05.12.1980.

allowed vide order dated 22.11.2004, whereby he was given regular promotion w.e.f. 05.12.1980. In the written statement, the respondents have not denied that aforesaid Punjab Singh and Ami Chand were appointed as Head Constables on 21.08.1980 and 06.05.1981. The petitioner being promoted as Head Constable on 05.12.1980 was senior to Ami Chand. Punjab Singh and Ami Chand were brought on list 'D' after completing the Intermediate School Course on 13.06.1991. Thereafter, they were promoted as ASIs w.e.f. 31.07.1991. After passing of the judgment dated 01.12.2004 CWP No.14151 of 1998, the petitioner has been promoted as Head Constable w.e.f. 05.12.1980 vide order dated 05.01.2005 (Annexure P-11) and has been confirmed as Head Constable w.e.f. 31.08.1984 instead of 31.01.1985, the date when his immediate junior namely Balwan Singh was confirmed as Head Constable. At this stage, reference can be made to a judgment passed by this Court in **Head Constable Zile Singh Vs. State of Haryana**, 2002 (1) SCT 297. In that case, Zile Singh had sought a writ of certiorari quashing the order dated 06.10.1999, whereby private respondents had been sent to Intermediate School Course by ignoring the case of the petitioner, who was senior to them. During the pendency of said petition, the petitioner was sent for Intermediate School Course. The writ petition was allowed by giving direction to the respondents to fix the seniority of the petitioner in the rank of ASI on the basis of the dates of confirmation on the post of Head Constable irrespective of the fact that he had attended the Intermediate School Course later than the private respondents.

Rule 13.09 of the Punjab Police Rules came up for consideration before a Full Bench of this Court in **Head Constable Sardul Singh Vs. Inspector General of Police, Punjab and others**, 1970 AIR (Punjab) 481,

wherein it has been observed as under:-

“15. For the reasons given above, we are of the opinion that every Head Constable on list 'C' has the right to be sent for the Intermediate School Course in the order of his seniority determined in accordance with rule 13.8. While sending the Head Constables for the Intermediate School Course, the Deputy Inspector General of Police shall first send the confirmed Head Constables and after their list is exhausted, the Head Constables on probation will be sent and last of all officiating Head Constables will be sent. This appears to us to be the most reasonable, fair and equitable way of complying with the provisions of rule 13.9 of the Police Rules in the interest of all the Head Constables in the police force, who legitimately aspire for promotion. Any Head Constable unwilling to undergo that course will of course be omitted.”

The Full Bench further considered the case of Head Constables, who were promoted as officiating Assistant Sub Inspectors without having passed the Intermediate School Course. They were reverted when Intermediate School Course passed Head Constables became available. Their reversion orders were not interfered with. While accepting the petitions, it was observed as under:-

“19.They had no right to the officiating posts and since better qualified persons became available, according to rule 13.9 of Police Rules, the order of reversion was legal. Under rule 13.9, a Head Constable can be appointed as an officiating Assistant Sub Inspector of Police unless he has passed the Intermediate School Course and is admitted to list 'D'. These petitioners were admittedly never placed on list 'D', but their names were placed on provisional list 'D' for which there is no authority in the Police Rules. It appears that the department had evolved a practice in 1957 or thereabout to prepare a provisional list 'D' on which the names of Head Constables were brought and after some trial selection was made out of them for being sent for the Intermediate School Course. These petitioners were never selected for that course although some of them held the post of Assistant Sub Inspector of Police for six years or so. It is really very hard on the petitioners to be reverted in this manner, but we feel that we cannot help the petitioners in their plight. It is for the Government and the high police officials to consider how to ameliorate their suffering which has been caused to them not because of their own fault, but because of the wrong act of the higher police officials in promoting them contrary to the Police Rules. We do hope that the respondents shall find some way to do justice to these unfortunate petitioners.

We, however, find force in their prayer that they should be sent for the Intermediate School Course according to the principle laid down by us in the first category of cases.”

The Full Bench has specifically observed that if, any Head Constable is unwilling to go to the Intermediate School Course, his case will be omitted.

In the present case, the petitioner was given adhoc promotion as ASI on 11.10.1989. As per status report dated 25.03.2016 submitted by the Superintendent of Police, Kaithal, the petitioner remained unwilling to be deputed to Intermediate School Course upto 1999. Thereafter, he passed the Intermediate School Course in Batch No.42, which was held at PTC, Madhuban and his order of merit was 96/141. Hence, as per the judgment passed by the Full Bench in **Head Constable Sardul Singh's** case (supra), the petitioner, who had remained unwilling to undergo Intermediate School Course till 1999, cannot claim that his adhoc promotion be made regular, till 1999. He passed the Intermediate School Course on 21.04.2001 and was brought on promotion list 'D'. Thereafter, he was promoted as ASI in the year 2002 as per his entitlement.

In **Head Constable Sardul Singh's** case (supra) it has further been observed that those Head Constables, who were promoted as Assistant Sub Inspectors without having passed the Intermediate School Course, had no right to officiate those posts, if candidates who had completed Intermediate School Course were available for promotion, even if, they had continued on adhoc promotion for a period of six years.

In the present case, after being appointed on adhoc basis as ASI, the petitioner did not opt to undergo the Intermediate School Course till October, 1999. Hence, Punjab Singh and Ami Chand, who underwent the

said course were admitted to list 'D' on 13.06.1991 and thereafter, promoted

as Assistant Sub Inspectors on regular basis on 31.07.1991. As per the judgment passed in **Head Constable Sardul Singh's** case (supra), the petitioner cannot claim the benefit of seniority at par with Punjab Singh and Ami Chand after completing the Intermediate School Course on 21.04.2001.

Resultantly, finding no merit, the present petition is dismissed.

08.07.2016
ajp

(RITU BAHRI)
JUDGE