

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

**CWP No. 19519 of 2014
Date of decision : 28.01.2016**

Satish Kumar

...Petitioner

versus

State of Haryana and another

..Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Maharaj Kumar, Advocate
for the petitioner.

Mr. Gaurav Goel, A.A.G. Haryana

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

RITU BAHRI , J.

Petitioner has approached this Court by way of instant writ petition filed under Articles 226/227 of the Constitution of India, seeking a writ in the nature of certiorari for setting aside order dated 01.07.2014 (P-7) passed in compliance of order dated 13.01.2014 passed by this Court in CWP No. 4415 of 2010 and further prayer is for issuance of direction to the respondents to depute the petitioner for B-1 Course at P.T.C Madhuban.

Petitioner was recruited as Constable in the Haryana Police on 02.11.2000 and is now posted as Constable at P.S. City, Gurgaon.

GAURAV GOEL
2016.02.16 15:45
I attest to the accuracy and
integrity of this document

Vide letter dated 02.04.2008 from S.H.O Police Station Pataudi, petitioner was informed that examination of B-1 test is to be held on 05.04.2008 and he has to report in the Police Line, Gurgaon on 04.04.2008. Thereafter, petitioner appeared in the examination of B-1 Test along with other 400-500 candidates and 60 candidates cleared the test and the name of the petitioner was also in the list of successful candidates. Thereafter, petitioner appeared for Parade, Physical Test, Test of Law and Practical Police Work and thereafter in the interview. The petitioner later on came to know that he has not been sent for training of B-1 course to be held at PTC Madhuban.

Petitioner then made a representation dated 23.07.2008 in this regard but no action was taken and thereafter he moved an application under R.T.I Act on 22.12.2008 to know the reason that why he was not sent for training of B-1 course to be held at PTC Madhuban. In response to the RTI application, office of Commissioner Police Gurgaon vide letter No. 45-D informed that since vide order dated 09.12.2005, two annual increments of the petitioner have been stopped and by another order dated 03.03.2006, one annual increment has been temporarily stopped, therefore, petitioner was debarred from B-1 examination. This information is incorrect as the petitioner had already appeared for B-1 examination and cleared the examination but was

denied the right to undergo for training of B-1 course to be held at PTC Madhuban.

Earlier also petitioner filed CWP No. 5388 of 2009 in this Court for issuance of writ of mandamus for joining the B-1 Course at Madhuban and this Court vide order dated 29.10.2009 disposed of the writ petition after taking in to consideration the provisions of Rule 13.7 of Punjab Police Rules and a direction was given to the respondents to reconsider the issuance and decide the case afresh by passing a speaking order.

In compliance of the above said order, respondent No. 3 rejected the claim of the petitioner vide order dated 01.01.2010 (P-4), which was against the notification of DGP which was issued vide memo dated 04.01.2002 whereby a clarification was issued about amended Rules 13.7 Punjab Police Rules, which reads as under:-

7	<i>Whether Constables who are undergoing punishment or have been awarded major punishments at two times or more are eligible to appear in the written test prescribed for selection of 55% candidates or not</i>	<i>Constables who are undergoing or have been awarded major punishment at two times or more are eligible to appear in the written test. Please take action as para No. 10 of the notification</i>
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Petitioner again filed CWP No. 4415 of 2010, which was disposed of on 13.01.2014 giving liberty to the petitioner to file a representation to the Commissioner of Police, Gurgaon (P-6). Petitioner filed representation before Commissioner of Police, Gurgaon, who rejected

the claim of the petitioner vide order dated 01.07.2014 (P-7) holding that the petitioner is not entitled to be included in the B-1 test on the ground of currency of punishment.

Petitioner again sought information under RTI Act from the department with respect to the Constables who have been brought on list B-1 during the currency of punishment and the petitioner received the information dated 04.01.2014 in respect of Constable Mahinder Singh, Harvinder Singh and Sanjay Kumar with details of punishment and date of bringing them on list B-1 (P-8).

On notice, a reply has been filed on behalf of respondent Nos. 1 to 5 taking a stand that order dated 01.07.2014 (P-7) has rightly been passed in pursuance of order dated 13.01.2014 passed by this Court in CWP No. 4415 of 2010, as the deduction of marks and currency of punishment are two separate aspects and the petitioner was inadvertently permitted to sit in B-1 test for the year 2008 under 55% quota as he was undergoing currency of punishment during the test. The Departmental Promotion committee gave the remarks in the column of order of merit 'Disqualified due to currency of punishment'. Reference was made to Rule 13.7(12) of the Punjab Police Rules (Haryana Amendment Rules, 2001) which clearly mentions that"

Provide that no constable during the period when he

is undergoing punishment shall be eligible for entry into promotion list B.”

This rule is applicable to both the categories i.e 55% quota and 35% quota.

A similar case was filed by Lady Constable Punita ie CWP No. 7538 of 2010 and this Court vide judgment dated 23.11.2011 held as under:-

“The awarding of marks, as the petitioner prays for, would be at a stage of consideration subsequent to the expiry of the currency of punishment wherein the respondents are within their rights to consider if a person has been awarded major/minor punishment or censure.

Having regard to the aforesaid, I do not find any reason to interfere in the petition which is held to be without any merit and is dismissed

In the reply, it has further been stated that no such officials who are undergoing currency of punishment were brought on promotion list B-1.

The matter was also re-examined by DGP and vide his PTM dated 12.08.2009, it was clarified that an official who is under the currency of punishment cannot be allowed to be born on list 'B' under

55% quota (R-2).

Some other clarification issued by DGP, Haryana were considered by this Court in CWP No. 13445 of 2006 and held that instructions neither override the rules nor they can be contrary with them. In case of any conflict between the Rules and instruction, the latter has to make the way to the former.

Further it has been stated that Rule 13.7(12) of Punjab Police Rules notified on 28.06.2001 will prevail the instructions issued by DGP, Haryana on 04.01.2002. Representation dated 23.07.2008 has not been received in the office of Commissioner of Police, Gurgaon as well as D.C. Police, East Gurgaon who was the Chairman of DPC.

The dispute in the present case is with regard to interpretation of notification dated 28.06.2001 and instructions issued by DGP, Haryana on 04.01.2002.

Thereafter, in compliance of order dated 07.09.2015, DCP Gurgaon has filed its affidavit stating therein that petitioner has appeared in B-1 online test for the year 2009 under 55% quota and obtained 27.5 marks out of 60 marks in online test and as per Rules 13.7(3) of Punjab Police Rules (Haryana Amendment Rules, 2001), incumbent are required to obtain 50% marks i.e 30 marks in the written test and as such, petitioner was declared fail. Petitioner has also

appeared in B-1 online test for the year 2010 under 55% quota and obtained 19.25 marks out of 60 marks in online test. Further it has been stated that in B-1 online test for the year 2011 to 2014, the petitioner did not appear

Reference at this stage can be made to a judgment of this Court in a case of ***Constable Dharambir vs. State of Haryana and others passed in CWP No. 13445 of 2006, decided on 10.09.2008*** whereby this Court while dealing with a case of constable, who was stating that he should be deputed for course under 35% quota on the basis of seniority cum merit under Rule 13.7(ii) of the Punjab Police Rules (Haryana Amendment Rules, 2001). In this judgment, the petitioner was seeking benefit of clarification dated 17.12.2004 and the respondents were taking a stand that these instructions had been withdrawn. This Court while allowing the writ petition held as under:-

"16. The respondents have based their stand in the written statement on the Memo of the Director General of Police dated 11.10.2005 (Annexure R-2). A perusal of the same would show that vide this clarification, after giving the three categories and their quota, it has been stated that all the three categories are different and cannot claim benefit in the category of each other. It has been further states that Category-I (55% quota) cannot claim benefit in Category-II (35% quota) and candidate of Category-II cannot claim benefit under Category-I. This position as regards Category-II may be correct but as regards Category-I (55% quota) and Category-III(10% quota) this position is not the correct interpretation of Rule 3.17 (2).

17. This in our considered view is in clear violation of Rule 13.7 (2). It goes against the very spirit and the purpose for which the rules have been formulated. The intention and purpose of the rules is to be read in conjunction with the object which is sought to be achieved. The police

officials have to deal with various and varied situations while performing their duties but primary of them being law and order, which requires competent and talented officers. The intention of Rule 13.7 is to identify and catch them young so that the talent may be groomed and allowed to grow with the experience gained in their service. Rule 13.7 (2)(i) aims at constables, who are below the age of 35 years while Rule 13.7 (ii) aims at constables, who are under the age of 40 years. A conjoint reading of both the sub-rules would show that only the upper age limit has been prescribed under the rules and no minimum age has been prescribed either under sub-rule 2(i) or sub-rule 2 (ii), which means that if a constable fulfills the requirement of the upper age and the other qualifications prescribed under the respective category as per sub- rule 2, there is no bar to his consideration under each of them. Meaning thereby, a constable, who is eligible in one category under Rule 13.7 (2) (i) can also be considered in the other category under Rule 13.7 (2) (ii) of the Punjab Police Rules, as there is no bifurcation between the rules as far as the eligibility is concerned with regard to the minimum age as none is prescribed.

18. The minimum age if prescribed by way of executive instructions would go against the interest of the Constables, who are otherwise eligible under the statutory Rules. Rule 13.7 (2) (ii) confers a right which a Constable attains on the basis of his seniority in the service. As and when his turn comes based on the seniority a right to consideration devolves on him. This right on the basis of his seniority cannot be deprived on the basis of executive instructions. This would be in contravention to the statutory rules and, therefore, not sustainable.

19. What the respondents have sought to do in the instant case is to amend the rules by executive instructions, which is not permissible in law. In case, a minimum age is required to be prescribed, then the rules need to be amended incorporating such change. The executive instructions can supplement the rules but they cannot go contrary to the rules and cannot violate the spirit and purpose of the statutory rules by scribing the minimum age. The right conferred on the employee under statutory Rules cannot be obliterated or taken away much less wiped by the executive Instructions. It is settled principle of law that by executive instructions there can be no amendment of statutory Rules. It is no more res integra that Instructions can neither override the Rules nor can they be contrary to them. In case there is any conflict between the rules and the instructions, the latter has to make way to the former.

20. The employee cannot be deprived of his right to be considered for promotion, so conferred upon him, under the Punjab Police Rules by mere issuance of executive instructions. If the statutory rules provide for and confers on an employee right to consideration for promotion and further provides for a qualification, which the employee possesses as per the rules, that right of consideration cannot be curtailed so as to deprive him of his statutory right merely on issuance of executive instructions, which is

contrary to the statutory Rules.

21. In the light of the above discussion, the Memo No. 13745-82/T2 dated 11-10-2005 of Director General of Police, Haryana (Annexure R-2) cannot be sustained to the extent it states that all three categories cannot claim benefit of each other and that category-I (55% quota) cannot claim benefit in category-II (35% quota) as the same is contrary to the statutory rules and is thus quashed to this limited extent.

22. What emerges from the above discussions is that a constable who has completed 5 years of service on the 1st day of January of the year in which the selection is made, is under the age of 35 years and is eligible for consideration and selection for including his name in List B-I of selected constables for admission to Lower School Course under the 55% quota on the basis of merit as per Rule 13.7 (2) (i) of the Punjab Police Rules, 1934 and having participated in the competitive test (B-I test) and failed or was unable to get enlistment due to lower merit can also claim consideration and selection under the 35% quota on the basis of seniority-cum-merit as per Rule 13.7 (2) (ii), if he is eligible under both the categories.

Applying the ratio of the above mentioned judgment to the facts of the present case wherein vide clarification dated 04.01.2002 (P-5) DGP only clarified that constables who are undergoing or have been awarded major punishment at two times or more are eligible to appear in the written test and as per notification dated 28.06.2001, some marks are to be reduced on account of punishment suffered by the Constable while calculating marks from the detailed marks obtained by the Constable for B-1 Test for the punishment imposed upon him.

At this stage, reference can further be made to a judgment passed by this Court in a case of ***Satish Kumar vs. State of Haryana and others, decided on 29.10.2004 whereby petitioner was seeking setting aside of order dated 01.01.2010*** as he was not allowed to appear in B-1 test in terms of Rule 13.7(12) of the Punjab Police Rules

(Haryana Amendment Rules, 2001). this Court disposed of the petitioner as the petitioner submits that since the currency of his punishment has now come to an end, he may be deputed to undergo B-1 course since he has cleared the B-1 test held on 05.04.2008. A liberty was granted to the petitioner to file representation to the Commissioner of Police, Gurgaon which shall be considered and decided within a period of one month.

In the earlier writ filed by the petitioner, this Court had rightly observed as under:-

“State counsel was directed to have instructions in this regard and to explain as to how these instructions will operate in case Constables are not to be detailed once they are under the currency of punishment. State counsel has now received a communication where it is stated that when a Constable is under currency of punishment, he cannot be allowed to be borne on list B. Reference is also made to Rule 13.7 of the Punjab Police Rules in this regard.

The perusal of Rule 13.7 of the Punjab Police Rules would show that this bar for detailing on a B-1 course while undergoing punishment would be for inclusion in List B against 35% quota reserved for seniority-cum-merit. This would appear from the

reply. It is required to be seen if having detailed a Constable to appear in an examination meant for 55% quota, he can still be denied detailment on the ground that he cannot be brought on B-1 list. It is for the respondents to see as to what would be then the purpose in permitting such a Constable to appear in the examination if he was punished twice and is not to be brought on B-1 list. State counsel has not been able to explain how then instructions, Annexure A-1, would operate in the light of para 10 of the notification. Apparently, what is to be seen is that a person, who is undergoing or who has been awarded punishment twice would remain eligible for appearing in the examination for B-1 course and his merit has to be assessed by deducting the marks as given in para 10 of the notification. If he is still able to make a grade, perhaps he may be required to be allowed for B-1 course.

Let this issue in the light of notification and the stand taken in the reply be re-considered by the respondents. The writ petition is accordingly disposed of with the direction to the respondents to re-consider the issue and decide afresh by passing a speaking order. The petitioner would be detailed on the course, if the petitioner is required to be so detailed. Let this exercise be completed within a period of two months from the date of receipt

of copy of this order.

Hence, for all intents and purposes once the respondents had allowed the petitioner to appear in B-1 test examination and he secured 62.75% marks, his case has to be considered by the respondents after deducting his marks in terms of notification dated 28.06.2001 and he cannot be deprived of his right only on the ground that petitioner has appeared in B-1 online test for the year 2009 under 55% quota and obtained 27.5 marks out of 60 marks in online test and further also he appeared in B-1 online test for the year 2010 under 55% quota and obtained 19.25 marks out of 60 marks in online test and was declared fail. In B-1 online test for the year 2011 to 2014, the petitioner did not appear.

In view of the above, the writ petition is allowed and order dated 01.07.2014 (P-7) is set aside and a direction is given to the respondent to consider the case of the petitioner afresh after taking into consideration marks obtained by him in the written test, as per letter dated 04.01.2002 and thereafter, sent him to B-1 course.

(RITU BAHRI)
JUDGE

28.01.2016

G Arora