

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

CWP No.28323 of 2013

Date of decision: 25.07.2016

Sikander Pal Singh

..Petitioner

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Chanchal K. Singla, Advocate
for the petitioner.

Mr. Pankaj Mulwani, DAG, Punjab
for the respondents-State.

Daya Chaudhary, J.

The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for setting aside order dated 19.08.2012 (Annexure P-2) whereby, the petitioner was debarred from appearing in basic proficiency course undergoing Lower School Course for District Police Armed Battalions and also for setting aside order dated 11.11.2013 (Annexure P-4) passed by the Director General of Police, Punjab, whereby, appeal preferred by the petitioner against order dated 19.08.2012 was dismissed.

Briefly, the facts of the case are that the petitioner joined the second battalion IRB as Constable on 16.12.1992 and thereafter he completed his preliminary training and also passed the Commando Course. He was deputed at Second Commando Battalion, Fourth Commando Battalion and Fifth Commando Battalion from time to time. A departmental inquiry was initiated by Senior Superintendent of Police, Patiala vide order dated 18.07.2012. The petitioner was charge-sheeted on 28.08.2012 and statements of witnesses were also recorded. The petitioner was debarred

from appearance in the proficiency test vide order dated 19.08.2012 but other candidates were given opportunity. The petitioner made a representation but his request was not accepted. The petitioner submitted reply to the charge-sheet and ultimately, he was exonerated and inquiry was closed vide order dated 08.01.2013. When the case of the petitioner was not considered, he filed appeal, which was also dismissed on 11.11.2013.

Learned counsel for the petitioner submits that as per Rule 13.7 of the Punjab Police Rules (for short 'the Rules'), the eligibility criteria for appearance in the basic proficiency test was drafted. The eligibility of Constables to sit in the test was that one should be matriculate and should put more than four years of service or in case, the Constable is 10+2, then he should have more than three years of service. There is a proviso that no constable, who has been awarded a major punishment within a period of three years preceding the first day of January of the year in which selection is made, will be eligible for admission in the list. Learned counsel further submits that the petitioner was wrongly debarred from appearing in the basic proficiency test B1 only on the ground that departmental inquiry was pending against him whereas no major punishment was awarded to him during previous three years as required under Rule 13.7 of the Rules and eligibility criteria as mentioned in the standing order. Learned counsel also submits that one similarly situated candidate, namely, Balraj Singh Constable was also not allowed to attend the course. He approached this Court in case ***Balraj Singh Constable vs. State of Punjab, 1992(1) RSJ 188***, which was allowed with the direction to the respondents to send the petitioner forthwith to attend the course. It was also left to the authorities to

keeping in view the observations mentioned therein and the rules on the subject. It is also the argument of learned counsel for the petitioner that charge sheet was prepared against the petitioner on 28.08.2012 and thereafter, he was summoned before the Inquiry Officer and there was no occasion to debar the petitioner on 19.08.2012 as no charge sheet was pending against him. Subsequently, the petitioner was found innocent in the inquiry and Senior Superintendent of Police, Patiala agreed with the inquiry report which was approved by him. Learned counsel for the petitioner has also relied upon judgments of this Court in Constable ***Balraj Singh's case (supra)*** as well as ***Constable Karan Chand vs. State of Punjab and others, CWP No.582 of 1993 decided on 15.07.2013*** in support of his contentions.

Learned State counsel submits that the names of eligible candidates, who fulfilled the terms and conditions as per standing order, were sent. It was mentioned that in case, any employee, who has been charge-sheeted in any departmental inquiry/vigilance inquiry/criminal case, is not eligible to appear in the basic proficiency test. The petitioner was restrained from appearing in the said test held on 20.08.2012 as departmental inquiry was initiated against him. The petitioner was not fulfilling the terms and conditions for appearance in the test and he was debarred from sitting in the test.

Heard arguments of learned counsel for the parties and have also perused the impugned orders as well as other documents on the file.

Admittedly, the basic proficiency test was conducted on the basis of standing order No.12/2010 under Rule 13.20 of the Rules. The petitioner was debarred from appearing in the test vide order dated

In the impugned order dated 19.08.2012, no reason whatsoever has been mentioned as to why the petitioner has been debarred from appearance in basic proficiency test. In Rule 13.7 of the Rules, the eligibility criteria for appearance in the basic proficiency test has been drafted. The criteria given in the standing order No.12/2010 is reproduced as under:-

“Eligibility of Constables to Sit in the Test.

All constables, who up to the 1st January at that year:-

(a) are matriculate pass and have put in more than four years of service or

(b) are 10+2 and have put in more than three years of service or

(c) had obtained 1st class with credit as defined in IGP's standing order No.1/83 in the recruits course, as specified in rule 19.2 of Punjab Police Rules Vol.- II.”

Rule 13.7 of the Rules is also reproduced as under:-

“Selection of candidates for admission to Promotion Course for Constables at the Police Training College.(1) List B (in Form 13.7) shall be maintained by each Superintendent of Police. It will include the names of all Constables selected for admission to the Promotion Course for Constables at the Police Training College. Selection will be made in the month of January, each year and will be

limited to the number of seats allotted to the district for the Year with a twenty per cent reserve. Names will be entered in the list in order of merit determined by the Departmental Promotion Committee constituted by the Inspector General of Police on the basis of tests in parade, general law (Indian Penal Code, Criminal Procedure Code, Indian Evidence Act and Local and Special Laws) interview and examination of records.

(2) All Constables-

(a) who are middle pass and have put in more than four years of service;

(b) who are at least matriculates and have put in more than three years of service, or

(c) who obtain first class with credit in the Recruits Course specified in rule 19.2; will be eligible to have their names entered in the aforesaid list, if they are not above thirty years of age on the first day of July in the year in which the selection is made;

Provided that no Constable who has been awarded a major punishment within a period of three years preceding the first day of January of the year in which selection is made will be eligible for admission to this list and if any Constable whose name has been brought on this list is not sent to the Police Training College in the year he will be required to compete

again with the new candidates, if he is still eligible for admission to the said list under the rules.

(3) Temporary Constables brought on List 'B' shall be absorbed in the regular establishment in preference to others.

(4) No Constable who has failed to qualify in the promotion course for Constables shall be readmitted to List 'B', unless the Principal, Police Training College, for the reasons to be recorded in writing considers him deserving of another chance and he is still eligible. The reasons are to be communicated to the Superintendent of Police concerned."

As per Rule 13.7 of the Rules, the stage of debarring any candidate comes when any major punishment is imposed on a Police Official.

In the present case, no major punishment was imposed upon the petitioner. The charge-sheet was prepared on 28.08.2012 and thereafter, he was summoned before the Inquiry Officer. There was no reason to debar the petitioner from appearing on 20.08.2012 as no charge-sheet was pending against him at that time. Moreover, he was found innocent in the inquiry which was approved by the competent authority.

In **Constable Balraj Singh's case (supra)**, the petitioner was placed under suspension and he was debarred. It was held that the action of the State was not sustainable in law as attending the Course under Rule 13.7 of the Rules, is a step towards promotion. Actual promotion was to be made

subsequently. There is no restriction contained in Rule 13.7 that a person,

who has been placed under suspension, can be kept back. It is only after infliction of the major punishment.

While passing impugned order dated 19.08.2012, no reason whatsoever has been mentioned as to why the petitioner has been debarred from appearance in basic proficiency test B-1.

In **Constable Karam Chand's case (supra)**, it was held that the instructions cannot override the provisions of the Act and the Regulations framed thereunder.

This Court in ***Sardul Singh Head Constable vs. Inspector General of Police, Punjab and others, 1970 SLR 505*** has considered the issue in detail and has also acknowledged the rights of the Constables to be deputed to an Intermediate Course provided he has been placed in List 'C'.

Same view was taken by this Court in ***Constable Bhag Singh vs. The State of Punjab and others, 1982(2) SLR 281*** and ***Mohinder Singh, Head Constable and others vs. The State of Haryana and others, 1991(4) SLR 757***.

Accordingly, in view of the law position as discussed above, the present writ petition is allowed and the respondents are directed to consider the case of the petitioner in view of **Constable Karam Chand's case (supra)** as well as **Constable Balraj Singh's case (supra)**. The respondents are directed to send the petitioner forthwith to attend the course in view of the law as discussed above as well as Rules applicable to the dispute in hand.

25.07.2016

neetu

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

✓
Yes/No

Whether reportable

✓
Yes/No