

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

**CWP No.3019 of 2016 (O&M)
Date of decision: 06.05.2016**

Jasbir Singh and another

.....Petitioners

Versus

State of Haryana and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. S.K. Kaushik, Advocate,
for the petitioners.

Mr. M.S. Sidhu, Addl. A.G., Haryana,
for the respondent.

Ritu Bahri, J.

The petitioners are seeking quashing of the order dated 07.08.2014 (Annexure P-10), whereby their claim for sending them to Intermediate School Course from H.A.P., has been rejected.

The petitioners were enrolled as Constables in the month of March, 2003 in H.A.P. (Technical Batch). Their names were brought on promotion list (B-1) from their parental cadre i.e. H.A.P. They passed the Lower School Course in the year 2011. Their names were also brought on promotion list (C-1) and accordingly, they were promoted to the rank of Head Constables by H.A.P. The seniority of the petitioners were accordingly fixed as per their merit in Lower School Course.

Grievance of the petitioners is that vide orders dated 21.07.2012

and 17.09.2012, they were transferred from H.A.P. (Madhuban) to other

districts. Vide these orders, petitioner No.1 was transferred to District Gurgaon and petitioner No.2 was transferred to District Jhajjar, as Head Constable(s) in separate range and separate cadre. On account of their transfers, their names have not been kept in the seniority list in the parent cadre. When their turn came for sending them to Intermediate School Course, some of the persons junior to the petitioners in the parental cadre who had not been transferred from H.A.P., Madhuban were sent for the said course. Many of their similarly situated employees have been called back in their parental cadre i.e. H.A.P., Madhuban. Vide letter dated 01.01.2014 (Annexure P-5), the department had sought option from those employees, who were transferred in the districts without their consent. But, the said letter was not circulated by the department at the places, where the petitioners were posted. Petitioner No.2 made a representation (Annexure P-2), but no action was taken thereon.

After hearing learned counsel for the parties and going through the stand taken by the respondents in the written statement, this petition deserves to be allowed. This issue is squarely covered by the judgment passed by a Division Bench of this Court in **H.C. Virender & others Vs. State of Haryana & others**, LPA No.921 of 2014, decided on 23.03.2015 (Annexure P-11). This was a case where the Constable had never made a request for transfer to District Police Cadre. The petitioner had placed on record circular dated 01.01.2014, which was issued by the Director General of Police, Haryana enabling the transferred Technical Constables/Head Constables to seek their re-transfer to the parent cadre. Aforesaid LPA was dismissed as the order of transfer was contrary to the conditions made in the Standing Order No.108/2014. While dismissing the LPA, it was held that

the constables, who were regularly recruited in H.A.P. cadre continued to maintain their lien after their transfer and their lien could not be terminated or suspended without taking their consent before transfer. The aforesaid judgment has been followed by this Court in **Rakesh Kumar Vs. State of Haryana and others**, CWP No.17679 of 2015 (decided on 12.02.2016).

In the present case, as per Standing Order No.108/2004 (Annexure P-1), Technical Constables could be transferred from H.A.P. Battalions only after 10 years or after attaining the age of 35 years. In this Standing Order, there is a provision that those who are unwilling to transfer to District Police/GRP, may opt to remain in H.A.P. till they reach to the rank of Inspector(s). Option once exercised in this regard shall be final. It is not the case of the respondents that the petitioners had given their option for transfer from H.A.P. to other districts. Therefore, the petitioners could be transferred only as per the Standing Order No.108/2004 (Annexure P-1).

In view of the decisions given by this Court in LPA No.921 of 2014 (Annexure P-11) and CWP No.17679 of 2015, this petition is allowed and the impugned order dated 07.08.2014 (Annexure P-10) is set aside.

06.05.2016
ajp

(RITU BAHRI)
JUDGE