

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

Date of decision: 21.04.2016

1. CWP No.9002 of 2014 (O&M)

Avtar Singh

.....Petitioner

Versus

State of Haryana and others

.....Respondents

2. CWP No.10363 of 2014 (O&M)

Suresh Kumar and another

.....Petitioners

Versus

State of Haryana and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

**Present: Mr. Manjeet Singh, Advocate,
for the petitioner(in CWP No.9002 of 2014).**

**Mr. Sat Narain Yadav, Advocate,
for the petitioners (in CWP No.10363 of 2014).**

Mr. M.S. Sidhu, Addl. A.G., Haryana.

**Mr. K.S. Jaitly, Advocate,
for respondent Nos.6 & 7.**

Ritu Bahri, J.

This order will dispose of CWP Nos.9002 of 2014 and 10363 of 2014 together, as common questions of law and facts are involved in both the petitions. For reference, the facts are being taken from CWP No.9002 of 2014.

Petitioner (in CWP No.9002 of 2014) is seeking quashing of the promotional orders dated 27.12.2010 (Annexure P-6), whereby the private respondents have been promoted to the post of Sub Inspectors and orders

dated 21.01.2014 (Annexure P-11), vide which, claim of the petitioner for promotion to the post of Sub Inspector w.e.f. 27.12.2010, has been rejected.

Avtar Singh-petitioner joined the Police Department as Constable on 19.12.1979. He was promoted as Head Constable on 14.12.1988. Thereafter, he was promoted to the post of Assistant Sub Inspector (ASI) on 20.05.2003. He completed Upper School Course and was brought on List 'E' w.e.f. 30.06.2010 vide order dated 12.10.2010 (Annexure P-1). Promotion from Assistant Sub Inspector to the post of Sub Inspector is governed by Rules 13.1 and 13.10 of the Punjab Police Rules. As per Rule 13.1, the promotion from one rank to another is to be made by selection tempered by the seniority and specific qualifications viz. passing of training courses and practical experience. The role of seniority is considered in the matter of promotion when the qualifications of two officers are otherwise, equal. As per Rule 13.10, vacancies of long duration are to be filled up by way of promotion from amongst the eligible candidates. As per Standing Order No.50 dated 08.07.1988 (Annexure P-2), promotion to the post of Sub Inspector has to be made from List 'E'. As per the said Standing Order, preference is to be given to those ASIs, who have passed Upper School Course.

Vide order dated 27.12.2010 (Annexure P-6), the respondent-department has promoted the private respondents to the post of Sub Inspectors, even though they had not passed the Upper School Course. The petitioner's name was also included in the zone of consideration as he was eligible for promotion, but he was not promoted. The petitioner, thereafter, was promoted as Sub Inspector vide order dated 04.10.2012 (Annexure P-7).

Consequently, the petitioner along with other persons filed CWP No.24981

Haryana and others, seeking quashing of the order dated 27.12.2010, whereby private respondents were promoted. The said petition was disposed of by this Court vide order dated 14.11.2013 (Annexure P-9) by giving direction to the respondents to consider and decide the legal notice dated 18.03.2013 in a time bound manner. Vide letter dated 18.12.2013 (Annexure P-10), the Superintendent of Police, Railways, Ambala-respondent No.4 sent a communication to the Inspector General of Police, Railways-respondent No.3 along with the service details of the petitioners (in both the petitions), recommending their promotion as officiating Sub Inspectors w.e.f. 27.12.2010. Thereafter, respondent No.4 vide order dated 21.01.2014 (Annexure P-11) rejected the claim of the petitioners by referring to the instructions dated 22.11.2013 and 31.12.2013 issued by the Director General of Police, Haryana.

Learned counsel for the petitioner has argued that the impugned order dated 21.01.2014 (Annexure P-11) rejecting the claim of the petitioner has been passed in view of the instructions issued by the Director General of Police, Haryana, dated 22.11.2013, whereby it was decided that the Assistant Sub Inspectors be promoted to the rank of Sub Inspectors in accordance with their seniority until due rules are framed making Upper School Course mandatory for promotion to the rank of Sub Inspectors. These instructions were further clarified vide instructions dated 31.12.2013 that Assistant Sub Inspectors, who have been ignored promotion to the rank of Sub Inspectors due to non passing of Upper School Course, may be considered for promotion as Sub Inspectors. The above two instructions could not be made applicable to reject the case of the petitioner(s), as the private respondents, who were senior but have not passed the Upper School

had not been issued. At that time, Standing Order No.50 dated 08.07.1988 (Annexure P-2) was being followed. As per the said Standing Order, preference for promotion had to be given to those Assistant Sub Inspectors, who had passed Upper School Course, as they were more meritorious. Learned counsel for the petitioner is seeking promotion of the petitioner(s) as per the Standing Order No.50 dated 08.07.1988 (Annexure P-2) with effect from the date when the private respondents were promoted.

Learned counsel for the respondents has argued that as per Rule 13.10 of the Punjab Police Rules, passing of Upper School Course was not mandatory and Assistant Sub Inspectors could be promoted to the rank of Sub Inspectors in accordance with their seniority. The petitioner has been promoted as per his seniority w.e.f. 04.10.2012 vide order dated 16.07.2014 (Annexure R-6). In the year 2010, only three posts of Sub Inspectors were lying vacant and the office had forwarded the case of 20 ASIs/ESIs for promotion (including Upper School Course pass/non Upper School Course pass officials) as per list (Annexure R-5). Name of the petitioner-Avtar Singh figured at serial No.16 in that list and only 12 officials were promoted by the office of respondent No.3.

After hearing learned counsel for the parties and going through the contents of the writ petition and written statement, this petition deserves to be allowed on the following grounds:-

(i) In the year 2010, only three posts of Sub Inspectors were lying vacant, and 12 officials were promoted by the office of respondent No.3. In these 12 officials, private respondents, who were promoted, had not cleared the Upper School Course, even though they were senior to the petitioner(s).

(ii) As per Standing Order No.50 dated 08.07.1988 (Annexure P-

2 & Annexure R-2), regular promotion to the rank of Sub Inspector was to be made from promotion List 'E' only. For admission of names in List 'E', there was no provision to bring the names of those ASIs, who had passed the Upper School Course. For the purpose of promotion, if any ASI undergoes Upper School Course and attains special training and becomes more meritorious, preference for promotion was to be given to those who have passed the Upper School Course according to their merits as per provision of Rule 13.1 of Punjab Police Rules. Instructions/Standing Order No.50 dated 08.07.1988 (Annexure R-2) were further clarified on 22.11.2013 (Annexure R-3), where a conscious decision had been taken that since the new Police Rules under the Haryana Police Act, 2007 were under consideration with the Government, it was decided that ASIs be promoted to the rank of Sub Inspectors as per their seniority, as passing of Upper School Course was not mandatory. At the same time, preference was to be given to an Inspector, who had undergone Upper School Course, to be posted as SHO as it would be advantageous for an officer holding such a post to have gained an edge in professional proficiency after successfully passing the Upper School Course. Thereafter, vide letter dated 31.12.2013 (Annexure R-4), it was further clarified by the Director General of Police, Haryana that all those ASIs, who had been ignored from promotion due to non passing of Upper School Course, may be considered for promotion as Sub Inspector from due date.

A perusal of the above instructions (Annexures R-2, R-3 & R-4) shows that all those ASIs, who had not passed the Upper School Course were to be considered for promotion as Sub Inspectors from due date i.e. the date when their juniors had been promoted.

(Annexure P-10), their case was recommended for promotion as officiating Sub Inspectors w.e.f. 27.12.2010 keeping in view that earlier three ASIs (Upper School Course passed) and six ASIs (Non Upper School Passed) had been promoted vide order dated 25.12.2010. This recommendation had been made keeping in view the Standing Order No.50 dated 08.07.1988 (Annexure R-2), which provided that special weightage was to be given to an ASI, who has undergone the Upper School Course.

(iv) Respondents had promoted the private respondents as Sub Inspectors in the year 2010 keeping in view their seniority alone and against three available vacancies, 12 ASIs had been promoted, including three ASIs, who had not passed Upper School Course.

Stand taken by the respondents in their written statement that at the time of promotion in the year 2010, only three vacancies were available, is liable to be rejected. Once, the respondents had promoted 12 officials against three vacancies and the petitioners were duly eligible as per Standing Order No.50 dated 08.07.1988 (Annexure R-2), they had a right to be promoted along with the private respondents because they had qualified the Upper School Course on 12.10.2010 (Annexure P-1). The impugned order dated 21.01.2014 (Annexure P-11) which was passed in compliance of the order dated 14.11.2013 passed in CWP No.24981 of 2013 is against the Standing Order No.50 dated 08.07.1988 (Annexure R-2) and the case of the petitioner(s) has been wrongly dismissed pursuant to the instructions dated 22.11.2013 (Annexure R-3) and 31.12.2013 (Annexure R-4), as the benefit of these instructions (Annexures R-3 and R-4) is to be given to those ASIs who had not passed the Upper School Course, but, at the relevant time, they had been ignored for promotion.

2014 and CWP No.10363 of 2014 are allowed and the respondents are directed to promote the petitioner(s) as Sub Inspectors w.e.f. 27.12.2010 along with all consequential benefits.

21.04.2016
ajp

(RITU BAHRI)
JUDGE