

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 16634 of 1997
Reserved on: 30.03.2017

Date of Decision: April 17, 2017

Chander Hans Rana

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. I.D. Singla, Advocate,
for the petitioner.

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

P.B. Bajanthri, J.

1. In the instant writ petition, petitioner has questioned the validity of order dated 24.07.1997 (Annexure P/1) by which his claim for fixation of seniority in the cadre of Head Constable has been rejected.

2. The petitioner joined service as a Constable with the Police Department, State of Haryana on 20.11.1962. The petitioner was sent on deputation to the State Vigilance Bureau on 14.12.1969. He was brought on list C-II on 06.10.1980, whereas 4th respondent was brought on list C-II on 18.08.1983. The petitioner was repatriated to his parent department from State Vigilance Bureau in the year 1986, then the petitioner came to know that 4th respondent who is junior to the petitioner had been promoted to the post of Head Constable w.e.f. 20.10.1983. Thus, the petitioner

submitted representation to consider his name for promotion to the post of Head Constable from the date of 4th respondent's promotion while rectifying the seniority. Claim of the petitioner was rejected on 24.07.1997. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that official respondents have rejected the petitioner's claim of seniority and promotion on par with the 4th respondent, stating that seniority of Head Constables is being prepared at the District level and reckoned from the date of confirmation, therefore, petitioner is not entitled to claim seniority over and above his contemporaries serving in other Districts/Ranges. Whereas provisions of the Punjab Police Rules, 1934 (applicable for State of Haryana) (hereinafter referred to as "Police Rules, 1934") do not provide for District-wise preparation of seniority list of Constables or Head Constables as contended by the respondents. In this regard, learned counsel for the petitioner relied on provisions of Rules 1.1, 1.3, 1.4, 1.5, 12.1, 12.2 (3) and 13.8 of the Police Rules, 1934. The aforesaid provisions do not stipulate that the seniority list of Constables and Head Constables are required to be prepared and published District-wise, therefore, rejection of the petitioner's claim that the petitioner is not entitled for seniority on par with his contemporaries is not tenable. It was further submitted that the selection and appointment is being made for the post of Constable State-wise only thereafter, selected candidates would be allotted to different districts and District head Superintendent of Police/Commissioner would be issuing appointment order. In other words, appointing authority in respect of Constable only to the extent of appointment and taking

disciplinary proceedings. The power of assigning seniority or restricting seniority list to the District cadre is not forthcoming.

4. Learned counsel for the petitioner relied on a decision of this Court in the case of **Jagat Singh vs. State of Haryana**, reported in **1995(1) CLJ (Service) 90** (Para 5) to contend that an appointee who is on probation would be deemed to have been confirmed on the post in question on completion of two years' probation. Therefore, delay in confirmation would not be hurdle for assigning seniority. Since the petitioner was on deputation to Vigilance Bureau during the period from 1969 to 1986, whatever the service benefit extended to juniors to the petitioner are required to be extended *suo motu* or automatically, during the deputation period 4th respondent has been promoted to the post of Head Constable in the year 1983, therefore, petitioner is entitled for promotion to the post of Head Constable on par with 4th respondent w.e.f. 20.10.1983 while rectifying the seniority list of Constables. In view of these facts and circumstances, Annexure P/1 dated 24.07.1997 is liable to be set aside.

5. Per contra, learned counsel for the official respondents submitted that seniority list of Constables and Head Constables is required to be prepared and published at the District level and seniority list of Assistant Sub Inspectors and Sub Inspectors is required to be prepared and published Range-wise and Inspectors and above are by State-wise. Since the petitioner's grievance is relating to publication of seniority list at the State level so as to contend that 4th respondent is junior to the petitioner who is in different District than the petitioner was appointed, therefore, petitioner cannot contend that 4th respondent is junior to the petitioner

since the petitioner and 4th respondent were working in different Districts. It was further contended that date of confirmation would be the criteria for the purpose of assigning seniority. Therefore, the petitioner has not made out a case so as to seek re-fixation of seniority and promotion on par with 4th respondent. Learned State counsel relied on two decisions, namely, ***State of Haryana and others vs. Kashmir Singh and another*** reported in ***(2010) 13 SCC 306 (Para 13)*** and ***Attar Singh (SI) No. 531/BWN vs. State of Haryana and others*** reported in ***2012 (4) RSJ 335 (Para 13)*** to contend that seniority list of Constables and Head Constables are being maintained at the District level. Therefore, contention of the petitioner that Constable and Head Constable's seniority list is required to be prepared on State-wise basis is without any basis, hence no interference is called for in respect of impugned communication dated 24.07.1997 (Annexure P/1).

6. Heard learned counsel for the parties.

7. Core issue in the present case is whether Constables and Head Constables' seniority list is required to be prepared on District-wise, Range-wise or State-wise. If it is State-wise then the petitioner is entitled for service benefits on par with 4th respondent or not.

8. Undisputedly, petitioner and 4th respondent joined service as a Constable and they were allotted different Districts. It is also not disputed that the petitioner joined earlier than the 4th respondent. When petitioner was on deputation to Vigilance Bureau during the period from 1969 to 1986, 4th respondent was promoted to the Head Constable cadre on 20.10.1983. Even though 4th respondent brought on list C-II on 18.08.1983 despite the fact that petitioner was brought on list C-II on 06.10.1980.

Reason for non-consideration of the petitioner's claim for re-fixation of seniority and promotion on par with 4th respondent is that they were working in different Districts therefore, petitioner cannot claim any service benefit on par with 4th respondent. It is to be noted that selection of Constable is throughout State, thereafter each constable will be allotted to a District for the purpose of appointment and taking disciplinary action there are provisions that the Superintendent of Police or Head of the District in the Police Department is empowered to appoint and take disciplinary action, whereas there is no provision in respect of preparation of seniority list of Constables empowering the District Head in the Police Department. In this regard, it is necessary to quote the following provisions of the Police Rules, 1934:-

*“1.1. **Constitution** – For the purposes of section 3 of the Police Act (V of 1861) the Punjab is divided into “General Police Districts”, namely, -*

- (a) the Provincial Police District,*
- (b) the Railway Police District.*

All ranks of police employed in the province are appointed or enrolled under section 2 of the Act.

*1.3. **General Police, Districts-divisions of** - The Provincial Police general district is divided into administrative establishments; a Training School (including the Provincial Finger Print Bureau); a Criminal Investigation Department, and District Police Establishments. The Inspector-General may, with the approval of the State Government, add such other cadres from time to time as the need may arise. The Railway Police, general district, is divided into a Central Investigating Agency, and such number of sub-divisions as the Provincial*

Government may authorize from time to time.

1.4. Administrative Division. - *The districts of the province are grouped in Ranges and the administration of all police within each such range is vested in a Deputy Inspector-General under the control of the Inspector-General of Police.*

[The Railway Police District is administered, under the control of the Inspector-General of Police, by an Assistant Inspector-General of Police, Railways and Traffic, who has the powers of, and is responsible for the duties allotted to, a Deputy Inspector-General of a range. The limits of the Railway Police are the railway limits within Haryana].

The Training School is under the direct control of the Inspector-General subject to such delegation of powers as he may make to one or other of the range Deputy Inspectors-General. The Criminal Investigation Department is administered by a Deputy Inspector-General, who also supervises the Finger Print Bureau.

1.5. Limits of jurisdiction and liability to transfer.- *All police officers appointed or enrolled in either of the two general police districts constitute one police force and are liable to, and legally empowered for, police duty anywhere within the province. No sub-division of the force territorially or by classes, such as mounted and foot Police, affects this principle.*

Every police officer shall be liable to serve at any place, whether within or outside the State of Haryana and in any organization under the Central Government on being ordered so to do by the appointing authority. Every police officer is empowered to section 3 of the Police Act, 1888 (Central Act 3 of 1888), when necessary, to exercise the powers, functions and privileges of a police officer in any part of India. In the exercise of such functions a police

officer is deemed to be a member of the police force of the State or Union of India, in which he is at the time.

12.1 Authorities empowered to make appointments - (1)
Assistant Superintendents of Police are appointed by the Secretary of State for India, either in England or in India according to the rules framed by him from time to time.

Deputy Superintendents of Police are appointed by the Provincial Government according to rules contained in Appendix 12.1.

The following table summarises the directions given by the Provincial Government under clause(b) of sub-section (1) of Section 241 of the Government of India Act, 1935, in regard to the authorities competent to make appointments to the non-gazetted ranks.

<i>1</i>	<i>2</i>	<i>3</i>
<i>Class of Government servants</i>	<i>Authority to whom the power of appointment is delegated</i>	<i>The extent of the delegation</i>
<i>Inspectors</i>	<i>Deputy Inspectors-General of police, Assistant Inspector-General, Government Railway Police, Assistant Inspector General, Provincial Additional Police, (designated as Commandant, Provisional Additional Police), and the Assistant Inspector General of Police (Traffic)</i>	<i>Full powers subject to rules governing the conditions of service as defined in Police Rules</i>

1	2	3
<i>Sergeants, Sub-Inspectors Assistant Inspectors.</i>	<i>Superintendents of Police and [Superintendent of Police, Railways]</i>	
<i>Head Constable and Constables</i>	<i>Superintendents of Police and [Superintendent of Police, Railways], Deputy Superintendent-in-charge of Railway Police Sub-Divisions, Senior Assistant Superintendent of Police, Lahore and Officers incharge of Recruits Training Centres. Deputy Superintendent of Police, District, Assistant Superintendent of Police, Lahaul and Spiti District, District Magistrate, Lahaul and spiti.</i>	

[(2) All direct appointments to non-gazetted ranks above that of constables and all first appointments of civilian clerks shall be made by the appointing authority on the recommendations of Haryana Staff Selection Commission.]

[(2a) The appointment of constables shall be made by the appointing authority on the recommendations of the Selection Board(s) constituted by the Director General of

Police for this purpose.

Explanation – *(1) Director General of Police may constitute one or more Selection Boards. Each Selection Board shall consist of an officer of the rank of Superintendent of Police or above as Chairman and two Deputy Superintendents of Police as members to be nominated by the Director General of Police, Haryana.*

(2) In order to ensure smooth and expeditious completion of recruitment process, the Director General of Police may assign responsibility of conducting Physical Measurement and Physical Efficiency Test to more Selection Boards depending upon the number of candidates appearing for test at any Selection Centre.

(3) The power to confirm the appointment of officers appointed on probation vests in the prescribed appointing authority.

(4) Inspectors shall be borne on a provincial roll and shall receive provincial constabulary numbers. Sergeants shall be borne on a separate provincial roll and shall receive range constabulary numbers.

Sub-inspectors and assistant sub-inspectors shall be borne on range rolls and shall receive range constabulary numbers.

Head constables and constables in each district shall be borne on district rolls and shall receive district constabulary numbers.

[(5) In matters relating to general conditions of service such as pay, pension, leave, joining time and traveling allowance, the subordinate ranks of the Police force of the State of Punjab shall be governed by the Punjab Civil Service Rules, for the time being in force, in so far as they are not inconsistent with the provisions contained in these rules.

12.2 Seniority and Probation - (1) *The seniority of Assistant Superintendents of Police is regulated by the orders passed from time to time by the Secretary of State and the Central Governments.*

No Probationary Assistant Superintendent of police shall be permanently appointed as an Assistant Superintendent of Police until he has passed the prescribed departmental examinations.

A Probationary Assistant Superintendent of Police who does not qualify by passing these examinations, within two years, or at the first examination after two years, from the date of his joining the service, will be removed from Government service; provided that the Provincial Government shall have power to relax this rule in special cases, when the probationary Assistant Superintendent of Police is likely to make a good police officer.

(2) *The rules governing the probation and seniority of Deputy Superintendents of Police are contained in Appendix 12.1.*

(3) *All appointments of enrolled police officers are on probation according to the rules in this chapter applicable to each rank.*

Seniority, in the case of upper subordinates, will be reckoned in the first instance from date of first appointment, officers promoted from a lower rank being considered senior to persons appointed direct on the same date, and the seniority of officers appointed direct on the same date being reckoned according to age. Seniority shall, however, be finally settled by dates of confirmation, the seniority inter se of several officers confirmed on the same date being that allotted to them on first appointment. Provided that any officer whose promotion or confirmation is delayed by reason of his being on deputation outside his range or

district shall, on being promoted or confirmed, regain the seniority which he originally held vis-à-vis any officers promoted or confirmed before him during his deputation.

The seniority of lower subordinates shall be reckoned from dates of appointment, subject to the conditions of rule 12.24 and provided that a promoted officer shall rank senior to any officer appointed direct to the same rank on the same date:

Provided that in the case of officers recruited direct after 23rd December, 1958, as a result of the same examination or selection, their inter se seniority shall be reckoned -

- (a) by the order of merit fixed by the selection body, and*
- (b) when there is no such order by merit indicated, by the age of the candidate i.e., the oldest being placed the senior most and the youngest the junior most.*

13.8. List C. Promotion to Head Constables – (1) *In each district a list shall be maintained in card index form (Form 13.8(1) of all constables who have passed the Lower School Course at Phillaur and are considered eligible for promotion to Head Constables. A card shall be prepared for each constable admitted to the list and shall contain his marking under sub-rule 13.5(2) and notes by the Superintendent himself, or furnished by Gazetted Officers under whom the Constable has worked, on his qualifications and character. The list shall be kept confidentially by the Superintendent and shall be scrutinized and approved by the Deputy Inspector-General of Police at his annual inspection.*

13.9. List D Promotion to Assistant Sub-Inspectors – (1)

A list shall be maintained in each district in card index Form 13.9(1) of those head constables who have passed the lower school course and the intermediate school

course at the Police Training and are approved by the Deputy Inspector-General as eligible for officiating or Substantive promotion to the rank of assistant sub-inspector. No head constable shall be admitted to this list who is not thoroughly efficient in all branches of the duties of a constable and head constable and of established integrity.

(2) Officiating promotion to the rank of assistant sub-inspector shall be made from the list prescribed in sub-rule (1), as far as possible in rotation, so as to give each man a trial in the duties of the higher rank. Substantive promotion shall be made by the Deputy Inspector-General in accordance with the principles prescribed in rule 13.1, and officiating promotion shall be made in accordance with sub-rule 13.4 (2).

(3) Half-yearly reports in Form 13.9(3) on all head constables in this list shall be furnished on the 15th April and the 14th October, to the Deputy Inspector-General."

Reading of the above provisions, it is evident that constitution of General Police District are: (a) the Provincial Police District, (b) the Railway Police District and all the ranks of police employed in the province are appointed or enrolled under section 2 of the Act. That apart Rule 1.3 relates to General Police, District-Divisions. In other words, Provincial Police General District is further divided into administrative establishments like Training School (including the Provincial Finger Print Bureau); a Criminal Investigation Department, and District Police Establishment. The Railway Police, General District, is divided into a Central Investigating Agency, and such number of sub-divisions as Provincial Government may authorize from time to time. Rule 1.4 deals

with the Districts of the province are grouped in Ranges so also railway police District is administered by various authorities which is higher than the Deputy Inspector General and above. Further, Rule 1.5 relates to limits of jurisdiction and liability to transfer. All police officers appointed or enrolled in either of the two general police Districts (the Provincial Police District and the Railway Police District) constitute one police force and are liable to, and legally empowered for police duty anywhere within the province. Further, every police officer shall be liable to serve at any place within or outside the State of Haryana. Thus, it is evident that there is no specific provision that within the District transfer is permissible and further Inter-District. Learned State counsel relied on Rule 12.1 which relates to authorities empowered to make appointments in which appointments of the police officials are being made by certain authorities who have been identified insofar as Head Constables and Constables, Superintendent of Police and Superintendent of Police Railways etc., therefore, the contention of the official respondents is that Superintendent of Police would be District Head under whom Constables and Head Constables are working, he is required to prepare seniority list. Accordingly, he has prepared the seniority list on District-wise, therefore, contention of the petitioner that seniority list of Constables and Head Constables are required to be prepared State-wise (Provincial Police District) is without any substance is concerned, such a contention cannot be accepted for the reasons that Rule 12.1 relates to only identifying the authorities to make appointments of Class of Government servants like Inspectors, Sub Inspectors, Assistant Sub Inspectors, Head Constables and

Constables. Said provisions do not provide for preparation and publication of seniority list of Constables and Head Constables. Learned counsel for the petitioner relied on the decision of **Jagat Singh's** case (supra), para 5 of the judgment reads as under:-

“5. There is also merit in the contention of counsel that the petitioner would be deemed to have been confirmed on completion of probation period of two years. The relevant rule in this case of the petitioner is Rule 13.18 which is reproduced hereunder:-

“13.18. All police officers promoted in rank shall be on probation for two years; provided that the appointing authority may, by a special order in each case, permit periods of officiating service to count towards the period of probation. On the conclusion of the probationary period a report shall be rendered to the authority empowered to confirm the promotion who shall either confirm the officer or revert him. In no case shall the period of probation be extended beyond two years and the confirming authority must arrive at a definite decision within a reasonable time soon after the expiry of that period whether the officer should be confirmed or reverted. While on probation officers may be reverted without departmental proceedings. Such reversion shall not be considered reduction for the purpose of Rule 16.4.”

Concededly, the petitioner was promoted as Head Constable on 1.10.1982 and has completed more than two years probation period and there is nothing on record to show that his conduct during the probation was not satisfactory. In this view of the matter, the petitioner would be deemed to have been confirmed on the post in question on completion

of two years' probation."

Reading of the above judgment, it is crystal clear that an appointee who is on probation would be deemed to be confirmed on the post in question on completion of two years' probation. Therefore, the petitioner as soon as he completes his probation period deemed to have been confirmed and is entitled for ranking in the seniority list of Constables at the relevant rank.

9. Learned State counsel relied on two decisions in support of the contention that seniority list of Constables and Head Constables are required to be prepared District-wise. In the case of **Attar Singh's case** (supra), this Court in para no.13 held as under:-

"13. A perusal of the above Rule and in particular sub rule (2) would show that Head Constable shall be borne on district rolls and shall receive district constabulary number. On the day when the petitioner was transferred from HAP, Madhuban to District Police, he was a confirmed Head Constable and his seniority was to be, therefore, maintained and borne in HAP, Madhuban and in the light of the instructions dated 15.12.1995 issued by the Director General of Police, Haryana (Annexure R-3), petitioner could not have been absorbed in Hisar Range. The relevant portion of the instructions reads as follows:-

"Number of complaints of irregularities and favoritism have been received and are continuing to be received in the matter of deputing Head Constables to the Intermediate School Course in particular. It has been seen that some Head Constables after confirmation in a particular Range manage to secure their transfer to another Range thereby gaining seniority over Head Constables who are otherwise

senior to them in the Range, these Head Constables manage to get themselves transferred. Apart from causing imbalances and posing administrative problems, this practice has led to considerable criticism and has given rise to large number of avoidable litigation and petitions in the Courts. This practice has also been seriously viewed by the Hon'ble Courts. Such motivated transfer after confirmation in a particular Range is against the principles of natural justice and erode the confidence and faith of the subordinates in the leadership. In order to prevent recurrence of such situations arising out of such transfers after confirmation as Head Constables and to uphold the principles of fair play and justice, it is hereby directed that Head Constables, who are confirmed in a particular Range under normal circumstances will not repeat not be transferred to another Range to enable them to get undue benefit which may accrue to them on account of their seniors having not been promoted confirmed in the range to which they are transferred. If in any exceptional circumstances, transfer of the above nature becomes essential, the Head Constables so transferred will be treated as on deputation and will retain their original seniority in the parent Range from where transferred. Even, in the event of such Head Constables undergoing Intermediate School Course, their promotion will be affected according to their seniority in their parent Range.”

In the case of **Kashmir Singh's case** (supra), Supreme Court in para no.13 held as under:-

“13. Thus, a plain perusal of the Punjab Police Rule shows

that transfer can be done one district to another district or even to another range, and there is no absolute prohibition for doing so. However, in such a case, the seniority of Constable and Head Constables at the district level and of ASI and SI at the range level is maintained in the parent district / range despite the transfer. Promotion / confirmation is also given strictly as per the seniority in the parent district / range level, as per Memo No. 43515-22/E-(III) dated 10.8.2010.”

The contention of the official respondents is that this Court has appreciated the preparation and publication of seniority list District-wise with reference to Rule 12.1. Further, Supreme Court in the case of **Kashmir Singh's case (supra)** discussed Rules 1.4, 1.5, 12.26 and 14.15(1) so as to support the contention of the official respondents that the preparation of seniority list of Constables and Head Constables are required to be at the District level. Supreme Court interpreted Rules 1.4 and 1.5 stating that since District of the province are grouped in ranges and administration of all police within each such range is vested in DIG has been taken into consideration that Constables can be transferred from one District to another District. Whereas Rule 1.5 is read “two general police districts constitute one police force”. Here it is to be noted that two general police districts means (i) Provincial Police District (ii) Railway Police District, as stipulated in Rule 1.1 of Rules 1934 – Constitution. Under Rule 1.1, there is no sub division of (i) the provincial police district into each district, therefore, Rule 1.1 would override rule 1.4 and so also reading of Rule 1.5 relating to limits of jurisdiction and liability to transfer where it is stated that two general police districts constitute one police force. It does not

stipulate each of the district, it speaks only two general police districts i.e. with reference to the Provincial Police District and the Railway Police District. Further, it stipulates that every police officers shall be liable to serve at any place, whether within the State and outside the State of Haryana and under any organization under the Central Government etc., whereas transfer is not within the district or inter-district. Even though Rule 12.26 stipulates Inter District Transfers, it is only relating to transfer of police personnel and not relating to seniority. Entire Police Rules, 1934 applicable to State of Haryana, no provision has been made for the purpose of seniority. Since Rule 1.1 stipulates only two types of Districts – Provincial Police District and Railway Police District, therefore, seniority list is required to be maintained at the State level. Hence, the decisions cited by the official respondents is distinguishable to the extent that Rule 1.1 has not been taken into consideration so as to identify the District. The District could be identified only with reference to Rule 1.1 to the extent of Provincial Police District and the Railway Police District and nothing else. That apart initial recruitment to the post of Constable is State-wise and not District-wise and selected Constables are being posted to different Districts. If in a District, promotional opportunity to the post of Head Constable is more and if it is in less in a different District, in such event, even though more merited Constable in the initial recruitment may lose his promotion in a District where chances of promotion are less, therefore in order to set right the anomaly and heart-burning among the merited Constables who have been denied promotion due to lesser chances of promotion in the respective District, preparation of seniority list of

District-wise of Constables and Head Constables would be arbitrary and illegal. Hence to streamline and to avoid arbitrariness in promoting junior to the post of Head Constable in a District and denial of senior Constable for want of promotional vacancy read with the statutory provisions in particularly Rule 1.1, the respondents are required to prepare seniority list of Constables and Head Constables etc. at State level. Further, promotion is also required to be operated at the State level or in the alternative at the time of appointment and selection to the post of Constable, candidates should be given an option and also promotional prospects in a particular District be made available so that more merited candidates may opt for a particular District where chances of promotion are bright. This could be done by means of bringing necessary amendment to the Police Rules, 1934 (applicable for State of Haryana).

10. In view of these facts and circumstances, order dated 24.07.1997 (Annexure P/1) is set aside. The Competent Authority is directed to re-examine the petitioner's claim for fixation of seniority and promotion to the post of Head Constables and extend all service benefits including monetary benefits and further promotion on par with 4th respondent who is stated to be much junior to the petitioner in the cadre of Constable. The above exercise shall be completed within a period of four months from today.

11. Instant writ petition stands allowed.

April 17, 2017

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Whether speaking / reasoned : Yes

Whether reportable : Yes

[P.B. Bajanthri]
Judge