

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 4353 of 2006 (O&M)
Date of Decision: September 08, 2017

Harinder Singh Dhaliwal and others

... Petitioners

Versus

Union of India and others

... Respondents

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

Present: Mr. Aakash Singla, Advocate,
for the petitioner.

Mr. Puneet Jindal, Sr. Advocate with
Ms. Shreya Vasishtha and
Mr. Nitin Kumar, Advocates,
for respondents no. 1 to 5.

None for respondents no. 6 to 10.

P.B. Bajanthri, J. (Oral)

1. In the instant writ petition, petitioners have challenged the validity of order dated 16.02.2006 (Annexure P/13) by which respondents no. 6 to 10 have been promoted to the post of Assistant Security Commissioner and further sought for direction to consider petitioners' name for promotion with reference to their eligibility.

2. Ist petitioner – Harinder Singh Dhaliwal was appointed as Assistant Public Prosecutor. Thereafter, he was selected as Inspector Prosecution, Grade-II in Railway Protection Force and joined the post on 23.03.1999 and further he has been promoted to the post of Inspector Grade-I on 22.03.2002.

3. 2nd petitioner – Mam Chand Sharma was appointed as Sub Inspector on 14.12.1992. Further he was earned promotions to the post of Inspector Prosecution Grade II and Grade I on 10.12.1998 and 23.03.2002 respectively.

4. 3rd petitioner – Krishan Kumar Sharma was appointed as Inspector Prosecution Grade II on 31.03.1999 and he has earned promotion to the post of Inspector Grade I on 22.03.2002.

5. Contesting respondents no. 6 to 10 as on 15.02.2006, they were in the cadre of Inspector Grade-II. Posts in the 2nd respondent were governed by 1987 rules of recruitment. Post of Inspector was classified into three branches: (i) Executive Branch, (ii) Prosecution Branch and (iii) Fire Service Branch. The petitioners were stated to be in the prosecution branch, whereas contesting respondent nos. 6 to 10 are from other than the prosecution branch. With reference to the seniority in the cadre of Inspector Grade-II even though the petitioners joined service later than the respondents no. 6 to 10 by virtue of rules and number of posts, petitioners were promoted to the post of Inspector Grade-I in respective branch viz. Prosecution Section or Branch, whereas, respondents no. 6 to 10 were not promoted to the post of Inspector Grade-I due to chances of promotions from other than the prosecution branch was remote. Even during the period from 23.03.2002 to 17.01.2006, they were in the Inspector Grade-II, whereas constitution of single cadre of Inspector would be w.e.f. 20.01.2006.

6. The method of recruitment to the post of Assistant Security Commissioner under the Railway Protection Force (Group-A) Posts of

Deputy Inspector General Railway Protection Force, Deputy Chief Security Commissioners/Senior Security Commissioners and Assistant Security Commissioners Recruitment Rules, 1994 (hereinafter referred to as “1994 Rules”). Extract of 1994 Rules are reproduced herein:-

(1)	(8)	(12)
4. Assistant Security Commissioner	<i>A degree of any of the Universities established or incorporated by an Act of the Central or State Legislature in India or other Educational Institutions established by an Act of Parliament or declared to be deemed as a University under Section 3 of the University Grant Commission Act, 1956, or an equivalent qualification.</i>	<u>Promotion:-</u> Inspectors Grade-I (Pay Scale Rs.2000-3200) with five years regular service in the grade, failing which Inspectors Grade I with seven years combined regular service as Inspector Grade-I (Rs.2000-3200) and Inspector Grade II (Rs.1640-2900) with a minimum of two years regular service as Inspector Grade I.

7. On 10.10.1997 pay scale of the Inspector Grade I and Grade II were equated. As on 10.10.1997 pay scale of Inspector Grade I was Rs.2000-3200 and Inspector Grade II was Rs.1640-2900. Revised pay as on 10.10.1997 of the Inspector Grade I and Grade II is Rs.6500-200-10500. Insofar as Inspector Grade-I is concerned, a sum of Rs. 200/- as special pay was granted.

8. On 17.01.2006 the official respondents upgraded 119 posts of Inspectors, RPF/RPSF to the rank of ASCs/ACs (Junior Scale) at difference places. Insofar as Northern Railway is concerned, 8 posts were earmarked.

9. The official respondents amended the Rules of Recruitment called as Railway Protection Force (Group `A`) posts of Deputy Inspector General (Railway Protection Force), Deputy Chief Security Commissioner, Senior Security Commissioner, Security Commissioner and Assistant Security Commissioner) Recruitment Rules, 2006 (hereinafter referred to as “2006 Rules”). These rules were notified on 16.01.2006 and it was gazetted on 20.01.2006. Method of recruitment to the post of Assistant Security Commissioner reads as under:-

<i>Name of post</i>	<i>No. of posts</i>	<i>Classification</i>	<i>Scale of Pay</i>	<i>Whether selection on post or non selection on post</i>	<i>Whether benefit of added years of service admissible</i>
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>
<i>1. Asstt Security Commissioner</i>	<i>152* (2006)* subject to variation depend ent on work load</i>	<i>General Central Service Group A Gazette No ministerial</i>	<i>Rs.800 0-275- 13,500 /-</i>	<i>Selecti on</i>	<i>Not applica ble</i>

Method of Recruitment: <i>Whether by direct recruitment or by promotion or by deputation / absorption and percentage of the post to be filled by various methods</i>	<i>In case of recruitment by promotion / deputation / absorption grade from which promotion / deputation / absorption to be made</i>
<i>11</i>	<i>12</i>
<i>40% promotion 50% direct recruitment 10% by deputation Re-employment of armed forces personnel failing which by promotion.</i>	Promotion <i>Inspectors with revised pay scale of Rs. 6500-10,500/- with five years regular service in the grade..</i> Note:- <i>Where juniors who have completed their qualifying / eligibility service are being considered for promotion, their seniors would also be</i>

	<i>considered provide they are not short of the requisite qualifying / eligibility serve by more than half of such qualifying / eligibility service or two years, whichever is less, and have successfully completed their probation period for promotion to the next higher grade along with their juniors who have already completed such qualifying eligibility service.</i>
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10. The official respondents promoted respondents no. 6 to 10 to the post of Assistant Security Commissioner with reference to upgradation notification dated 17.01.2006 (Annexure P/11) read with 2006 Rules gazetted on 20.01.2006 {notification dated 16.01.2016 (Annexure P/12)}. The petitioners are aggrieved by order of promotion of respondent nos. 6 to 10 to the post of Assistant Security Commissioner vide order dated 16.02.2006 (Annexure P/13). Hence, the present writ petition.

11. Learned counsel for the petitioner submitted that promoting respondents no. 6 to 10 is contrary to 2006 Rules notified in the Gazette on 20.01.2006. It was submitted that upgradation of post of Inspector to Assistant Security Commissioner was ordered on 17.01.2006 while earmarking 8 posts to Northern Railway. Therefore, as on 17.01.2006 post of Inspectors were required to be upgraded to the extent of 8 posts with reference to 1994 Rules. Petitioners were in the cadre of Inspector Grade-I which is higher than Grade-II Inspector and respondents were still in the cadre of Inspector Grade-II. Thus, the respondents have violated Rules 1994 since mode of promotion to Assistant Security Commissioner is from Inspector Grade-I which are required to be followed for the purpose of

promotion to the post of Assistant Security Commissioner as on 17.01.2006 since Rules 2006 were came into force only on 20.01.2006 as is evident from para No.2 of Rules 2006 which states that

“They shall come into force on the date of their publication in the official gazette.”

In view of these errors committed by the official respondents, promotion of respondents no. 6 to 10 are liable to be set aside and further petitioners' name are required to be considered for the purpose of promotion to the post of Assistant Security Commissioner as on 17.01.2006 the date on which 8 posts which were earmarked for Northern Railway were required to be implemented.

12. Per contra, learned counsel for the official respondents vehemently submitted that upto 10.10.1997 post of Inspector Grade-I and Grade II were separate and Inspector Grade-I was higher than the Grade-II. It was submitted that as on 10.10.1997 pay scale attached to the post of Inspector Grade-I and Grade-II were equated with reference to 5th Pay Commission. Consequently, only one cadre remains i.e. Inspector w.e.f. 10.10.1997. It was further submitted that upgradation notification dated 17.01.2006 mandates that each railway will have to identify the post of Inspector to be upgraded to ASC/AC, therefore, identification of upgraded post is subsequent to 20.01.2006 notification since private respondents have been promoted to the post of Assistant Security Commissioner only on 16.02.2006. Therefore, petitioners' contention that for the purpose of promotion to the post of Assistant Security Commissioner Rules 1994 are required to be followed is incorrect. Since Rules 2006 provide for promotion to the post of Assistant Security Commissioner only from the

post of Inspector and it does not distinguish between Inspector Grade-I and Grade-II, there is no infirmity in the order of promotion dated 16.02.2006 in favour of respondents no. 6 to 10.

13. Heard learned counsel for the parties.

14. Question for consideration in the present petition is “whether upgraded post of Inspector to that of Assistant Security Commissioner and equivalent posts (Junior Scale) issued on 17.01.2006 is required to be implemented with reference to 1994 Rules of Recruitment or 2006 Rules of Recruitment?”

15. Mode of promotion to the post of Assistant Security Commissioner under 1994 Rules is from the cadre of Inspector Grade-I, whereas mode of promotion to the post of Assistant Security Commissioner under 2006 Rules is from the cadre of Inspector. The petitioners were promoted to the post of Inspector Grade-I on 22.03.2002 / 23.03.2002 from the cadre of Inspector Grade-II. Undisputedly, respondents no. 6 to 10 were never promoted to the post of Inspector Grade-I from Inspector Grade-II. As on 17.01.2006, 1994 Rules were in vogue, therefore, upgradation of posts of Inspectors to that of Assistant Security Commissioner was ordered on 17.01.2006. Rules of recruitment of 2006 Rules was gazetted on 20.01.2006. Consequently, method of recruitment to the post of Assistant Security Commissioner from the Inspector Cadre would be effective on 20.01.2006. Therefore, 1994 Rules of Recruitment are required to be followed to the extent of promoting Inspector Grade-I as on 17.01.2006 the date on which posts were upgraded. The contention of the respondents that posts were required to be identified as stated in the notification dated

17.01.2006, therefore, it would be effective subsequent to the identification of the post is not tenable for the reasons that number of posts have been identified as 8 posts for Northern Railway among 119 posts as is evident from 17.01.2006 order. Therefore, as on 17.01.2006 Inspector's post to the extent of 8 in the Northern Railway was already upgraded. Upgraded posts same shall be filled up with reference to rules of recruitment as on that date (1994 Rules). The respondents' contention that pay scale was merged in respect of Inspector Grade-I and Grade II as on 10.10.1997, therefore, w.e.f. 10.10.1997 there would be only Inspector cadre and there cannot be Inspector Grade I and Grade II beyond 10.10.1997, it is to be noted that as on 10.10.1997 no doubt the pay scales have been equated between Grade I and Grade II Inspectors to Rs. 6500-200-10500 at the same time Inspector Grade I have been extended the benefit of Rs.200/- as Special Pay. Question of upgradation and merger of two cadres would arise as and when rules of recruitment are amended. Until and unless rules of recruitment not amended one cannot draw inference to that cadres were merged merely because pay scales have been equated. Therefore, contention of the respondents that posts of Inspector Grade I and Grade II were merged as on 10.10.1997 is untenable and merger has taken place only as and when amended rules of recruitment issued in the year 2006 i.e. w.e.f. 20.01.2006, whereas the petitioners' claim relates back to 17.01.2006. That apart for the purpose of filling up of higher posts by means of upgraded posts are required to be done with reference to the vacancies occurred as on the date of upgradation or as on the date of promotion. In the present case, as on 17.01.2006, 8 posts were already upgraded and existing, therefore, 1994

Rules are required to be followed as held by the Supreme Court in the case of ***Y.P. Rangaiah and others vs. J. Sreenivasa Rao and others***, reported in ***(1983) 3 Supreme Court Cases 284***. Para 9 of that judgment reads as under:-

“9. Having heard the counsel for the parties, we find no force in either of the two contentions. Under the old rules a panel had to be prepared every year in September. Accordingly, a panel should have been prepared in the year 1976 and transfer or promotion to the post of Sub-Register Grade II should have been made out of that panel. In that event the petitioners in the two representation petitions who ranked higher than the respondents Nos. 3 to 15 would not have been deprived of their right of being considered for promotion. The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the post of Sub-Registrar Grade II will be according to the new rules on the zonal basis and not on the State-wide basis and, therefore, there was no question of challenging the new rules. But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules.”

Supreme Court in the case of ***Arjun Singh Rathore and others vs. B.N. Chaturvedi and others***, reported in ***(2007) 11 S.C.C. 605*** held as under:-

‘6. The above legal position has not been seriously disputed by the learned counsel for respondent Nos.6 &7. We are therefore of the opinion that the vacancies which had occurred prior to the enforcement of the Rules of 1998 had to be filled in under the Rules of 1988 and as per the procedure laid down therein. We are therefore of the opinion that the

judgment of the learned Single Judge needs to be restored. We order accordingly.

7. There is another aspect of the matter which needs to be taken care of. It has been brought to our notice during the course of hearing that pursuant to the order of Division Bench the exercise for promotion under the Rules of 1998 had been carried out and that all 15 original respondents (present appellants) had appeared in the written examination and been declared successful but the result of 14 had been declared on 22nd November 2005 whereas the result of one, Ram Narayan Meena appellant No.3 before us, had been kept in a sealed envelop as a disciplinary enquiry was pending against him. It has however been pointed out that Ram Narayan Meena had been subjected to a charge-sheet dated 09.11.2005 on the basis of a complaint dated 16th June 2005, that is long after the promotions had been made under the Rules of 1988, and as such he too should be given the benefit of this judgment in so far as the promotion was concerned though subject to the outcome of the proceedings against him. We find merit in this plea as well. It needs to be highlighted that the promotion under the Rules of 1988 had been made way back in September 2000 i.e. long before the complaint had been made against Ram Narayan Meena. We are therefore of the opinion that he too should be given the benefit of this judgment subject to the outcome of the disciplinary proceedings.....”

16. In view of above facts and circumstances, order dated 16.02.2006 (Annexure P/13) is set aside. The official respondents are directed to consider the petitioners’ name for promotion to the post of Assistant Security Commissioner as on 17.01.2006 with reference to 1994 Rules, within a period of three months from today and extend consequential service and monetary benefits.

17. Writ petition stands allowed.

18. At this stage, learned counsel for the official respondents pointed out that they have prepared a combined seniority list on 01.07.2004 of Inspectors wherein respondents are much senior to the petitioners. Combined seniority list of Inspectors Grade I and Grade II are required to be prepared with reference to 2006 Rules which were issued on 20.01.2006. Therefore, question of preparation of seniority list as on 01.07.2004 and notified on 20.03.2006 is immaterial for the purpose of promotion since as on 17.01.2006 relevant rules which were in vogue is 1994 Rules. 1994 Rules provide for promotion to the cadre of Assistant Security Commissioner is from the cadre of Inspector Grade-I. Therefore, combined seniority list of Inspector would be only after 20.01.2006 and not as on 01.07.2004. Hence, the combined seniority list is redundant for the purpose of promotion to 119 upgraded posts i.e. as on 17.01.2006.

September 08, 2017
vkd

[P.B. Bajanthri]
Judge

Whether reasoned / speaking : Yes

Whether reportable : Yes