

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.17668 of 2013

Reserved on :02.11.2017

Date of decision:22.11.2017

Ram Phal

....Petitioner

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.Namit Kumar, Advocate, for the petitioner.

Ms.Shruti Jain Goyal, AAG, Haryana.

G.S. SANDHAWALIA, J.

The petitioner seeks writ in the nature of mandamus under Article 226 of the Constitution of India, to depute him to the Lower School Course and consider his case for promotion to the post of Head Constable and ASI, w.e.f. the date person junior to him, namely, Constable Kaptan Singh No.296/Ist IRB had been promoted, in view of the judgment dated 26.11.2012 passed in CWP-19482-2011 titled *Jai Bhagwan Vs. State of Haryana & others*. He further seeks consideration for addition of 1 mark of the 'Traffic Basic Course' and 6 marks for 'Tracker Course' and for consideration of his case to send him to the Lower School Course for the year 2010, with all consequential benefits. Further prayer has been made for issuance of mandamus, directing the respondents for considering him to the Lower School Course under 10% quota as per the provisions of Rule 13.7 of the Punjab Police Rules, 1934.

The pleaded case of the petitioner is that he was initially appointed as Constable-Motor Mechanic on 19.06.2002 on a technical post since the scale of the said technical post was granted to him of Rs.4000-6000. He had filed CWP-2766-2007, which was allowed on 07.12.2007

and he was deputed to the Traffic Basic Course from 01.04.2006 to 29.04.2006 and also for the Tracker Course from 01.10.2006 to 29.08.2008 and certificates Annexures P-1 & P-2 were attached. It is his case that he was eligible to appear for the B-1 Test for the year 2008-09 as he was under the age of 35 years and had completed 5 years of service. However, he was not allowed to sit in the said test in view of the orders passed by the DGP-respondent No.2 dated 05.02.2007 (Annexure P-3). In the said order, it was conveyed that there was no sanctioned post of Technical Head Constable and therefore, Constables who were appointed as Technical Constables having qualification of Diploma from ITI/Polytechnic etc. i.e., Computer Operators, Draftsmen and Motor Mechanics etc. were not entitled for promotion against the general duty posts of Head Constables. The said circular reads as under:

“Subject: Promotion of Technical Constables (Draftsmen, Motor Mechanics, Computer Operator etc.) as Head Constable.

Memo.

In continuation of this office endst. No.1135-40/E(II)-1 dated 19.1.2007, on the subject noted above.

2. The matter has been examined. These constable who were recruited as technical Constable having qualification of Diploma for ITI/Polytechnic, etc i.e. Computer Operators, Draftsmen, Motor Mechanics etc. have been given higher pay scale equivalent to the post of Head Constables i.e. Rs.4000-6000. Since there are no posts of Technical Head Constables sanctioned, these constables are not entitled for their promotion against General Duty posts of Head Constables. Moreover, they are already drawing salary of Head Constables.

3. Therefore, those technical Constable may not be promoted to the rank of Head Constable against General Duty posts. However they will be entitled for ACP Scale and will be considered for promotion as Exemptee Head Constable and Exemptee ASI after required length of service.

In view of above you are requested to direct concerned SSP/Comdts. to review the cases for withdrawal of promotions of those technical constables who have been promoted to the rank of Head Constable against General duty posts are passing the Lower School Course. Information regarding action taken may be sent to this office.”

The list of candidates who were not eligible was attached as Annexure P-4A wherein his name was mentioned at Sr.No.38 and he was shown as Technical Constable and therefore, he was amongst the 14 Technical Constables, not to be sent to the Lower School Course. It was, accordingly, pleaded that persons junior to him including Constable Kaptan Singh son of Shri Ishwar Singh had been sent to the Lower School Course and have been promoted as Head Constable, vide order dated 08.04.2009 (Annexure P-4B).

It has further been pleaded that the above-said circular was quashed by the Division Bench of this Court in **Sandeep Mehta Vs. The State of Haryana & others 2010 (1) SCT 350** by holding that there was no separate cadre of Technical Constables and therefore, they could not be deprived of the right of promotion under the Punjab Police Rules (as applicable to the State of Haryana), by issuance of executive instructions. Relevant portion of the order reads as under:

“12. We have heard counsel for the parties and with their able assistance gone through the pleadings. The facts which have

come-forth and are not in dispute are that the petitioner was appointed on the vacant post of Constable General Duty as Constable Computer Operator. The requirement for appointment to the post held by the petitioner is more stringent as apart from the physical requirements for appointment to the post of Constable as per the Punjab Police Rules, 1934, an additional qualification of one year diploma is required. There is no separate cadre or separate service Rules governing the services qua the alleged post of Technical Constables or Constables General Duty as the Rules do not provide for separate posts for Technical Constables and Constables General Duty. The petitioner on passing the B-I test, was deputed to the Lower School Course, which he completed successfully, whereafter he was promoted as officiating Head Constable. All this was done on the basis of the common seniority maintained for Constables. The service Rules, do not provide for any distinction between the post held by the petitioner and the alleged post of Constable General Duty. The petitioner has been transferred as Constable General Duty and has been performing the responsibilities of the said post. For all intents and purposes as well as under the Rule, the petitioner is working as a Constable. In this way, the petitioner fulfills all the requirements for promotion to the post of Head Constable. The petitioner cannot be deprived of his right to be considered for promotion so conferred upon him under the Punjab Police Rules, 1934, as applicable to State of Haryana, by mere issuance of executive instructions. Unless separate cadre is carved out for each separate category and necessary amendments brought about in the service Rules, the respondents cannot justifiably be allowed to take a stand that there is no sanctioned post for Technical Head Constables whereas in fact, there is no sanctioned post of Technical Constable as well. Once the petitioner has been appointed against the post of Constables there is no sanctioned post of

Technical Constable, how under the statutory Rules, can be deprived of is right to be considered for promotion to the post of Head Constable ?

13. We are of the considered view that unless the Rules amended and a separate cadre created for the petitioner and similarly situated persons, which the respondents have sought to distinguish in the written statement on the basis of the Memo. of Director General of Police, Haryana dated 5.2.2007 (Annexure P-8), the petitioner and the persons belonging to the categories mentioned in the Memo. dated 5.2.2007, cannot be treated differently from the other Constables as they are governed by the same set of Rules, which provide for a single cadre of Constables with common seniority and other statutory benefits. In this view of the matter, the order dated 15.9.2007 (Annexure P-7) and Memo. dated 5.2.2007 (Annexure P-8) cannot be sustained and deserve to be quashed.”

It is, therefore, been pleaded that he has been allowed to appear in the year 2010 in the B-1 Test but he was not sent for the Lower School Course by wrongly awarding him only 33 ½ marks and not giving him the benefits of the marks of the Traffic Basic Course and the Tracker Course. It is, thus, his case that he should have been awarded 40 ½ marks instead of 33 ½ marks.

His claim is also there against the 10% quota on account of getting the benefits of the Tracker course on regular basis. It is further his case that one Jai Bhagwan had also not been deputed to the B-1 Course for the same reason and he filed writ petition wherein his claim had been accepted (Annexure P-9). Resultantly, he seeks consideration for being deputed for the Lower School Course in the 2010 batch.

The respondents, in their reply, have admitted that in view of the order dated 05.02.2007, petitioner was not allowed to appear in the B-1 Test, in view of the directions received from respondent No.2, but in view of the orders passed in **Sandeep Mehta's case** (supra), he was allowed to appear in the qualifying B-1 Test. The petitioner was an employe of the Indian Reserve Battalion IRB and had never been recommended for participation in the All India Police Duty Meet and Dogs handling, which was not prescribed as one of the duties of the IRB Constable. On 07.11.2012 (Annexure R-2), the name of the petitioner was approved by the Central Departmental Promotion Committee, to bring it on the promotion list B-1. The same was got scrutinized and it was confirmed that his name was not recommended under the 10% quota, vide communication dated 25.06.2012 and the letter dated 27.08.2013 (Annexure R-5).

Regarding the junior-Constable Kaptan Singh, it was mentioned that Lower Subordinates in Police Department counts from the date of granting List-C to the candidates whose names are on the Promotion List-B, after successfully undergoing/passing Lower School Course. Petitioner's name was not in the Promotion List-B or Promotion List-C till date. The contents of para No.6 were admitted that the petitioner was allowed to appear in the B-1 Test wherein he had secured 33 ½ marks and the fact that he had to be awarded 7 more marks on account of having passed the tests, was not denied.

Accordingly, petitioner filed replication that no employee

could undertake any course unless he is deputed for the same and therefore, the plea taken that the same was required to be entered in his Character Roll as it was the duty of the department. Accordingly, the plea taken was that it was incumbent upon the respondents to depute him to the Lower School Course on the date his juniors were deputed.

On 07.04.2016, the Co-ordinate Bench passed the following order:

“Learned counsel for the petitioner submits that in the B-1 Test for which the petitioner had appeared in the year 2010, he was shown to have secured 33.5 marks. However, 7 marks which were required to be given to the petitioner i.e. 1 mark for having successfully completed Traffic Basic Course from 01.04.2006 to 29.04.2006 and 6 marks for having passed the Tracker Training Course from 01.10.2007 to 29.08.2008 were not given. The aforesaid averment has not been specifically denied in the written statement.

Learned State counsel is directed to file an affidavit to the effect whether the petitioner was entitled to the marks as per the above referred submissions and if so whether the same were awarded to him or not.

Adjourned to 26.05.2016.”

In pursuance of the said order, it has been admitted in the additional affidavit filed by Shri Rajesh Duggal, IPS, Commandant 1st IRB, Bhondsi, Gurugram, that the petitioner was entitled for the remaining 7 marks of the B-1 Test for the year 2010. However, entry had not been made in the Character Roll of the petitioner as such, result of both the courses were not received in the office of the deponent and since the petitioner had been transferred from the said Battalion, to the State

Crime Branch, Madhuban, the same had not been received by the office of the said deponent. It was, accordingly, pleaded that the petitioner had raised no objection at the time of the B-1 Test and was satisfied with the entry in his Character Roll in the year 2010.

Thus, from the above sequence of events, it would be clear that the petitioner was entitled to sit in the B-1 Test in the year 2008-09 but had been denied the same, in view of the circular dated 05.02.2007, on account of the fact that he was appointed as a Technical Constable, which would also be clear from Annexure P-4A, the list attached. Eventually, the circular dated 05.02.2007 was quashed by the Division Bench in **Sandeep Mehta's case** (supra). He was allowed to sit in the B-1 Test in the year 2010 and his marks were not properly calculated and he could not make the cut because 7 marks less had been given as 1 mark of the 'Traffic Basic Course' and 6 marks for 'Tracker Course' were not given to him and thus, he was not sent to the Lower School Course. In view of the admission now made by way of additional affidavit, it would be clear that the petitioner would, thus, be entitled for being sent to the said course with all consequential benefits.

Resultantly, the present writ petition is allowed and a direction is issued to the respondents to depute the petitioner to the Lower School Course and his seniority would, accordingly be determined by considering him against the course of 2010. Accordingly, the consequential benefits, as per rules and instructions be granted, from the date the persons of the said course who were junior to him were granted

the same benefit. His case for further promotion be also considered,
accordingly.

22.11.2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No