

CWP-3855-2019 (O&M)

238

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

**CWP-3855-2019 (O&M)
Date of decision : 04.07.2019**

ASI Ashok Kumar

... Petitioner(s)

Versus

State of Haryana and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ravi Sharma, Advocate
for the petitioner.

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

AMIT RAWAL, J.

The petitioner has approached this Court under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari*, quashing the order dated 26.12.2018 (Annexure P-3), being illegal and arbitrary.

It was alleged that the petitioner would remain posted on temporary duty at MT Section PHQ from District Panchkula in the year 2001-02 and having deputed for lower school course in batch No.45, was promoted in the rank of officiating Head Constable w.e.f. 18.09.2008 and confirmed as Head Constable w.e.f. 31.01.2011 and further promoted to the rank of officiating Assistant Sub Inspector w.e.f. 24.04.2017, but should have been promoted from the date when his junior i.e. respondent No.5/Rakesh Kumar, was promoted. It was further alleged that the petitioner had been performing his duties to the satisfaction of his superiors

CWP-3855-2019 (O&M)

throughout and deputed for lower school course in batch No.45 from District Police Panchkula and secured merit at Sr. No.254/511. Services of the petitioner were governed by Punjab Police Rules 1934 as applicable to Haryana Police. Rule 13.7 of the 1934 Rules pertained to admission of Constables to lower school course through List B-1 for their further promotion as Head Constable.

It was argued by learned counsel for the petitioner that the petitioner is senior to respondent No.5 as Constable, but he could not appear in B-1 test held in 2002-03 as no intimation was given by the authorities to his district, resulting into, loss of one year of seniority. The petitioner came to know about the fact that respondent No.5 was deputed for lower school course prior to the petitioner i.e. in 2002-03 and was promoted as Head Constable w.e.f. 20.07.2004 and ASI on 12.11.2012 and SI on 19.04.2018, despite the fact that he was junior. Respondent No.4 recommended the case of the petitioner to respondent No.3 for grant of his due seniority, but no action has been taken so far. In this regard, a representation (Annexure P-1), was also submitted, but the same fell into deaf ears.

Mr. Hitesh Pandit, Addl. A.G., Haryana, representing the respondent Nos.1 to 4/State supported the impugned order and stated that B-1 Test was conducted in the year 2002-03 i.e. on 20.01.2002, but despite wide publicity for conducting the same, the petitioner did not avail the aforementioned opportunity. However, he had appeared for B-1 Test for the year 2003-04 in Batch No.45 and secured merit as 254/511, whereas respondent No.5 was selected in B-1 Test in the year 2002-03, therefore, was rightly promoted. In such circumstances, justification in denying promotion of the petitioner from junior/respondent No.5 is most appropriate

CWP-3855-2019 (O&M)

and legal in law, thus, urges this Court for dismissal of the present writ petition.

I have heard learned counsel for parties, appraised paper book and of view that there is no force and merit in the submissions of Mr. Ravi Sharma for the simple reason that passing of B-1 Test in 2003-04 is not being denied by the petitioner. He had missed B-1 Test in the year 2002-03, thus, the respondents/authorities cannot be blamed for not granting promotion similar to respondent No.5 stated to be junior as Constable. Condition of passing of B-1 Test is *sine qua non*.

Keeping in view the above, the present writ petition is devoid of merit and the same is hereby dismissed.

04.07.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**