

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

**CWP No.12221 of 2016
Date of decision: 22.05.2019**

Pawan Kumar, ASI

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Harkesh Manuja, Advocate,
for the petitioner.

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

Ritu Bahri, J.

Petitioner is seeking quashing of the orders dated 28.05.2015 & 15.01.2016 (Annexures P-6 & P-8), whereby his claim for grant of ante-dated promotion and seniority in the rank of ASI has been declined.

Facts not in dispute between the parties are that the petitioner joined as Constable in 3rd Battalion, HAP, Hisar on 15.07.1989. In the year 2000, petitioner along with Constable Sushil Kumar, No.1061/PPP, caught a dreaded criminal namely, Vinod Kumar son of Shahi Ram Gujjar, resident of village Garhi Ram Kaur, Police Station, Kandla, District Muzaffar Nagar. The said criminal was involved in many cases of robbery and dacoity. He was also wanted in case bearing FIR No.08 dated 07.01.1999, under Sections 224/225 IPC, Police Station, Sarar, Thanesar, District Kurukshetra. In this regard, FIR No.374 dated 02.08.2000, under Sections 25/54/59 of Arms Act was also registered against criminal Vinod Kumar at Police Station City, Panipat (Annexure P-1). A cash reward of Rs.10,000/- was

also declared for the information/arrest of the said Vinod Kumar by the office of Director General of Police, Haryana vide letter dated 27.05.1999. Aforesaid Sushil Kumar, Constable, who was accompanying the petitioner at the time when they nabbed Vinod Kumar, had joined Haryana Police as Constable in the year 2005. Under Rule 13.7 (9) of Punjab Police Rules, as applicable to the State of Haryana, 10% seats are filled up on the basis of State Level Comparative merits of candidates, sponsored by the units on account of their exceptional display of bravery during the course of performance of official duty and on the basis of consistent outstanding performance in jobs/games on the recommendations of the State Level Departmental Promotion Committee. As per these rules, name of Sushil Kumar was recommended by the Departmental Promotion Committee (DPC) including respondent Nos.3 and 4, for B-1 course under 10% quota vide letters dated 15.02.2007 (Annexures P-2 & P-3). Consequently, Sushil Kumar was sent for B-1 course, which he passed successfully in the month of October, 2007. Thereafter, he was promoted as Head Constable w.e.f. 26.10.2008. Petitioner was sent for B-1 course as per his seniority in the cadre of Constable, in the year 2008 and was promoted as Head Constable on 15.07.2009. Petitioner belongs to SC category. Petitioner was sent for intermediate course, which he passed on 11.12.2012. Accordingly, he was promoted to the post of ASI in the year 2012. With regard to his grievance, petitioner moved an application dated 20.12.2014 (Annexure P-4) before respondent No.3-Inspector General of Police, Rohtak Range, Rohtak. Para-wise comments on the representation submitted by the petitioner, were also sent by the office of respondent No.4 to the office of respondent No.3 vide letter dated 17.01.2015 (Annexure P-5). Vide order dated 28.05.2015

(Annexure P-6), claim of the petitioner was rejected on the ground that the same was highly belated. Against the said order, petitioner filed an appeal (Annexure P-7) before the Director General of Haryana-respondent No.2, which was declined vide order dated 15.01.2016 (Annexure P-8).

Petitioner is seeking quashing of the impugned orders dated 28.05.2015 & 15.01.2016 (Annexures P-6 & P-8) on the ground that he was senior to Sushil Kumar having been appointed as Constable on 15.07.1989. Said Sushil Kumar had been appointed as Constable in the year 2005. While extending the benefit of 10% quota reserved for the persons performing acts of exceptional bravery while in service, Sushil Kumar, who was junior to the petitioner, was sent for B-1 course, which he successfully passed in the term ending October, 2007. Thereafter, he was promoted as Head Constable w.e.f. 26.10.2008. Petitioner was sent for B-1 course as per his seniority in the year 2008 and was promoted as Head Constable on 15.07.2009. As per petitioner, respondents had to extend this benefit to him (petitioner) at par with Sushil Kumar.

Learned counsel for the petitioner has argued that claim of the petitioner could not be rejected on the ground of delay of 14 years without considering the fact that petitioner was senior to Sushil Kumar being appointed as Constable in the year 1989, whereby Sushil Kumar was appointed in the year 2005. Petitioner came to know that the benefit of 10% quota had been extended to Sushil Kumar, in the year 2014 and before 2014, he had no occasion to make a representation to the department for claiming the said benefit at par with Sushil Kumar. Hence, the ground of delay cannot be made basis for rejecting his claim.

On the other hand, learned counsel for the respondents has argued

that HC Sushil Kumar had made a representation seeking the benefit of 10% special quota in the year 2007 and this benefit was granted to him. Since the petitioner did not file any representation, his name could not be considered in the year 2014. Hence, vide orders dated 28.05.2015 & 15.01.2016 (Annexures R-1 & R-2), his claim has been rightly rejected on the ground of delay.

Heard, counsel for the parties.

This issue has been considered by Hon'ble the Supreme Court in **State of Uttar Pradesh & Ors. vs. Arvind Kumar Srivastava & Ors.**, 2015 (1) RSJ 704. In that case, a civil suit was filed in the year 1987 challenging cancellation of the appointments. The suit was dismissed for non-prosecution. Some of the petitioners approached the Tribunal and others kept quiet. The Tribunal accepted the claim of the petitioners vide judgment dated 16.08.1991. Against the said judgment, State filed the writ petition in the High Court, which was dismissed on 27.08.1992. Thereafter, SLP, filed by the State, was also dismissed on 12.08.1994. Finally, the persons who had approached the Tribunal, got the appointments. The other set of plaintiffs, who did not challenge the order of dismissal of the suit, filed a petition in the year 1995 seeking the benefit at par with those candidates, who had been appointed after dismissal of the SLP on 12.08.1994. However, their petition was rejected vide order dated 06.06.1995 passed by the Chief Medical Officer. Against the rejection order, they approached the Tribunal and the Tribunal had allowed their claim on the ground that other successful candidates were given the relief and the appellants were also entitled for the same. Thereafter, the High Court affirmed the order passed by the Tribunal. Against the said order, State of Uttar Pradesh filed SLP

before Hon'ble the Supreme Court, which was allowed on the ground that the claim petition had been filed after the delay of 09 years and there was a gap of almost 27 years when the similarly situated employees had been appointed. At this stage, they had no right to be appointed.

Even though, the above said judgment has laid down that similarly situated persons, after a gap of 09 years, had no right to claim the same benefit once their suit had been dismissed for non prosecution, but the ratio of this judgment cannot be applied in the present case. As per Rule 13.7 (9) of the Punjab Police Rules, if police officials have displayed bravery in the job, it is the duty of the department to send their recommendation through concerned Inspector General of Police/Deputy Inspector General of Police to the Central Departmental Promotion Committee under the 10% seats reserved for promotion for those candidates. The respondents are not disputing the fact that the petitioner and Sushil Kumar had displayed exceptional bravery in arresting a dreaded criminal namely, Vinod Kumar in the year 2000. Rule 13.7 (9) of the Punjab Police Rules does not provide that a candidate, who has displayed act of bravery, should make a representation for claiming the above said benefit. 10% quota has been carved out to encourage and motivate the other police officials to do their work with good modification. It is the department, who has to send this recommendation to the Central Departmental Promotion Committee. In the case of the petitioner, his recommendation was not sent by the respondent-department. At the same time, on a representation made by Sushil Kumar in the year 2007, he was sent to B-1 course under the above said rules. The petitioner being senior to Sushil Kumar by almost 16 years, was given regular promotion to the post

of Head Constable in the year 2009. It was in the year 2014, the petitioner came to know that Sushil Kumar had been promoted as Head Constable by the department. The benefit of 10% quota could not be denied to the petitioner on the ground that he did not make a representation in the year 2003-2004. Moreover, the petitioner has taken a plea that he came to know about the benefit given to Sushil Kumar, in the year 2014 and immediately thereafter, he made a representation dated 20.12.2014 (Annexure P-4). Therefore, the ground of delay is liable to be rejected, as the petitioner made a representation on 20.12.2014 (Annexure P-4) when he came to know about the benefit given to Sushil Kumar. On this ground alone, the present petition deserves to be allowed.

Furthermore, as per Rule 13.7 (9) of the Punjab Police Rules, it was the duty of respondent-department to recommend the case of the petitioner for B-1 course under 10% quota as he had displayed an act of bravery, which the respondents have failed to do. On the other hand, Sushil Kumar, who was junior to the petitioner, had made a representation and got this benefit in the year 2007. This fact was not in the knowledge of the petitioner. It was the duty of the department to extend the above said benefit to both the petitioner and Sushil Kumar. Hence, the petitioner cannot be denied the benefit on the ground that he did not make any representation in time. Moreover, the act of bravery of petitioner by arresting a dreaded criminal in the year 2000 is admitted by the respondents.

Resultantly, the impugned orders dated 28.05.2015 & 15.01.2016 (Annexures P-6 & P-8) are set aside and the respondents are directed to consider the case of petitioner for B-1 course at par with Sushil Kumar keeping in view the fact that he (petitioner) was appointed as constable on

15.07.1989 and grant him all the consequential benefits. The arrears, if calculated, shall be restricted to 38 months prior to the date of filing of this petition.

Allowed accordingly.

22.05.2019
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No