

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

**CWP-2127-2015 (O&M)
Date of decision : 02.05.2019**

Kishan Bahadur

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Kamaldip Singh Sidhu, Advocate,
for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

JITENDRA CHAUHAN, J.

Prayer in the instant petition is for quashing of impugned order dated 31.03.2014 (Annexure P-9), whereby, the claim of the petitioner for enlistment as Constable as a special case, was rejected, with a further direction to allot constabulary number to the petitioner on account of his outstanding service record.

It is contended that the petitioner was recruited as Home Guard Volunteer on 16.03.1988, with the Punjab Home Guard Department. Thereafter, he was transferred to District Patiala with the Punjab Police Department. The petitioner had been performing his duties with utmost honesty and sincerity and his work was appreciated by awarding him with a number of commendation certificates of Class I, II and III, with cash awards (Annexure P-1 colly.). Further states that while being posted at P.S. Sadar

Rajpura, and P.S. Civil Lines, Patiala, the petitioner was instrumental in registration of a number of criminal cases against hard-core criminals/terrorists. The petitioner also played vital part in solving a case of kidnapping of a two-year old child, namely, Yograj, from Patiala, who was recovered from Uttar Pradesh.

It is submitted that considering the commendable job done by the petitioner, respondent No.3-Senior Superintendent of Police, Patiala, recommended his case for allotting constabulary number as special case vide memo dated 19.02.2010 to respondent No.2, which was further marked by respondent No.2 to the ADGP, Administration with the remarks 'Process and Put Up', on 05.04.2010, but no further action was taken. Thereafter also, the case of the petitioner was recommended for allotment of constabulary number at least three times. However, no action has been taken so far. The petitioner then submitted representation dated 02.11.2012 (Annexure P-8), praying for allotment of constabulary number. Ultimately, respondent No.2 passed impugned order dated 31.03.2014 (Annexure P-9), which is totally non-speaking, rejecting the claim of the petitioner without appreciating the excellent service record and without affording any opportunity of hearing to him.

The grouse of the petitioner is that similarly situated persons, namely, PHG Avtar Singh and PHG Jaswant Singh, have been allotted constabulary numbers on the basis of their extraordinary work like the petitioner, whereas, the case of the petitioner has been rejected on flimsy grounds. It is submitted that Rule 13.21 of the Punjab Police Rules, 1934, empowers the Director General of Police, Punjab, to relax any of the

provisions with respect to any class or category of persons.

On the other hand, learned State counsel submits that in a similar case, PHG Harbans Singh preferred CWP-15943-2013, seeking appointment as a Constable on the basis of his good work done in various FIRs. The writ petition was dismissed by this Court vide judgment dated 25.07.2013. Thereafter, he filed LPA No.1655 of 2013, which was disposed of on 25.11.2013 (Annexure R-1), with the directions to the respondents to lay down parameters/guidelines for absorption of Home Guards as Constables and then to consider the claim of appellant therein. Pursuant thereto, respondent No.2 issued parameters/guidelines vide letter dated 22.05.2014 (Annexure R-2), for absorption of Home Guards as Constables. However, the petitioner in the instant petition is not eligible/entitled for the post of Constable as he does not fulfil the educational criteria being Middle Standard pass without Punjabi language. It is further submitted that the cases of PHG Jaswant Singh and PHG Avtar Singh, who have been allotted constabulary numbers, are on different footing. PHG Avtar Singh received three bullet injuries in an encounter, whereas, PHG Jaswant Singh arrested four criminals risking his life. Performance of PHG Avtar Singh and PHG Jaswant Singh was comparatively at a much higher platform as compared to the petitioner. It is also submitted that both the above referred employees were appointed before issuance of parameters/guidelines dated 22.05.2014 (Annexure R-2). However, the case of the petitioner, when considered in the light of Annexure R-2, is not covered. Rule 13.21 of the Punjab Police Rules, 1934, is not applicable to the case of the petitioner, because recruitment as Constable from the post of PHG is a fresh recruitment and

not a promotion.

Heard.

The good performance of the petitioner as claimed by him in eight different FIRs has not been denied by the respondents. The acts of bravery or other factors of the petitioner were approved and forwarded by Senior Superintendent of Police, Patiala to Director General of Police, Punjab, vide letter dated 19.02.2010 (Annexure P-4), with the recommendation to grant him necessary exemption in qualification in upper age. Another letter of recommendation is dated 02.07.2010 (Annexure P-5) followed by letter dated 19.07.2010 (Annexure P-6). Another emphatic recommendation dated 13.12.2011 (Annexure P-7) was sent by the competent authority with the remarks that the police party headed by SI Bikram Singh, was awarded with Gallantry Police Medal along with HC Sher Singh and HC Balwant Singh in FIR No.180 dated 29.06.2010 registered under Sections 307, 353, 332, 186, 411, 412 and 148 read with Section 149 IPC and Section 25 of the Arms Act, at P.S. Samrala, District Khanna. The petitioner was also a member of the police team but he was left out. It cannot be lost sight of that the petitioner has played active role in a number of cases honestly, bravely and while terrorism was at its peak in Punjab State. The recommendations for enrollment of the petitioner as Constable were made by the competent authority much prior to the issuance of the guidelines (Annexure R-2). The delay occasioned in acknowledging the commendable works of the petitioner by the authorities cannot be used as a tool to deny the benefit as claimed by him.

The only ground taken by the respondents to deny the benefit of

appointment as Constable to the petitioner is that he is not Punjabi pass upto Middle Standard, whereas, PHG Avtar Singh was reportedly 7th Standard pass and did not qualify the eligibility conditions as laid down for the post of Constable. The case of the petitioner is on a better footing than that of PHG Avtar Singh. The respondents have tried to distinguish the case of the petitioner from that of PHG Avtar Singh, No.30096 and PHG Jaswant Singh, 29922, on the premise that both these PHGs were appointed as Constables before the issuance of paramaters/guidelines vide letter dated 22.05.2014 (Annexure R-2). A close scrutiny of the guidelines (Annexure R-2), shows that the same were held to be applied prospectively and not with retrospective effect. It is to be noticed that the case of the petitioner for grant of constabulary number was recommended by the competent authority four times much prior to the issuance of guidelines (Annexure R-2), which are concededly to be applied prospectively and the case of the petitioners deserves to be dealt with at par with PHG Avtar Singh and PHG Jaswant Singh, who also were given the benefit prior to the issuance of the guidelines (Annexure R-2).

The service career of the petitioner is unblemished, blotless and stigma-free. He is a disciplined, faithful and obedient soldier with a high degree of devotion to duty which is evident from the perusal of eight different FIRs. In these cases, many criminals were arrested; weapons, vehicles and heavy quantify of poppy husk was recovered from hardcore criminals. Not only this, one person and an infant were rescued from the clutches of the accused during the operation of police party in which the petitioner admittedly played an active role.

As regards FIR No.180 (*ibid*), the Court feels that role of members of a police party cannot be distinguished in an arbitrary manner as all are equally important and it is the team work which is to be given credit. In an operation, the position of a member of the police party who stands guard is no less than another member who carries out the task of gunning down the desperado because they also serve who only stand and wait. The act of acknowledging the good work of a few while ignoring the works of the other members of a police party is discriminatory and violative of Article 14 of the Constitution of India.

In this backdrop, the Court feels that there is no reason as to why the claim of the petitioner should not be considered for enrollment as a Constable.

Consequently, the instant petition is allowed: impugned order dated 31.03.2014 (Annexure P-9) is quashed; and the respondents are directed to allot constabulary number to the petitioner on the basis of his extraordinary and outstanding service record. The necessary exercise be completed within a period of six weeks from the date of receipt of a certified copy of this judgment.

Allowed.

02.05.2019
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(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned : Yes No

Whether Reportable : Yes No