

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

**CWP No.23221 of 2016
Date of decision: 01.05.2019**

Kulwinder Singh

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Dr. Suresh Kumar Redhu, Advocate,
for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

Ritu Bahri, J.

Petitioner is seeking quashing of the action of respondents for not allowing him to appear in B-1 test during 2009 to 2014 under 55% quota meant for competitive test on the basis of pendency of departmental enquiry and criminal case against him.

Petitioner was recruited as Constable in Police Department on 25.11.2003. His date of birth is 08.10.1982. A departmental enquiry was initiated against the petitioner by the Deputy Commissioner of Police, vide order dated 31.05.2008 due to registration of FIR No.65 dated 30.12.2007, under Sections 7, 8, 9, 13, 15 of Prevention of Corruption Act and Sections 365, 392, 201 and 120-B IPC against him at Police Station, SVB, Gurgaon. Thereafter, a charge-sheet dated 22.07.2009 was issued to the petitioner, to which, he gave a detailed reply dated 06.12.2009 (Annexure P-1). Vide enquiry report dated 03.10.2009 (Annexure P-2), petitioner was held guilty. Thereafter, a show cause notice dated 18.05.2010 (Annexure P-3) was

issued by the Deputy Commissioner of Police, Headquarter, Gurgaon,

proposing to inflict punishment of dismissal from service. Petitioner submitted a detailed reply dated 02.06.2010 taking a plea that he has been falsely implicated in criminal case and has not indulged in any case of extortion of money from Chetan Kaushik. It has been further pleaded that he had monetary dealings with the complainant of criminal case and when he demanded his money back from him, he took the recourse of entangling the petitioner in a false case. Punishing authority, vide order dated 16.07.2010 (Annexure P-4) imposed punishment of stoppage of five future annual increments with permanent effect. Against the said order, petitioner filed an appeal (Annexure P-5) before the Commissioner of Police, Gurgaon. In the meantime, petitioner was acquitted in the aforesaid criminal case vide judgment dated 06.10.2014 (Annexure P-6). Thereafter, Deputy Commissioner of Police, Headquarter, Gurgaon, issued a show cause notice dated 01.09.2015 to the petitioner for deciding his suspension period, to which, he filed his reply (Annexure P-7). Vide order dated 11.08.2016 (Annexure P-8), Commissioner of Police, Gurgaon set aside the punishment awarded by the Deputy Commissioner of Police, Gurgaon vide order dated 16.07.2010 and exonerated the petitioner. He also granted entire benefits to the petitioner keeping in view the judgment of acquittal dated 06.10.2014 (Annexure P-6).

As per policy dated 28.06.2001 (Annexure P-9), 55% seats are reserved for B-1 on the basis of test, 35% seats are reserved to seniority-cum-fitness and 10% for sports quota and outstanding performance. The petitioner was not allowed to appear in B-1 test during the period 2009 to 2014 firstly on the ground that he was facing departmental enquiry and criminal case and secondly, because he had been awarded punishment of

stoppage of five future annual increments with permanent effect by the Deputy Commissioner of Police, Gurgaon vide order dated 16.07.2010.

Learned counsel for the petitioner has argued that Rule 13.7 (10) of Punjab Police Rules has been amended vide notification dated 28.06.2001 and marks can be deducted for every major/minor punishment while calculating marks for both categories of competitive examination. He further argued that petitioner could not be deprived to appear in B-1 examination on the ground of currency of punishment. Subsequently, the petitioner was allowed to appear in B-1 examination under 55% quota. He was declared qualified in the online test held on 13.12.2015 (Annexure P-10) and in the parade test held on 14/15.12.2015 (Annexure P-11). He also appeared for interview before the Departmental Promotion Committee. Learned counsel for the petitioner has referred to the judgment passed by this Court in **Satish Kumar vs. State of Haryana and another**, CWP No.19519 of 2014, decided on 28.01.2016 (Annexure P-12), whereby a constable was allowed to appear in B-1 test, but was not sent for Lower School Course on the ground that he was undergoing currency of punishment. The said petition was allowed and was implemented by the Department of Police vide order dated 29.08.2016 (Annexure P-13) by allotting one additional seat for the petitioner (therein) for B-1 course for the year 2008 under 55% quota. Petitioner is praying that the above said benefit be granted to him as well for the year 2009.

Short question for consideration in this petition is that as per policy dated 28.06.2001 (Annexure P-9), whether the petitioner can be granted benefit under 55% seats, which are to be filled on the basis of competitive examination.

Stand taken by the respondents, in their written statement, is that as per record, petitioner did not appear in B-1 online test under 55% quota during the years 2009 to 2014. In the year 2011, the petitioner submitted his unwillingness for appear in B-1 test. He appeared in online B-1 test under 55% quota in the year 2015 and qualified the same with 59.25 marks, which are detailed as under:-

Character Roll/Service Book marks	Online test marks	Parade & Race marks	Interview marks	Total Marks
12	32.25	10	5	59.25

However, total 92 seats were allotted to Commissionerate Gurugram for B-1 under 55% quota for the year 2015 and 96 constables qualified the B-1 test. Name of the petitioner figured at Sr. No.94 as per merit list (Annexure R-2). Hence, he could not be sent to lower school course.

A perusal of Annexure R-1 shows that the petitioner had given in writing that he was not willing to appear in B-1 test for the year 2011. He cannot get benefit once he himself had given his unwillingness to appear in the examination under 55% quota. His case, at best, can be considered with effect from the date when he qualified B-1 test in the year 2015 and secured 59.25 marks. As per notification dated 28.06.2001 (Annexure P-9), marks of every major/minor punishment has to be deducted from the competitive examination as under:-

“10. Marks at the following rate shall be reduced for every major/minor punishment while calculating marks for both categories of competitive examination and seniority:-

For every major punishment	:	5 marks
For every minor punishment	:	2 marks
For every censure	:	1 mark.

After reducing the marks, if petitioner still comes within the zone

of consideration, he could have been sent for B-1 test. As per written statement, only 92 seats were allotted in the year 2015 and petitioner's seniority was at Sr. No.94 as per merit list (Annexure R-2). Although the petitioner has secured 59.25 marks, yet no seat was available to be given to him and after deducting the marks as per notification dated 28.06.2001 (Annexure P-9), he would go lower in merit and not higher.

In the present case, petitioner cannot get benefit of the judgment passed by this Court in Satish Kumar's case (supra) (Annexure P-12). In that case, petitioner had appeared for on-line B-1 test for the year 2009 under 55% quota and secured 27.5 marks out of 60. While allowing the said petition, a direction was given by this Court that after deducting marks as per notification dated 28.06.2001, his case be considered afresh. Thereafter, the Department of Police vide order dated 29.08.2016 (Annexure P-13), created one additional seat under 55% quota and deputed Satish Kumar (petitioner therein) in the forthcoming batch of Lower School Course at HPA, Madhuban.

However, in the present case, seniority of the petitioner in the year 2015 was at Sr. No.94 and before 2015, he had never appeared for B-1 test under 55% quota. Hence, the petitioner had a right to be considered for sending him to Lower School Course in the year 2016. Moreover, vide order dated 11.08.2016 (Annexure P-8), he has now been exonerated and punishment order has been set aside. Further, keeping in view the judgment of acquittal dated 06.10.2014 (Annexure P-6), no deduction can be made from his marks. He can be considered for sending to Lower School Course without deduction of marks.

Keeping in view that the punishment order has already been set

aside vide order dated 11.08.2016 (Annexure P-8), present petition is disposed of by giving direction to the respondents to consider the case of petitioner in B-1 Lower School Course (2016 batch). This exercise be completed within a period of four weeks from the date of receipt of certified copy of this order.

01.05.2019
ajp

(RITU BAHRI)
JUDGE

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