

HONOURABLE SRI JUSTICE N.V.SHRAVAN KUMAR

WRIT PETITION Nos. 11446 and 13187 of 2022

COMMON ORDER:

Since the issue involved in both the writ petitions is one and the same, they are heard together and being disposed of by this common order.

2) Heard learned counsel appearing for the petitioners and Sri M.V.Rama Rao, Special Government Pleader, appearing for the respondents and perused the record.

3) The present writ petitions are filed seeking issuance of writ of mandamus to declare the action of the respondents in not considering the claim of the petitioners for reversion from the rank of Head Constables to Police Constables as illegal, arbitrary and unconstitutional, and consequently to direct the respondents to consider the claim of the petitioners for reversion from the category of Head Constables to Police Constables and convert them as AR Constables pursuant to the Memo Rc.No.15/Rect/Admn.2/2022, dated 11.02.2022 for the panel years 01.07.2018 to 30.06.2019 (2019) and 01.07.2020 to 30.06.2021 (2021) along with others as per their eligibility and

seniority in terms of the law declared by this Court in W.P.Nos.37146 and 39280 of 2013.

4) The facts, in brief are that in order to uplift the Tribals especially those who are natives of Scheduled Areas, the then Government of Andhra Pradesh decided to facilitate recruitment of tribals into police force to fill up posts exclusively from specified tribal areas, thereby permission was accorded for raising Special Police Battalion by recruitment of tribal youth from scheduled areas by creating 1206 posts in various categories. Accordingly to that extent, the Government issued G.O.Ms.No.226 Finance (SMPC) Department, dated 14.09.2005, for raising and formation of Special/Scheduled Police Battalion. It is further submitted that the petitioners were selected and appointed as Police Constables (TSSP) through direct recruitment conducted for 15th Battalion in different spells during the year 2007 and posted to 15th Battalion, TSSP, Sathupalli, Khammam District. Thereafter, the petitioners were discharging their duties to the satisfaction of the higher authorities. The petitioners further submitted that as per the Telangana State Police Subordinate Service Rules, category 7

(b), which states that the police constables of Telangana State Special Police, who have completed 10 years of service, are eligible for appointment as Police Constable in District Armed Reserve. In view of the above, the petitioners are eligible for promotion in their parent department or conversion into AR constables after completion of ten years of service in 40% quota. It is further submitted that from the beginning the petitioners were requesting the authorities to consider their claim for conversion into AR Constables on completion of ten years of service as Police Constables. The request of the petitioners for conversion into Armed Reserve (AR) was not considered on the ground that the 15th Battalion was formulated only for tribal youth by relaxing certain conditions. Though the petitioners are interested for conversion into Armed Reserve Constables, the authorities denied the opportunity for conversion into AR stating that 15th Battalion is raised and formulated only for ST Candidates and they were forced to accept promotion as Head Constables. Thereafter, as per their seniority and eligibility, the petitioners were promoted to the post of Head Constable under Rule 10 of the Telangana State and Subordinate Service Rules, 1996 and placed under probation *vide* order in

Rc.No.51/A1-Estt/2019 (D.O.No. 145/2019) dated 23.02.2019.

It is further submitted that the promotion orders are purely on temporary basis without conferring any probationary rights and they are liable to be reverted to his/their substantive rank at any time without any notice and without assigning any reason thereof.

5) It is further submitted that since formation of the 15th Battalion, the authorities considered the Police Constables working in 15th Battalion for conversion into Armed Reserve, some of the police constables of 15th Battalion approached this Court by filing W.P.No.24794 of 2019 seeking a direction for conversion on par with other Battalion Police Constables. By an order, dated 14.11.2019, this Court disposed of the said writ petition directing the respondents therein to consider the claim of the police constables working in 15th Battalion also for conversion into Armed Reserve. It is further submitted that while implementing the above orders of this Court, for the first time the respondent authorities have given an opportunity to the police constables, who are working in 15th Battalion, for conversion into Armed Reserve Constables, along with other

Battalions and called for submission of options thereof. Accordingly, respondent No.3 issued orders, wherein 730 Police Constables working in various Battalions including 15th Battalion, were selected for appointment by transfer to the post of Police Constable (AR) (Men) and Police Constable (SARCPL) (Men) against the vacancies earmarked under 40% quota for the panel year 01.07.2016 to 30.06.2017 and 01.07.2017 (2017) to 30.06.2018 (2018) *vide* Memo in Rc.No.A2/1496/2020, dated 17.12.2020. It is submitted by the petitioners that as on the date of issuing above proceedings, the petitioners have completed 10 years required service for conversion in Armed Reserve. Likewise, respondent No.3 issued another proceedings for conversion of (121) Police Constables by appointment by transfer to the post of Police Constable AR (Men) against 40% quota for the panel year 01.07.2016 to 30.06.2017 (2017) and 01.07.2017 to 30.06.2018 (2018) *vide* order in Rc.No.1572/A1-Estt/2019-2020 (D.O.No.899/2020), dated 21.12.2020. Thereafter, the authorities have once again called for options for appointment by transfer of Police Constables from TSSP to AR/SAR CPL for the panel year 01.07.2018 to 30.06.2020 (2020) and 01.07.2020 to 30.06.2021 (2021) seeking willingness of the

constables working in various battalions *vide* Memo Rc.No.15/Rect/ Admn.2/2022, dated 11.02.2022.

6) The grievance of the petitioners is that though they are eligible and interested for conversion into Armed Reserve their claim was denied only on the ground that the 15th Battalion was formulated for only Scheduled Tribe candidates and cannot be treated on par with other Battalions. The above said action of the respondents in not considering the claim of the petitioners for conversion into Armed Reserve, the petitioners lost their opportunity of conversion into District Armed Reserve as per their entitlement under 40% quota along with others.

7) It is further submitted that though the petitioners are eligible for conversion as Armed Reserve Police Constable at relevant point of time, their claim was denied stating that there is no channel/provision for conversion of police constables as Armed Reserve Police Constable, because they were appointed as Police Constables in Special Scheduled Police Battalion i.e., 15th Battalion. It is further submitted that now the respondent authorities for the first time called for options for conversion of Police Constables to Armed Reserve Police Constables, by that

time the petitioners missed the opportunity only because they are holding post of Head Constable Cadre. Due to the said action of the respondent authorities, the petitioners would never get a chance again for conversion into Armed Reserved (ARPC) till the end of their services. It is further submitted that infact the rule making authority provided provision for conversion of Special Police Battalion Constable into District Armed Reserved by considering their nature of duties to enable them to spend with their families into the District Armed Reserve Force. In view of these compelling and unavoidable circumstances and having no option, the petitioners accepted promotion as Head Constables at the relevant point of time. Subsequently, the petitioners gave a representation to respondent No.4 by ventilating their grievance to consider their claim for reversion as Police Constable from the category of Head Constable. The petitioners further submitted that if the authorities reverted them as Police Constables they are entitled to be converted as Armed Reserve Police Constables in 40% quota basing on the seniority and eligibility as per their turn. Though they are eligible for reversion as per their request, the same was not considered by respondent No.3 without there

being any reason. The petitioners further submits that some of their colleagues have approached this Court by filing W.P.No.4345 of 2021 for inter Battalion transfer in the cadre of Head Constables. By an order, dated 26.08.2021, this Court disposed of the said writ petition, directing the respondents to consider the request of the petitioners therein in the vacancies available, in terms of Memo Rc.No.A2/912-Vol-II/2020-21, dated 15.02.2021 for the post of Head Constable. Aggrieved by the said order, the respondents filed Writ Appeal No.649 of 2021. *Vide* judgment, dated 15.12.2021, this Court disposed of the Writ Appeal with the following direction:-

“In the considered opinion of this Court, as a direction has been issued to consider the request in vacancies available in terms of the Memorandum dated 15.02.2021 in the above Writ Petition, no case for interference is made out in the matter and the State is at liberty to consider the request of petitioner in accordance with law.”

8) It is further submitted that subsequently, respondent No.4 issued Memorandum rejecting their claim for inter battalion transfer in the cadre of Head Constables *vide* Memo Rc.No.467/A2/2021, dated 12.01.2021, which reads as under:-

“In this process, the Police Constables working in 15th Battalion TSSP are not considered for the reason that the recruitment process is completely different for 15th Battalion TSSP and that certain privileges are permitted to them as mentioned in the above chart. All the Police Constables of 15th Battalions belong to one category i.e., Scheduled Tribe and if their requests for transfer are considered to other battalions, it will have adverse effect on the existing Police Constables, head Constables in that battalion due to implementation of rule of reservation in the promotions. If they are considered, the seniority of existing police constables and head constables of those battalions belonging to S.T. category are likely to be disturbed while ordering promotions to higher posts. In view of the above, the cases of police constables of 15th battalion for inter battalion transfer are not being considered.”

9) It is further submitted that the rejection orders passed by respondent No.3 is highly illegal, arbitrary and unconstitutional and liable to be set aside. The reasoning given by the authorities in the above Memo is not correct and as per State and Subordinate Services Rules for direct recruitment also out of (100) posts (6) posts reserved for Scheduled Tribes. However, the respondent authorities considered the claim of some of the head constables and A.S.Is., who are working in 15th battalion, for inter battalion transfers as per their whims and fancies. It is further submitted that when the respondents have rejected the

claim for reversion as Armed Reserve Constables, some of the head constables approached the Hon'ble Tribunal by filing O.A.Nos.5900 of 2012 and 6138 of 2012 and *vide* judgment, dated 10.04.2013, the Tribunal allowed the said O.As. by setting aside the impugned rejection orders issued by the respondents with a direction to consider the claim of the applicants therein for reversion as police constables and conversion as Armed Reserve Constables. Aggrieved by the said judgment, the respondents therein filed W.P.Nos.37146 and 39280 of 2013. *Vide* judgment, dated 24.03.2014, this Court dismissed the writ petitions, with a direction to consider the claim of the applicants therein, if they fit into 40% quota after their reversion. Thereafter, by implementing the judgment of this Court, the respondents issued orders in C.No.1057/A3/2014 (D.O.No.832/2014) dated 25.08.2014, reverting the applicants therein as constables. The petitioners finally submits that in view of the various domestic problems and health issues, the petitioners made representations to consider their claim for reversion as Police Constables to enable them to spend their time with their families into the District Armed Reserve Force and since the respondent authorities are even not receiving

their representations on the ground that the Head Office directed the subordinate officers not to entertain the request for reversion and in view of the directions given by this Court in W.P.Nos.37146 and 39280 of 2013 and the orders, dated 24.03.2014, issued in favour of the similarly situated persons *vide* Rc.No.A1/16/PPT/ 2018-20 (D.O.No.266/2020) dated 18.02.2020, the petitioners are entitled for reversion from the category of head constable to police constable and conversion into Armed Reserve for the panel years 2019-2020, 2020-2021 as per their seniority and eligibility. Hence, this Writ Petition.

10) A counter has been filed by respondent No.4 on behalf of all the respondents. It is stated in the counter that the claim of the petitioners for reversion from the rank of Head Constable to Police Constable is against the Rules, as such, the same was rejected by respondent No.4 *vide* Memo Rc.No.1071/A1/2021, dated 23.09.2021.

11) It is submitted in the counter that the Government issued G.O.Ms.No.226, dated 14.09.2005, according sanction for raising of a Special Police Battalion viz., 15th Battalion TSSP by recruitment of Tribal youth from Scheduled Areas of Andhra

Pradesh by creation of (1206) posts in various categories. Subsequently, special service rules which are distinct in nature when compared to normal special police battalion were framed for 15th battalion called as Andhra Pradesh (Special Police Battalion-Scheduled Area Tribal) Subordinate Service Rules *vide* G.O.Ms.No.101, Home (Legal-II) Department, dated 01.05.2006 and 15th Battalion personnel are governed by the aforesaid Rules. The petitioners were called for pre-promotional training for promotion from the rank of police constable to Head Constable *vide* Memo Rc.No.156/A1-Estt/2018, dated 24.01.2018 and Memo Rc.No.51/A1-Estt/2019, dated 05.01.2019. Subsequently, the petitioners have submitted their willingness for pre-promotional training for promotions to the rank of head constables and accordingly, they were promoted as head constables *vide* D.O.No.410/2018, dated 02.04.2018 and D.O.No.145/2019, dated 23.02.2019 of respondent No.4. Moreover, after completion of one year of service in the rank of head constable, the probation of the petitioners in the rank of head constables was declared *vide* D.O.No.557/2019, dated 18.07.2019, D.O.No.302/2020, dated 06.04.2020 and D.O.No.387/2020, dated 12.05.2020. It is further submitted

that if the petitioners did not want promotion, they should not have opted for pre-promotional training for four weeks, which is given at State expenses with full pay.

12) It is further stated that in terms of the order, dated 14.11.2019 in W.P.No.24794 of 2019, the Government *vide* Memo No.4170/Ser-II/A2/2019, dated 29.08.2010 issued clarification and informed that the police constables of 15th battalion TSSP are eligible for appointment by transfer to Police Constable (AR), if they possess the required educational qualifications and fulfil other conditions required in G.O.Ms.No.329, Home (Legal-II) Department, dated 28.12.2010. It is further submitted that the petitioners did not give any willingness for conversion to Armed Reserve and that they did not refuse the promotion. Subsequently, (121) police constables of 15th battalion, TSSP, who gave willingness and fulfilled the conditions mentioned in the conversion notification, dated 19.10.2019 and the provisions mentioned in G.O.Ms.No.329, were selected for appointment by transfer to the post of police constables Armed Reserve (Men) against 40% quota for the panel year 01.07.2016 to 30.06.2017 (2017) and 01.07.2017 to

30.06.2018 (2018) *vide* D.O.No.899/2020, dated 21.12.2010 of respondent No.4.

13) It is further stated that the petitioners never submitted any application and therefore, there was no denial of their claim. It is further stated that the petitioners, have completed nearly three years of service in the post of head constable and they have made applications for reversion to the post of police constables due to family problems or to apply for Armed Reserve conversion or other reasons. The applications of the above head constables were rejected on administrative grounds *vide* Memo Rc.No.1071/A1/2021, dated 23.09.2021. It is further stated that the petitioners were promoted as head constables in the year 2018 and 2019 and that they have completed three years of service in the rank of head constable and their probations in the said rank are also declared and that there is no provision in the rules for reversion of the petitioners to the lower rank of police constables. It is further submitted that the petitioners have taken all service benefits in the rank of head constables since last three years and now requesting for reversion, which is against the Rules and not acceptable under Rule 28 of Telangana

State and Subordinate Service Rules, 1996. The right to relinquishment of a post is available only at the time of acceptance of promotion but not after their probation is declared and that too after lapse of three years.

14) It is further stated in the counter that the orders passed by this Court in W.P.Nos.37146 and 39280 of 2013 are different in nature and case content is completely different to the present case, as such, the claim of the petitioners that they are eligible for reversion to the rank of police constables in view of the above orders is completely against service rules. It is further submitted that there is a remedy available to the petitioners to approach higher officer i.e., Additional Director General of Police, Telangana State Special Police Battalions or Director General of Police, Telangana State, Hyderabad or even Government of Telangana, but without making any appeals before the said higher officers, the petitioners have approached this Court. Therefore, it is submitted that there are no merits in this case and despite knowing all the facts, the petitioners filed the present writ petitions with baseless averments and prayed to dismiss the writ petitions.

15) After considering the rival submissions, the question that arises for consideration is whether the orders passed in W.P.Nos.37146 and 39280 of 2013 would squarely applies to the case of the petitioners.

16) Admittedly, W.P.Nos.37146 and 39280 of 2013 were filed against the orders passed by the Tribunal in O.A.Nos.5900 of and 9104 of 2012, wherein the Tribunal has directed the respondents therein to relieve the applicants immediately from A.P.S.P. to enable them to join as Police Constables in District Armed Reserve. The Tribunal has categorically observed that probation of the applicants in the category of Head Constables was not declared by the date of filing of the original applications and so the applicants continue to be in the category of head constable as temporary promotes. But in the instant case, the petitioners are the approved probationers in the rank of head constables and they have completed three years of service in the post of head constable.

17) Further, the applicants in O.A.Nos.5900 and 6138 of 2012, have submitted their unwillingness for promotion as head constables within a very short time and before when their

probation was not declared. But in the instant case, the petitioners have submitted their representation seeking reversion to lower post after lapse of three years and after their probation was declared in the rank of head constable. Apart from that the petitioners have submitted their willingness for pre-promotional training for promotions to the rank of head constables and accordingly, they were promoted as head constables. If the petitioners are not willing for promotion, they should not have opted for pre-promotional training of four weeks, which was given at the State expenses with full pay. Further, the petitioners have taken all service benefits in the rank of head constables since last three years and now requesting for reversion, which is against the rules and not acceptable under Rule 28 of Telangana State and Subordinate Service Rules. The petitioners have right to relinquishment of a promotion post at the time of acceptance of promotion but not later stage that too after lapse of three years and moreover, their probation was declared in the promotion post.

18) In the counter, it is specifically stated by the respondents that there is a remedy available to the petitioners to approach

the higher officials i.e., Additional Director General of Police, Telangana State Special Police Battalions or Director General of Police, Telangana State, Hyderabad or even Government of Telangana. The petitioners failed to produce any record to show that they have availed the remedy available to them to ventilate their grievances.

19) Further, it is the contention of the respondents that the petitioners have taken all service benefits in the rank of head constables for a period of three years and now sought for reversion which is against Rule 28 of the Telangana State and Subordinate Service Rules, 1996. Before proceeding further, it would be appropriate to refer to Rule 28 of the Telangana State and Subordinate Service Rules, 1996, which reads as under:-

“28. Relinquishment of rights by members:- Any member of a service may, in writing, relinquish any right or privilege to which he may be entitled to under these rules or the special rules, if, in the opinion of the appointing authority, such relinquishment is not opposed to public interest. Such relinquishment once made will be final and irrevocable. Nothing contained in these rules or the special rules shall be deemed to require the recognition of any right or privilege to the extent to which it has been so relinquished:

Provided that no conditional relinquishment or relinquishment of right for a temporary period shall be permitted.”

20) A careful perusal of Rule-28, extracted above, would reveal the following:

(1) An option is given to any member of a service to relinquish any right or privilege to which he may be entitled to, under the relevant rules (this includes right or privilege of promotion).

(2) Such relinquishment is subject to acceptance of the appointing authority. Who must be satisfied before acting upon such relinquishment that such relinquishment was not opposed to public interest.

(3) Such relinquishment once made will be final and irrevocable.

(4) Once such relinquishment has come into force, the authorities concerned shall not be required to recognise any right or privilege to the extent to which it has been so relinquished. The proviso to this Rule contemplates that conditional relinquishment or relinquishment of a right for a temporary period shall not be permitted.

21) In the instant case, the petitioners have sought reversion to the rank of police constable after taking all service benefits in the rank of head constables for a period of three years. Therefore, Rule 28 of the Telangana State and Subordinate

Service Rules, 1996, is not applicable to the case of the petitioners.

22) Apart from that the petitioners were selected and appointed as police constables through direct recruitment conducted for 15th battalion in the year 2007. 15th Battalion was formulated only for tribal youth by relaxing certain conditions. The record discloses that Special Service Rules were framed for 15th battalion TSSP called as Andhra Pradesh (Special Police Battalion-Scheduled Area Tribunal) Subordinate Service Rules *vide* G.O.Ms.No.101, Home (Legal-II) Department, dated 01.05.2006 and the petitioners are governed by the said Rules. The said special rules are distinct when compared to a normal special police battalion. There is no provision in the rules for reversion of the petitioners to the lower rank of police constables.

23) For the aforesaid reasons and since the probation of the police constables/applicants in W.P.Nos.37146 and 39280 of 2013 have not been declared by the date of filing of the original applications and they have submitted their unwillingness for promotion as head constables within a very short time and

whereas the probation of the petitioners herein have been declared long back i.e., 18.07.2019, 12.05.2020 and 23.09.2021 and they have made representations on 04.09.2021, 05.09.2021 and 06.09.2021 seeking reversion to lower post after lapse of three years of their regularization in the promotion post, which was issued on 02.05.2018, the orders passed by this Court in W.P.Nos.37146 and 39280 of 2013 are not applicable to the present cases as the facts in those writ petitions are different from the facts in the present cases. Further, having given willingness for pre-promotional training and having taken the promotion benefit for a period of three years and now seeking relief for reversion to the lower post is against the rules and the relief sought by the petitioners is unsustainable.

24) Accordingly, both the writ petitions are dismissed. No order as to costs.

Miscellaneous application, if any pending, shall stand closed.

N.V.SHRAVAN KUMAR, J

06.12.2022
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HONOURABLE SRI JUSTICE N.V.SHRAVAN KUMAR

WRIT PETITION Nos. 11446 and 13187 of 2022

Date:06.12.2022

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