

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH.**

CWP No. 15813 of 2013

Reserved on: 28.07.2022

Pronounced on: 14.09.2022

Kamaljit Singh

...Petitioner

versus

State of Punjab and others

...Respondents

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. G.S. Bal, Senior Advocate with
Mr. Dilshad S. Gill, Advocate and
Mr. Gurpal Singh Sandhu, Advocate
for the petitioner.

Mr. Pawan Sharda, Sr. DAG, Punjab.

JAISHREE THAKUR, J.

1. The petitioner seeks a writ in the nature of certiorari to quash and set aside order (Annexure P-7) passed by the Officers Committee and the seniority list of Head Constables of the Armed Battalion qua sports quota, and for issuance of a writ in the nature of mandamus directing the respondents to promote the petitioner as Head Constable w.e.f 5.12.2003 on which date his juniors stand promoted.

2. The brief facts as culled out are that petitioner was appointed as Constable in Punjab Police on 29.04.1998 under sports quota and he joined service on 23.05.1998. He served as a Constable in 27th Battalion, Jalandhar, PAP from 1998 to 2006. On 26.06.2001, he was brought on the List C-II and then, he was promoted as ad hoc Head Constable w.e.f. 03.11.2006 in view of his outstanding sports achievements. In 2010, the official respondents uploaded a seniority list of Head Constables of Armed Battalions on the

Internet. In the said seniority list, the respondent department did not mention the date of joining and the date of grant of list 'C-II' of the persons promoted as Head Constables in sports quota. In the said seniority list, persons who had been appointed two years after the petitioner under sports quota were promoted w.e.f. 05.12.2003 and were made senior to the petitioner. Petitioner sent an application to the official respondents stating all his achievements in sports *vis-a-vis* achievements of other persons, who were promoted over and above him. He also mentioned that six police officials who were junior to him stood promoted. The respondent-department in its reply dated 30.09.2010 stated that the name of the petitioner has already been entered in the List C-II from 26.06.2001 and that the petitioner would be promoted as a regular Head Constable upon his turn. In December 2011, the Director General of Police, Punjab vide his office order dated 21.09.2011 promoted one Jarnail Singh, No.82/148, who joined as Constable in the year 2002 and was granted promotion list C-II in 2003, and various other Constables (sports persons) to the rank of officiating Head Constables.

3. Aggrieved against the action of juniors being promoted ahead of him, the petitioner filed *CWP-1519-2012 titled as Kamaljit Singh vs. State of Punjab*, which was disposed of on 25.01.2012 and the case was referred to the Officers' Committee to consider the claim of the petitioner. The claim of the petitioner stood rejected vide the impugned order, hence the instant writ petition.

4. Mr. G.S. Bal learned Senior Advocate assisted by Mr. Dilshad S. Gill and Mr. Gurpal Singh Sandhu, Advocates appearing on behalf of the petitioner would contend that the petitioner was brought on List C-II on

26.06.2001, whereas the private respondents were brought on List C-II on 25.02.2002, yet the private respondents have been given promotion as Head Constable w.e.f. 05.12.2003, while the petitioner was promoted w.e.f. 03.11.2006 as an *ad hoc* Head Constable. He lays stress on Rule 13.8 of the Punjab Police Rules, 1934 (hereinafter referred to as 1934 Rules) which provides for the procedure to be followed while effecting promotions to the post of Head Constable. It is argued that the said rule has been violated qua the petitioner herein and undue benefit has been given to the private respondents.

5. Therefore, the case as set up by the petitioner is that persons, appointed under sports quota after him and his juniors, have been given promotion as Head Constable while ignoring the merit of the petitioner. The petitioner joined service on 23.05.1998 and it is claimed that persons who joined service later have been promoted as Head Constables. The joining chart of the petitioner *vis a vis* the private respondents is as below.

Name	Date of Joining
Petitioner – Kamaljit Singh	23-05-1998
Respondent No. 4 - Charanjit Singh	27-09-2000
Respondent No. 5 - Gurmit Singh	04-09-2000
Respondent No. 7 - Bhajan Lal	07-03-1999
Respondent No. 8 - Harminder Singh	1999
Respondent No. 9 - Anwar Masih	1999

6. Rule 13.8 of 1934 Rules which deals List 'C' is reproduced as under:-

13.8 Promotion to Head Constables. –

(1) In each district a list shall be maintained in card index form (form 13.8 (1)) of all constables who have passed the Lower School Course at

Phillaur and are considered eligible for promotion to Head Constable.

A card shall be prepared for each constable admitted to the list and shall contain his marking under sub-rule 13.5 (2) and notes by the Superintendent himself, or furnished by Gazetted Officers under whom the Constable has worked, on his qualifications and character. The list shall be kept confidentially by the Superintendent and shall be scrutinized and approved by the Deputy Inspector-General of Police at his annual inspection.

*(2) Promotions to Head Constable shall be made in accordance with the principle described in sub-rules 13.1 (1) and (2). The date of admission to List C shall not be material, but the order of merit in which examinations have been passed shall be taken into consideration in comparing qualifications. In cases where other qualifications are equal, seniority in the police force shall be the deciding factor, **selection grade Constables who have not passed the Lower School Course at the Police Training School but are otherwise considered suitable may, with the approval of the Deputy Inspector- General, be promoted to Head Constable up to a maximum of ten per cent of vacancies.** (Emphasis supplied).*

7. Per contra, learned counsel for the respondent-State submits that the private respondents were initially promoted as Head Constables but stood reverted back to the post of Constable on account of the judgement rendered in **CWP No. 13788 of 1997** titled as **SI Swarn Singh v. State of Punjab**, decided on 21.04.1998. The chart is reproduced as under:

Sr. No.	Rank, Name & No.	Date of Enlistment	Date of Promotion List C-II	Date of Promotion as Head Constable	Date of reverting back as C-II Constable
1.	HC Charanjit Singh, No. 5-C/78	27.09.2000	25.02.2002	25.05.2002	25.02.2004
2.	HC Gurmit Singh, No. 80/1108, now 80/169	04.09.2000	25.02.2002	25.05.2002	25.02.2004
3.	HC Balkar Singh, No. 36/1104, now 36/148	31.01.2000	25.02.2002	09.12.2002	25.02.2004
4.	HC Bhajan Lal, No. 7/1133, now 7/173	30.07.1999	25.02.2002	04.06.2002	25.02.2004
5.	HC Harminder Singh, No. 27/1159, now ASI	14.07.1999	25.02.2002	14.11.2002	25.02.2004
6.	HC Anwar Masih, No. 27/1161, now 27/191	06.08.1999	25.02.2002	14.11.2002	25.02.2004

8. It is submitted that as per Rule 13.8 of 1934 Rules there are two methods to grant List 'C'. As per sub rule (1) of aforesaid Rules, names of those constables who pass the Lower School Course, are entered into list 'C' and per sub rule (2), constables who have not passed Lower School Course but are otherwise considered suitable, their names are entered into list 'C' with the approval of competent authority. Rule 13.8 (2) of 1934 Rules also provides that only 10% of the vacancies of Head Constables are to be filled up by promotion from those Constables whose names have been entered into list 'C', as per the procedure mentioned in sub rule (2), as noticed above.

9. Further, it is submitted by the counsel appearing for the respondent-State that this Court in **CWP-13788-1997** titled as *SI Swaran Singh v.State of Punjab* decided on 21.04.1998 has held that the provision of 10%, as mentioned above, has not been followed strictly by the department. Hence, it was ordered to take corrective measures in this regard. It was further mentioned in the order that 10% of such constables be brought on list C as per their seniority i.e. as per the dates of bringing their name on List C. The order of this Court dated 21.04.1998 was implemented in PAP in the year 2003-04, under which the officials who had been promoted in excess to the above mentioned 10% quota were reverted back to the rank of Constables on list C and their seniority list on List C was prepared as per the dates of entering their names in the List C. The name of the petitioner was brought on List C (through sub-rule (2) to Rule 13.8 of 1934 Rules) on 20.06.2001 and when in the year 2003-04, the order dated 21.04.1998 was implemented, the petitioner was holding the rank of Constable on List C only. Before the implementation of order dated 21.04.1998 and after the implementation of said order, the petitioner held the rank of Constable on list C. The seniority list of Constables on List C [through sub-rule (2)] is strictly being maintained as per seniority i.e. the date of grant of List C and as 10% promotions to the rank of Head Constable are made from that list, Constables who were granted that list in the year 1999 are presently being promoted to the rank of Head Constables, while the petitioner was granted List C in the year 2001 as mentioned above.

10. It is further argued that the case of private respondents stands on a different footing and the case of petitioner cannot be equated with their service background. In compliance with the order of this Court dated

21.04.1998, all the above-mentioned private respondents, who were holding the ranks of Head Constables were reverted back to the rank of Constables in the year 2003-04. Later on, the State Government created Ex-cadre posts of Head Constables, ASIs, SIs, Inspectors and DSPs as per instructions contained in the notification dated 23.01.2004 (Annexure R-3). Relevant portion of the same reads as under:-

“Whereas, it has been decided that appointment to the said ex-cadre posts shall be made in relaxation of all the relevant rules and the rule relation to reservation, appointment and promotion i.e. Rule 6 of the Punjab Police Service Rules, 1959 (in the case of DSPs) and Rules 12.1, 12.3, 13.8, 13.9, 13.10, 13.15 and 13.16 of Punjab Police Rules, 1934 (in case of N.G.O.s and O.Rs) will also not apply to these posts. This has been done purely as a one time measure.”

Hence the private respondents were re-appointed in the ranks of ex-cadre Head Constables and subsequently State Govt. by its notification dated 28.12.2006 (Annexure R-4) adjusted the private respondents against the cadre posts of Head Constables. As the petitioner was never promoted or reverted to or from the rank of Head Constable, hence his case is altogether different to the cases of private respondents.

11. It is brought to the notice of the court that the petitioner had been selected to undergo the Lower School Course, in view of his sports achievements against 5% vacancies reserved for sports-persons. He had qualified the Lower School Course for the term ending April 2013. Accordingly, his name has been admitted in promotion List C-I w.e.f. 01.05.2013 and he has further been promoted to the rank of officiating Head Constable w.e.f. 05.07.2013 vide order dated 06.07.2013.

12. I have heard the counsel for the parties and with their assistance have gone through the pleadings of the case.

13. Though the petitioner was appointed as Constable in the year 1998 and was brought on List C-II in 2001, which is prior to the date of appointment, as well as date of bringing private respondents on List C-II respectively, the private respondents, who were promoted to the rank of Head Constable over and above the 10% quota provided under Rule 13.8 (2) of 1934 Rules, were subsequently reverted back to the post of Constables by the department in 2003-04 in compliance of *SI Swaran Singh's judgment* (supra). It is only under the instructions issued by the Govt. of Punjab dated 15.12.2003, that the private respondents being outstanding sports persons were appointed in the ranks held by them before reversion, against ex-cadre posts created by the Punjab Govt. vide notification dated 23.01.2004 as mentioned in the foregoing para.

14. Whereas, the position of the petitioner remained unchanged, as he was granted promotion on List C-II w.e.f. 20.06.2001 and was not promoted as Head Constable upto 05.12.2003. Therefore, at no point of time he was promoted to or reverted back from the rank of Head Constable and the need for re-appointment/adjustment under the above mentioned instructions of Government of Punjab, in the case of petitioner, never arose.

15. It is also pertinent to note that the petitioner was promoted as officiating Head Constable w.e.f. 05.07.2013 after his passing the Lower School Course against 5% vacancies reserved for sports persons and his name having been admitted in promotion List C-I w.e.f. 01.05.2013. Therefore, he cannot be considered for promotion to the rank of Head Constable prior to the private

respondents as he has been granted due promotional benefits i.e. promotion from List C-I w.e.f. 01.05.2013 and promotion as officiating Head Constable w.e.f. 05.07.2013.

16. As far as the cases of Jarnail Singh No. 48/148 now Head Constable No. 1-IRB/70 (Cycling Player), who was enlisted as Constable on 13.09.2002 and granted List C-II w.e.f. 09.01.2003, and other sports persons are concerned, it is relevant to note that all such persons, were promoted to the rank of officiating Head Constable by the DGP, Punjab, vide his office order dated 21.09.2011, by exercising his special powers under Rule 13.21 of 1934 Rules, which reads as under:-

“13.21. Power of relaxation - Where the Inspector General of Police is of the opinion that it is necessary or expedient so to do, he may, by order for reasons to be recorded in writing, relax any of the provisions of this Chapter with respect of any class or category of persons.”

For whatever reasons, the Director General of Police, Punjab deemed it appropriate to exercise his discretion and promote the aforesaid persons by exercising his power of relaxing the rules under Rule 13.21 of 1934 Rules, which benefit was not given to the petitioner at any point in time. It is in these circumstances that the juniors stole a march over the petitioner and were promoted prior in time. Moreover the petitioner is not challenging the promotion of the juniors by grant of relaxation under Rule 13.21 of 1934 Rules. His only claim is to grant him promotion from the date his juniors stand promoted on the basis of just parity. The relief as sought in the writ petition would not be admissible as the petitioner was not on the same footing or similarly situated. He cannot claim the benefit of relaxation.

17. The cause of action, for the petitioner to be promoted as Head Constable w.e.f 05.12.2003 while being on List C-II, arose back in 2003-04 when the private respondents were promoted to Head Constables over and above the 10% quota provided under Rule 13.8 (2) of 1934 Rules and then subsequently reverted back. The petitioner has tried to justify that he was unaware of the seniority list prepared at the relevant time when his juniors were promoted. It is submitted that it was only in 2010, when the department put the seniority list on the internet, he came to know about the promotions, reversion and re-adjustment of the private respondents. His claim has been rightly rejected by the Officers' Committee. Whereas, it is an admitted fact that the petitioner was never promoted by the DGP by exercising his discretion, unlike in the case of his juniors who were promoted by relaxing the rules and the notification as enumerated above. In fact, persons senior to the petitioner in List 'C' are still waiting to be promoted.

18. Consequently, the writ petition is dismissed being devoid of merit.

(JAISHREE THAKUR)
JUDGE

September 14, 2022

Pankaj*

Whether speaking/reasoned Yes/No

Whether reportable Yes/No