

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

CWP No.19171 of 2015 (O&M)

Reserved on: 27.04.2022

Date of Decision:16.05.2022

Baljit Singh

...Petitioner

Vs

State of Haryana and others

...Respondents

2. **CWP No.17260 of 2016**

Krishan Singh

...Petitioner

Vs

State of Haryana and others

...Respondents

3. **CWP No.16395 of 2016**

Jaipal

...Petitioner

Vs

State of Haryana and others

...Respondents

4. **CWP No.15395 of 2016**

Dharampal Singh

...Petitioner

Vs

State of Haryana and others

...Respondents

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. S.K. Nehra, Advocate
for the petitioner in CWP Nos.19171 of 2015 and
CWP No.17260 of 2016.

Mr. Aditya Yadav, Advocate
For the petitioner in CWP No.15395 and 16395 of 2016.

Mr. Tapan Kumar Yadav, DAG, Haryana.

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JAISHREE THAKUR J.

1. By this common order, this court proposes to dispose of the above mentioned four writ petitions as a common question of law is involved in them. For the sake of convenience, the facts are being taken from Civil Writ Petition No. 19171 of 2005 titled as *Baljit Singh versus State of Haryana and others*.

2. In brief, the facts as stated are that the petitioner had joined as Constable with Haryana Armed Police (for short HAP) on 22.02.1972. The petitioner was given out of turn/ad hoc promotion w.e.f. 23.06.1976 as Head Constable on account of his achievements in the field of sports. This promotion was within 10% limit as prescribed within Rule 13.8(2) of the Punjab Police Rules 1934 (PPR for short). The petitioner was selected for the Lower School Course on 1.10.1979, however, was reverted back to his substantive post as Constable from 1.10.1979. Similarly situated Constables, who had been given out of the turn/ad hoc promotion to the rank of Head Constable on account of showing bravery in anti-terrorist front or on account of bravery were also sent for Lower School Course and reverted back to the post of Constable, challenged the reversion before the High Court in CWP No.403 of 1997, which was allowed by the High Court on 19.5.1998. This was challenged before the Supreme Court and the question posed was whether the out of turn promotion based on outstanding performance in the field of sports or on account of bravery given by the Director General of Police is permissible under the Punjab Police Rules. The Supreme Court by its judgement rendered in **Paras Kumar Vs Ram Charan 2004 (2) RSJ 659** held that the out of turn/adhoc promotions which have been made within Rule 13.8 (2) should be treated as regular promotions and those persons who were

beyond the said 10% limit of Rule 13.8 (2) could be given “own rank and pay” promotions. By counting his adhoc promotion, the petitioner was given benefit of promotion as Head Constable w.e.f 23.6.1976, ASI promotion w.e.f. 25.1.1989, promotion as SI w.e.f. 04.12.1998 and confirmed as SI on 31.1.2003. Reference is made to Annexure P-2 dated 9.5.2005. Notice was issued to the petitioner and other similarly situated persons proposing to withdraw the out of turn/adhoc promotions. Those similarly situated persons filed a CWP No 4271 of 2006 ***Dharam Pal and others vs State of Haryana and others*** whereby vide interim order the reversion order dated 22.02.2006 was stayed. As subsequently, the reversion order was withdrawn by the respondents, the writ petitions were disposed of. Another show cause notice was issued on 26.8.2009 to the petitioner and other similarly situated persons proposing to withdraw the promotions given, which notice was again withdrawn on 9.2.2010. On 29.10.2010, yet another show cause notice was issued and again withdrawn on 31.01.2011. Now by the impugned order dated 12.10.2011, the Director General of Police i.e. respondent No.2 has withdrawn the adhoc promotion given to the petitioner in the rank of Head Constable w.e.f. 23.6.1976. The petitioner-Baljit Singh approached this Court to challenge the said order. During the pendency of proceeding in the said Civil Writ Petition No.21841 of 2011, the Haryana Government came out with a policy dated 19.11.2013 for Regularization of Adhoc Promotions of Police Personnel prior to 1999. The Civil Writ Petition was disposed of with the direction to consider the claim of the petitioner in terms of the policy, which stands rejected vide order dated 18.07.2014. Hence, this writ petition seeking to challenge order 18.07.2014 whereby the benefit of adhoc promotion stands withdrawn w.e.f.23.6.1976.

3. Notice of motion was issued and written statement has been filed.
4. Learned counsel appearing on behalf of the petitioner would contend that the impugned order suffers from infirmity as the petitioner was given ad hoc promotion on account of being an outstanding sportsman and such promotion falls within the 10% limit as prescribed under Rule 13.8 (2) of the PPR. It is argued that the order is passed without giving an opportunity of hearing and is, thus illegal. It is submitted that the adhoc service of the petitioner was regularized as per annexure P-2 and he would now be entitled to be promoted to the rank of ASI. It is also argued that several show cause notices were issued and the said notices were withdrawn each time. It is also submitted that the successor in office does not have the authority to review the orders as maintained by the predecessors, who had allowed ad hoc promotion.
5. Mr. Tapan Kumar Yadav, learned DAG, Haryana, raised two-fold arguments to the effect that the petitioner herein never challenged the order of reversion that was issued in the year 1979. The petitioner was not party to the writ petitions filed by similarly situated persons in the matter of ***Paras Kumar***, who had been given adhoc promotion to the rank of Head Constable and were reverted to the post of Constable. The petitioner has then qualified the Lower School Course and was brought on the promotion list C-I w.e.f 19.3.1980 and further promoted to the rank of officiating Head Constable w.e.f. 23.4.1980 and confirmed as such w.e.f. 31.1.1984. He was deputed to Intermediate School Course and Upper School Course as per seniority. His name was brought on promotion list 'D' w.e.f 27.7.1994 and promoted to the rank of ASI w.e.f 12.9.1994. The petitioner was brought on the promotion list 'E' w.e.f 6.5.1999 and promoted as Sub Inspector w.e.f. 12.10.1999 and confirmed as such w.e.f. 31.1.2003. He was brought on List

‘F’ w.e.f.1.12.2005 and further promoted as officiating Inspector w.e.f.10.2.2006. It is contended that the judgment rendered in ***Paras Kumar’s case*** (supra) was revisited by the department vide memo dated 22.9.2005, and it was clarified that the said judgment cannot be made the general rule as the Supreme Court had made general observations thereunder. It is also contended that the petitioner had, in fact, cleared the Lower School Course and was brought into the List C-I in March 1980 and now cannot be permitted to claim the benefit of adhoc promotion given on 26.3.1976 as has been held in the judgment rendered by this Court in LPA No.136 of 2006 titled as *State of Haryana vs Paramjit Singh* decided on 19.02.2008.

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

7. In a nutshell, the grouse of the petitioners in all the four writ petitions is common, that being, that once adhoc promotion had been given to them, it could not be withdrawn and the order of withdrawal would tantamount to a review by the successor- in-office. It is also the case that show cause notices were issued on several occasions seeking to withdraw adhoc promotion, but these notices were subsequently withdrawn, meaning thereby, it would be deemed that the department itself accepted the adhoc promotion given.

8. It is not in dispute that the petitioner-Baljit Singh was enlisted as a Constable and then given ad hoc promotion to the rank of Head Constable in Haryana Armed Police by an order dated 26.3.1976 by the DGP Haryana under Rule 13.8(2) of the PPR and subsequently reverted to rank of Constable by order dated 11.10.1979. As a Constable, he underwent the Lower School Course and was brought on promotion list C-I w.e.f 19.3.1980. However, by

order dated 9.5.2005, he was given ante-dated seniority after giving him benefit of ad hoc promotion as on 26.3.1976, which is now sought to be withdrawn and given the date of entry to C-I List as on 19.3. 1980. The petitioner also sought the benefit of the policy dated 9.11.2013 as notified by Haryana Government for regularization of Adhoc promotion prior to 1999, which representation stands rejected.

9. It is worthwhile to note that the petitioner never challenged the order of reversion passed in the year 1979, even though similarly situated persons, who had been reverted to the original rank of Constable challenged the reversion orders in CWP No. 403 of 1997 and connected matters. In these circumstances, only it can be said that the petitioner accepted his reversion and the cancellation of adhoc promotion to the post of Head Constable. He underwent the Lower School Course as a Constable and came on the C-I list w.e.f from 19.03.1980. The plea that the adhoc promotion given has illegally been withdrawn, would not be sustainable in the light of the reply filed where a specific stand has been taken that the issue stands settled in the judgment rendered in **LPA No.136 of 2005** titled as ***The Director General of Police Haryana Panchkula and others vs Paramjit Singh*** decided on 19.02.2008. In the said case, Paramjit Singh filed a writ petition seeking a writ in the nature of mandamus to be issued to treat him as a regularly promoted Head Constable and further depute him to join Intermediate School Course. In the writ petition, Paramjit Singh had claimed that his adhoc promotion was under Sports Quota under Rule 13.8.(2) of the Punjab Police Rules, 1934 and was brought on List C-2 and other 90% Head Constables, are brought on List C-1, after passing Lower School Course. It was admitted by him that he was reverted to the rank of Constable and had undergone Lower School Course

after that and was again given the rank of Head Constable, but still by virtue of his promotion under Rule 13.8 (2) of the Rules in the month of March, 1990, he was senior to the private respondents and therefore, claimed a right to be sent to Intermediate School Course before his juniors. The writ petition was allowed, but the judgement was set aside in appeal. It was held that once the writ petitioner had not challenged the order of reversion and had undergone the Lower School Course and come on the C-I list, he would not be entitled to claim the benefit of adhoc promotion. The facts are similar to the present case where the adhoc promotion was withdrawn and thereafter, the petitioner cleared the Lower School Course and was promoted to the rank of Head Constable and come on C-I List. The petitioner would not be entitled to the claim as prayed for, as the ratio of the judgment rendered in ***Paramjit Singh's case*** would be applicable.

10. Another contention that has been raised is that the order of ad hoc promotion once given cannot be withdrawn subsequently, as it would amount to reviewing the said order by successor. In support of contention, counsel for the petitioners has relied upon the judgment rendered in **Balwinder Singh v. State of Punjab, 2017 (4) S.C.T. 838** where it has been held that “unless the review jurisdiction is vested with an authority under the Act and/or a statute, no authority can review its earlier order. However, the law is well settled in **Vinod Kumar v. State of Haryana and others, 2014(1) S.C.T. 312** that a review would be permissible *“when it is found that the order of the predecessor was without jurisdiction or when a palpably illegal order was passed disregarding all the cannons of administrative law viz. when the predecessor's decision was without jurisdiction or ultra vires or when it was ex-facie an act of favoritism.”* In the case in hand the Director General of

Police withdrew the adhoc promotion by taking into account the judgement rendered in *Paramjit Singh's case* (supra). An erroneous promotion given *de hors* entitlement and rules can certainly be reviewed. In **Indian Council of Agricultural Research and Another v. T.K. Suryanarayan and Others (1997) 6 SCC 766**, it has been held that a promotion granted by a mistake in ignorance of the service rules was held to be capable of being rectified stating: *"Incorrect promotion either given erroneously by the Department by misreading the said Service Rules or such promotion given pursuant to judicial orders contrary to Service Rules cannot be a ground to claim erroneous promotion by perpetrating infringement of statutory service rules. In a court of law, employees cannot be permitted to contend that the Service Rules made effective on 1-10-1975 should not be adhered to because in some cases erroneous promotions had been given."*

11. Consequently, finding no merit in the writ petitions the same are dismissed.

(JAISHREE THAKUR)
JUDGE

May 16, 2022
Pankaj*

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