

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

CWP No.24788 of 2016 (O&M)

Reserved on:31.08.2022

Pronounced on:05.09.2022

Kavrish Kumar Sharma

...Petitioner

Vs

State of Haryana and others

...Respondents

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Hari Om Sharma, Advocate
for the petitioner.

Mr. Tapan Kumar Yadav, DAG, Haryana.

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JAISHREE THAKUR J.

1. The instant writ petition has been filed seeking to challenge the order dated 24.08.2011 (P-8) as well as order dated 04.07.2016 (P-11) ordering reversion of the petitioner from the post of Head Constable to the post of Constable.

2. In brief, the facts as set out in the writ petition are that the petitioner herein was appointed in the Police Department as Constable vide appointment letter dated 09.03.1994. On completion of training, the petitioner was appointed as Constable in Batch No.48 and posted in Haryana Armed Police. The petitioner was then ordered to be transferred to the District Police Rohtak in June 2001 but his order was cancelled and the petitioner was then posted as a Music Teacher in Haryana Police Public School, Madhuban, Karnal where he remained posted till 2006. The Police Department Haryana recommended the name of the petitioner under 10% quota for Lower School Course as the petitioner was having an exceptional calibre in the field of music and choreography etc. and accordingly name of

the petitioner was approved for B-1 list vide order dated 04.06.2008. The petitioner was then sent to join Lower School Course w.e.f. 02.07.2008, who successfully completed the above said course and was consequently promoted as Head Constable w.e.f. 18.05.2009. Respondent No.3 issued a show cause notice dated 22.04.2011 to the petitioner proposing to remove name of the petitioner from the promotion list 'C'. The petitioner replied to the aforesaid show cause notice, however, without due consideration, the petitioner stood reverted from the post of Head Constable to the post of Constable vide order dated 24.08.2011. The petitioner challenged the reversion order by filing CWP No.17456 of 2011, which was dismissed by this Court vide judgment dated 15.11.2013. The review application was dismissed as well, which led to filing of LPA and the same was disposed of vide order dated 17.08.2016 wherein there was a direction issued to the respondents to consider the case of the petitioner whether he was entitled to retain promotion with 10% quota and pursuant to said direction, Director General of Police, Haryana vide order dated 04.07.2016 rejected the claim of the petitioner. Resultantly, the said LPA was dismissed as withdrawn with liberty to challenge the order passed by the DGP, Haryana through independent proceedings. Hence, the writ petition.

3. Learned counsel appearing on behalf of the petitioner would contend that the name of the petitioner was sent for Lower School Course under 10% quota on account of his outstanding performance and therefore, once having completed the Lower School Course, there was no occasion for reversion of the petitioner from the post of Head Constable to the post of Constable. It is submitted that though the petitioner is working with the Haryana Police Band, there is no bar in sending the name of the petitioner

under 10% quota under Rule 13.7 of the Punjab Police Rules, as applicable to the State of Haryana. It is further submitted that having completed the said course successfully and being promoted to the post of Head Constable, the petitioner could not have been reverted.

4. Per contra, learned counsel appearing on behalf of the respondent-State would submit that the petitioner had already challenged his order of reversion by way of filing writ petition before this Court and his claim was rejected by this Court holding that the claim for application of Rule 13.7 of the Punjab Police Rules, 1934, as applicable to the State of Haryana to the case of petitioner herein, is misdirected. It is submitted that the petitioner herein was appointed as Constable Bandsman in Haryana Police Brass Band on 09.03.1994, which is a separate cadre in the Haryana Police and that services of band staff are governed by the Rules of Haryana Armed Police Pipe Band, which came into force on 01.06.1973. Thereafter, draft Rules of Pipe Band, 1993 were framed, which were approved by the DGP, Haryana and promotion of the band staff is governed under these provisions, therefore, petitioner cannot claim promotion under Rule 13.7 of the Punjab Police Rules. It is also submitted that the petitioner was inadvertently sent under 10% quota, which in fact was not applicable to him and that is why, even though he had completed the course successfully and was promoted to the post of Head Constable, he had been reverted to correct the mistake that had occurred.

5. I have heard learned counsel for the parties and have perused the paper book. Admittedly, it is a second round of litigation. In the first round of litigation i.e. CWP No.17003 of 2010 titled as *Constable Puran Chand and others Vs. State of Haryana and others* and CWP No.17456 of

2011 titled as *Kavrish Kumar Sharma Vs. State of Haryana and others*, both decided by a common order dated 15.11.2013, this Court while coming to the conclusion that argument of the petitioners therein qua application of Rule 13.7 of the Punjab Police Rules to them is misdirected, held as under:-

“10. Learned counsel for the petitioner relies on a Full Bench judgment of this Court in Sardul Singh Head Constable v. Inspector General of Police, Punjab and others; 1970 SLR 505, to contend that supplemental instructions to rules can only be issued by Government which is competent to make rules. Instructions issued by IGP, Punjab vide memo dated 25.8.1964 and 16.9.1993 have been declared void by the Full Bench. This case did not deal with the Band Staff but dealt with main line police personnel and is therefore of no help to the petitioners in this case. Even if the drafts rules of Pipe Band, 1993, Haryana Police are not determinative of the issue based on a claim for being deputed to B-I course, the cadre created by the Pipe Band rules in 1973 would hold the field and form the complete code of service conditions of the Pipe Band/Band Staff in absence of statutory rules framed under proviso to Article 309 of the Constitution of India. It also appears rather incongruous that the Band Staff recruited through the process of test and Music Committee can be seen to fall under or be governed by the Punjab Police Rules, 1934 as applicable to the State of Haryana so as to avail the benefit of rule 13.7 thereof to transform them into main line police personnel recruited through an entirely different process and on appointment charged with a duty of investigation of crime and maintenance of law and order etc. Promotional avenues cannot be created out of judicial fiat. Creation of promotional avenues to meet stagnation etc. is for Government to look into. The petitioners remain free to choose a career as musicians or to compete for posts of Constables etc. through direct

recruitment. The main thrust of the argument of the petitioners that rule 13.7 would apply to them appears to be misdirected. They remain members of a separate cadre with promotions avenues available to them within the Band Staff as Constables, Head Constables and Assistant Sub Inspectors of Police (Band Staff).

6. It would be relevant to note that Rule 13.7 PPR 1934 as applicable to the State of Haryana pertains to selection of candidates for admission to courses at the Police Training College. The number of seats in Lower School Course in a year have to be created within one year in the respective unit. 55% of the seats allotted to a unit in the Lower School Course shall be filled in on the basis of a competitive examination. 35% on the basis of seniority-cum-fitness and 10% on the basis of consistent outstanding performance in job/obtaining Gold or Silver Medal in All India Police Games/ Duty Meet/National Games or exceptional display of bravery during the course of performance of official duty. The benefit of this quota would not be available to the petitioner who is a musician. However, while dismissing the aforesaid petitions, a direction was issued to the respondents to devise ways and means to ameliorate their lot and to consider framing statutory rules governing their future service conditions so they know clearly where they stand.

7. Against the aforesaid order dated 15.11.2013, two separate LPAs were filed i.e. LPA No.1171 of 2014 titled as *Kavrish Kumar Sharma Vs. State of Haryana and others* and LPA No.2091 of 2013 titled as *Constable Puran Chand and others Vs. State of Haryana others*. Both the aforesaid LPAs were listed before different Division Benches and decided on different dates i.e. 17.08.2016 and 04.12.2015 respectively.

8. In the interregnum, in view of the direction issued vide order dated 15.11.2013, respondent-State in order to devise promotional avenues to the Band Staff of Haryana Police carried out amendment in Rule 13.6 as well as inserted Rule 12.16A to the Punjab Police Rules, as applicable to Haryana. The relevant portion of amended Rule 13.6 regarding promotion of Haryana Police Band Staff is reproduced as under:-

“1) The promotion to the post of Head Constable, Assistant Sub-Inspector, Sub-Inspector and Inspector of Haryana Police Band Staff (Bandsman) shall be made from amongst persons admitted to promotion list 'C', 'D', 'E' and 'F' respectively maintained separately for the Haryana Police Band Staff; or by transfer or deputation from any State Government or the Central Government on the basis of criteria as approved by the State Government on the recommendation of Direction General of Police.

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(b) For the purpose of regulating promotion amongst Haryana Police Band Staff, promotion lists 'B', 'C', 'D', 'E' unit/range wise and list 'F' centrally shall be maintained separately for akin to the General Cadre as under:-

(i) List 'B' shall contain the names of Constable Bandsman who are eligible for undergoing the prescribed proficiency test to be conducted by the nominated music committee, which shall be maintained in the office of Commandant/Superintendent of Police concerned. The other conditions as provided under rule 13.7(2) for B-1 test in the General cadre shall apply mutatis mutandis, in so far as these are not inconsistent with the provisions under the rule.”

9. Interestingly, based upon the aforesaid amendment carried out in Rule 13.6 and insertion of Rule 12.16A in the Punjab Police Rules, 1934, as applicable to the State of Haryana, impugned order dated 04.07.2016 had

been passed by the respondent-State in pursuance to direction by the Division Bench in LPA No.1171 of 2014 and consequently, the said LPA was dismissed as withdrawn with liberty to challenge order dated 04.07.2016 in independent proceedings, which in turn resulted into filing of the instant petition. Similarly, based on aforesaid amendment in the Punjab Police Rules, the appellants (similarly situated persons as that of petitioner herein) in LPA No.2091 of 2013 decided on 04.12.2015 made a statement that in view of the notification dated 03.12.2015 whereby promotional avenues have been granted to the Haryana Police Band Staff by adding Rule 12.16A to the Punjab Police Rules, 1934, their appeal has been rendered infructuous and may be disposed of accordingly. In view of the statement made by the appellants, the said appeal was dismissed as infructuous. Meaning thereby, the similarly situated persons accepted the promotional avenues devised for them separately and the aspect that benefit of 10% quota as provided in Rule 13.7 of the Punjab Police Rules, 1934 as applicable to Haryana is not available to them.

10. In view of the aforesaid facts and circumstances, there is no ground made out to interfere with the orders under challenge in the instant petition and the same is dismissed being devoid of merit.

(JAISHREE THAKUR)
JUDGE

September 05, 2022

Pankaj*

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