



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

224

CWP-1010-2014

Date of Decision: 02.05.2025

Suresh ChanderPetitioner(s)

Versus

State of Haryana and othersRespondent(s)

<i>Sr. No.</i>	<i>Case No.</i>	<i>Parties Name</i>
2.	CWP-24295-2014	Samey Singh vs. State of Haryana and others
3.	CWP-12372-2015	Manoj Kumar vs. State of Haryana and others
4.	CWP-12373-2015	EASI Dharamjit Singh and others vs. State of Haryana and others
5.	CWP-12374-2015	Lal Singh vs. State of Haryana and others
6.	CWP-12375-2015	Shyam Phool vs. State of Haryana and others
7.	CWP-12376-2015	Katar Singh vs. State of Haryana and others
8.	CWP-12377-2015	Ramdia vs. State of Haryana and others
9.	CWP-13896-2015	Hakimudin vs. State of Haryana and others
10.	CWP-13723-2015	Shamsher Singh vs. State of Haryana and others
11.	CWP-13776-2015	Raj Kuldeep vs. State of Haryana and others
12.	CWP-16097-2015	Raj Kumar vs. State of Haryana and others
13.	CWP-12851-2015	Dilsher Singh vs. State of Haryana and others
14.	CWP-12865-2015	Surender Singh vs. State of Haryana and others
15.	CWP-13664-2015	Ranbir Singh vs. State of Haryana and others
16.	CWP-25524-2015	Krishan Kumar vs. State of Haryana and others
17.	CWP-13638-2015	Mukesh Kumar vs. State of Haryana and others
18.	CWP-10243-2022	Dharambir Singh vs. State of Haryana and others

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Dr. S.K. Redhu, Advocate, for the petitioner.

Ms. Palika Monga, DAG, Haryana.

JAGMOHAN BANSAL, J. (Oral)

1. By this common order, above noted writ petitions are hereby adjudicated as issues involved and prayer sought in all the petitions are common.



For the sake of convenience and with the consent of parties, the facts are borrowed from ***CWP-1010-2014***.

2. The petitioner through instant petition under Articles 226 and 227 of the Constitution of India is seeking setting aside of order dated 01.10.2013 (Annexure P-11) whereby respondent has rejected his claim for including his name in B-1 list under 35% quota.

3. The petitioner joined Haryana Police Force as Constable on 13.06.1988. He was allocated district Sonipat. The respondent is maintaining seniority list of Constables and Head Constables at district level. The service of the petitioner is governed by Punjab Police Rules, 1934 (as made applicable to State of Haryana) (in short 'PPR'). Promotion of Constables to the rank of Head Constable is governed by Chapter XIII of PPR. Rule 13.7 particularly adverts to promotion to the rank of Head Constable. The State of Haryana vide notification dated 28.06.2001 substituted Rule 13.7 of PPR. The relevant extracts of substituted Rule are reproduced as below:-

“13.7--Selection of candidates for admission to courses at the Police Training College. (1) List B (in Form 13.7) shall be maintained by each Superintendent of Police, it shall include the names of all Constables selected for admission to the Lower School Course to be held at the Police Training College. Selection to the list B shall be made in the month of January each year and shall be limited to the number of seats allotted to the district for the Year. The number of seats in Lower School Course in a year shall be allotted on the basis of existing vacancies and the vacancies likely 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. Selection of persons against 55% seats in B list/Lower School on the basis of merit shall be done by a Departmental Promotional Committee on the basis of—

- (i) Examination of service record; and*
- (ii) a competitive test (hereinafter called “B-I test”) in, —*
 - (a) Parade;*
 - (b) law and practical police work; and*
 - (iii) an interview.*

(2)(i) All constables irrespective of their educational qualifications shall be eligible to appear for B-1 test, if they are under the age of 35 years and have completed 5 years of service on the 1st day of January of the year in which selection is made. However, if a constable belonging to reserve category who is recruited after attaining the age of 27 years as per Government instructions/orders then he shall be allowed to appear for minimum three consecutive chances after completion of five years of service even if he has crossed the age of 35 years upto a maximum of 40 years of age.

(ii) All constables irrespective of their educational qualifications shall be eligible to be brought on list B-I, seniority-cum-merit basis if they are under the age of 40 years and have completed 5 years of service on



the first day of January of the year in which selection is made.

- (iii) *All constables irrespective of their educational qualifications shall be eligible to be brought on list B-I on the basis of consistent outstanding performance in job/obtaining Gold or Silver Medal in All India Police Games/Duty Meets/National or International Games or exceptional display of bravery during the course of performance of official duty if they are under the age of 40 years and have completed 2 years of service on the 1st day of January of the year in which selection is made. Only those constables shall be brought on list B-I after 2 years of service, but before 5 years of service who have won a medal in International Sports event like Olympics, Asian Games, Commonwealth games or similar International event. Constables who have won medals in National Games/All India Police Games/Duty Meets and who are being considered for exceptional bravery or consistent outstanding performance shall be considered only if, they have put in the minimum 5 years of service.*

xxx

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xxx”

4. As per afore-cited Rule, the State Government is maintaining district-wise B-1 list. For the purpose of promotion, at the first instance, names of Constables is included in B-1 list and thereafter they are deputed for Lower School Course (in short ‘LSC’). The respondent with intent to recognize meritorious Constables introduced competitive test for inclusion of their names in B-1 list. 55% seats are reserved for candidates who are able to clear the test. There may be many Constables who are unable to clear the test, however, they cannot be



deprived of promotion forever. Thus, 35% seats are reserved for those Constables who are unable to clear requisite test. The claim of petitioner is confined to seats reserved under 35% quota as petitioner did not clear the test.

5. The respondent conducted B-1 test during 2002. Many Constables participated in the test. The final result could not be declared on account of stay granted by this Court in CWP-15475-2001. This Court during the pendency of said writ petition granted liberty to respondent to declare the result which was finally declared on 08.12.2003. The respondent allocated district-wise seats for inclusion of names of Constables in B-1 list. Under 35% quota, 14 seats were allocated to District Sonipat for the year 2002-03 and 18 seats were allocated for the year 2003-04, meaning thereby for 3 years i.e. 2002, 2003 and 2004, 32 seats were allocated to District Sonipat. It is apt to mention here that despite having been less than 40 years and completed 5 years service, a candidate may not be included in the B-1 list if seats are insufficient e.g. in 2002, 14 seats were allocated to District Sonipat, the Constables who had not attained age of 40 years in 2002 and had completed 5 years service were not eligible to be included in list B-1 if their rank in the seniority list was beyond 14. The respondent did not include name of petitioner in B-1 list against seats allocated for Sonipat during 2002-03, 2003-04, 2004-05. It is apposite to notice that respondent during 2005 allocated 7 seats to District Sonipat. The petitioner became overage after 2005, thus, he was never considered for substantive post of Head Constable.

6. Mr. S.K. Redhu submits that during 2002-05 the respondent included name of two juniors namely Shamsher Singh and Navinder Singh in list B-1 and petitioner was intentionally ignored. The respondent as per judgment of this Court



was duty bound to include petitioner's name in B-1 list. The petitioner was less than 40 years and had completed 5 years service, thus, respondent was duty bound to include his name in list B-1 prepared during 2002-05. The respondent constituted a Review Committee in 2011 which reviewed cases of many Constables and passed order in 2012. The status of many Constables was retrospectively changed e.g. in District Hisar one Constable was deputed to LSC in Batch No. 54 whereas in the revision he was assigned Batch No.42. The respondent despite revision of cases of Constables at large scale did not consider the case of petitioner and was wrongly ignored.

7. *Per contra*, Ms. Palika Monga, DAG, Haryana submits that initially the respondent considered Constables for B-1 list under 35% quota on the basis of seniority-cum-merit. In view of judgments of this Court, it was realised that 35% quota is meant for candidates who have not cleared competitive test, however, are less than 40 years and have completed 5 years service. The claim of such candidates was required to be considered on the basis of seniority instead of merit. They were required to comply with requirement of fitness otherwise seniority was their criteria. Realising the mistake, a Review Committee was constituted which considered claim of all the Constables across the State. In 2007, instructions were issued whereby benchmark of 31 marks was notified, however, said benchmark was not having retrospective effect. The petitioner was eligible for consideration upto 2005 and thereafter he became ineligible on account of being overage. The juniors who were wrongly considered for B-1 list during 2002-05 were reconsidered by the Review Committee and their batch was changed e.g. a Constable who was wrongly deputed in Batch No.42 was considered as per his entitlement. The petitioner became overage in 2005 and approached this Court in



2011. His claim is hopelessly barred by limitation. In this bunch of petitions except 1-2, other petitioners have already retired on attaining the age of superannuation. They were assigned exempted promotional rank though their substantive rank remained Constable. The Constables who were not given substantive rank of Head Constable but were assigned exempted rank of Head Constable/Assistant Sub Inspector/Sub Inspector were paid salary with applicable ACP.

8. In reply to question of limitation raised by learned State Counsel, Mr. Redhu submits that respondent was bound to implement judgments of this Court as well as amended Rules without discrimination. The judgments were applicable to all the Constables, thus, it was not necessary for the petitioner to approach this Court during 2002-05. The Division Bench of this Court in **Balraj Singh and others vs. State of Haryana and others, CWP-19965-2006** decided on 22.10.2008 has clearly held that State was bound to implement Rule 13.7 across the State and to all the employees. It was not necessary for everyone to approach this Court for the redressal of his grievance.

9. I have heard the arguments and perused the record.

10. From the perusal of record and arguments of both sides, it comes out that State of Haryana substituted Rule 13.7 of PPR vide notification dated 28.06.2001. The litigation erupted on account of Rule 13.7(2)(ii) which provides that all Constables irrespective of their educational qualifications shall be eligible to be brought on List B on seniority-cum-fitness basis if they are under the age of 40 years and have completed 5 years of service on the first day of January of the year in which selection is made. There was difference in expression used in Rule



13.7(1) vis-a-vis Rule 13.7(2)(ii). In Rule 13.7(1) expression used was ‘seniority-cum-fitness’ whereas in Rule 13.7(2)(ii) the expression used was ‘seniority-cum-merit’. The respondent considered Constables under 35% quota for B-1 list on the basis of seniority-cum-merit instead of seniority-cum-fitness. Resultantly, many juniors came to be considered for List B-1. This practice led to filing of multiple petitions before this Court including **CWP-7952-2004** titled as **Naresh Kumar vs. State of Haryana and others**. The said petition was allowed vide judgment dated 05.11.2004 holding that under 35% quota, principle of seniority-cum-fitness would be applicable instead of seniority-cum-merit. The Court also directed the respondent to fix benchmark for fitness. The respondent issued instructions dated 13.02.2007 whereby benchmark of 31 marks was prescribed. These instructions came to be challenged before this Court in **Hawa Singh vs. State of Haryana and others, CWP-1194-2005** decided on 14.05.2008. The Court held that there could be no minimum benchmark for 35% seats in the LSC which were to be filled on the basis of seniority-cum-fitness basis. The opinion formed by a Division Bench in **Hawa Singh (supra)** was reiterated in **Balraj Singh and others vs. State of Haryana and others, 2009 (1) SCT 589**. The relevant extracts of the judgment read as under:-

"9. Accordingly, the present writ petitions are disposed of with a direction to the respondents to consider the claim of the petitioners and all similarly placed persons who have been deputed to the Lower School Course subsequent to the deputing of their juniors and have passed the said Course after their juniors for deciding their claim of seniority over and above them and also to consider the claim of the petitioners and all similarly placed persons, for including their names in List B of selected Constables for



*admission to the Lower School Course, in accordance with the judgment passed by this Court in Naresh Kumar's case (supra) within a period of two months from the date of receipt of copy of this order. The respondents are further directed to depute all similarly placed persons, including the petitioners, to the Lower School Course in accordance with the seniority in their prescribed quota of 35% seats provided they fulfill the requirements of the Rules as interpreted by this Court in Naresh Kumar's case (supra). These persons shall be deemed to have qualified the Lower School Course from the date the other Constables junior to them have qualified the same. It is, however, made clear that if by getting retrospective date of passing the Lower School Course the persons, including the petitioners, become eligible for promotion, they will get only deemed benefits without getting any actual financial benefits, in view of the principle of 'no work no pay' as laid down by the Hon'ble Supreme Court in **Union of India and another v. Tarsem Lal and others, 2006(4) SCT 355: 2006(10) SCC 145.**"*

11. A Single Judge of this Court in ***EHC Virender Singh vs. State of Haryana and others, 2011 (2) SLR 486*** held that instructions of 2007 prescribing minimum benchmark do not violate the statutory Rules, however, the same are prospective in nature since no benchmark was prescribed prior thereto. The candidates cannot be denied entry in List B-1 as per their seniority and other eligibility conditions. The operative portion of the judgment reads as under:-

"i) Such of the constables/petitioners who have failed in 55% merit quota are entitled to be considered for being brought on List B-1 under 35 % quota on the principle of seniority-cum-merit, provided they have the requisite experience and are otherwise eligible under the Rules;



ii) such of the constables who were less than 35 years of age as on the day of their consideration, but not more than 40 years, they will be entitled to be brought on List B-1 by deputing them to Lower School Course;

iii) the petitioners who acquired eligibility prior to the DGPs instructions dated 13.02.2007 will be deputed for the course without considering the question of minimum bench marks as prescribed under the government instructions and in their cases seniority and other eligibility criteria prescribed under the Rules, will be enough for their deputation to the course;

iv) the petitioners who became eligible for deputation after the issuance of the instructions dated 13.02.2007 and have achieved the minimum bench marks be deputed to the course notwithstanding their juniors have better bench marks;

v) inter-se seniority of the constables will be determined on the basis of their seniority in their respective districts in the constabulary and not on the basis of passing of the Lower School Course in all such cases, who are ignored by the above directions. However, the inter-se seniority of constables will not be governed by the above directions where senior was ignored on account of pendency of any disciplinary proceedings or who suffered any other disqualification for deputation to Lower School Course;

vi) deputation of the petitioners shall be made on the basis of their seniority in their respective districts and against the available vacancies."

12. In view of application of 2007 Instructions and judgments of this Court, multiple show cause notices came to be issued to already promoted



Constables. Matter again came up for consideration before learned Single Judge of this Court who set aside impugned notices. State preferred **LPA-645-2013** before Division Bench of this Court which partially allowed the appeal and disposed of the matter with following directions: -

“(i) The private respondents shall submit their reply to the show cause notices with liberty to dispute the inter-se-seniority position or the eligibility or entitlement of the purported seniors to claim retrospective promotion(s).

(ii) The private respondents will give an undertaking in their reply to the show cause notice that in the event of rejection of their objections on merits, they shall be ready and willing to continue in the present rank till their turn comes for further promotion as per the revised seniority.

(iii) However, if on the revision of seniority it is found that the respondent - writ petitioners were not entitled to be admitted to List B-I, we direct that they shall not be deprived of benefit of Lower School Course already undergone by them though the dates of passing of such course or inclusion in List B-I shall stand postponed.

(iv) Similarly, if any of the respondent - writ petitioners has undergone any further promotional course, the effect of acquiring such qualification shall not be taken away though the actual benefit of such qualification/course shall be given as and when his turn arrives and he is otherwise eligible under the rules.

(v) The appellants may create supernumerary posts to adjust the seniors or to retain the respondents in the present status, if so required.”



13. The respondent in view of afore-cited judgments of this Court realised its mistake that Constables under 35% quota for B-1 list could not be selected on seniority-cum-merit basis whereas were required to be selected on seniority-cum-fitness basis. To resolve the issue, it constituted a Review Committee. The said Committee considered case of all the Constables who were eligible for B-1 List under 35% quota. The Committee in its report dated 23.01.2012 reviewed case of many officers and found that there were few officers who were included in B-1 list prior to their eligibility. Their case was re-considered and were shifted to batch number as per their eligibility e.g. if a Constable was considered in Batch No.42 whereas he was eligible against Batch No.46, he was shifted to Batch No.46. The case of petitioner was also considered, however, he was not found eligible.

14. Perusal of different affidavits of the respondent and documents submitted during the course of hearing reveals that Suresh Kumar-petitioner joined service on 13.06.1988. He could be considered till January' 2005 because his date of birth is 15.05.1965. At the cost of repetition, it is hereby noticed that under 35% quota maximum prescribed age was 40 years. He was considered during 2002-03, 2003-04 and 2004-05. In 2002-03 last selected candidate was Constable Mohinder and his date of enlistment was 29.03.1984. In 2003-04, the date of enlistment of last selected Constable was 25.03.1987. In 2005, Constable Krishan was last selected candidate and his date of enlistment was 20.03.1988. The petitioner was enlisted on 13.06.1988, thus, he could not be selected during 2002-05. He completed 40 years age in 2005, thus, he became ineligible 2006 onwards. Similar is case of other Constables.



15. The petitioner became ineligible in 2006 and remained silent till 2011 and approached this Court in 2011 by way of *CWP-20333-2011* which was disposed of vide order dated 13.12.2012. Indubitably, in view of judgment of this Court in **Balraj Singh (supra)**, the State was duty bound to consider Constables for promotion under 35% quota as per their seniority and every Constable was not supposed to approach this Court, however, act of petitioner indicates that he was aware that he was not as senior as he should be for falling within zone of consideration, thus, remained silent for more than 5 years from the date of attaining age of 40 years.

16. The petitioner during the course of hearing primarily pleaded that his juniors were considered for B-1 list, thus, his right was curtailed. The respondent indubitably after filing of petitions by different Constables reconsidered case of already promoted as well as other eligible Constables. The Review Committee extended benefit to those officials who were actually eligible but were not considered. The candidates who were considered prior to their eligibility were transposed to their actual entitlement. Thirst of petitioner is that his juniors have been considered prior to him, however, he has failed to bring on record that during 2002-05 he was so senior that respondent was bound to consider him against the allocated seats. During 2002-05, the respondent allocated 32 seats to Sonipat district. The petitioner has not brought on record that he was so senior that respondent was bound to consider him against aforesaid allocated seats. The respondent in its pleadings and arguments have successfully shown that Review Committee reconsidered case of all the Constables and during 2002-03, 2003-04 and 2004-05, the last selected candidates were senior to petitioner. Thus, right of petitioner was never curtailed.

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17. It is apt to notice that most of the petitioners have already retired on attaining the age of superannuation. There are few petitioners who did not submit their willingness for LSC, thus, they were not considered. The petitioners are claiming that respondent wrongly did not include their names in B-1 list. Mere inclusion of name in B-1 list does not promote a Constable to the rank of Head Constable. He has to further undergo LSC wherein he has to clear different tests. If the names of petitioners, at this belated stage, are assumed to be included in the B-1 list, it is not possible to ask them to undergo LSC because either they have retired or are on the verge of retirement. Thus, it is not practically possible to ask the respondent to include their names in B-1 list and thereafter promote them to the rank of Head Constable.

18. Before parting with the judgment it is hereby made clear that if the petitioners are able to show that their seniority was not considered in true sense and as per seniority list they were eligible against the allocated seats, they may submit documents to jurisdictional Superintendent of Police who would reconsider their case on the basis of documentary evidence.

19. In the wake of above discussion and findings, instant petitions stand disposed of.

02.05.2025

(JAGMOHAN BANSAL)

shivani

JUDGE

Whether reasoned/speaking

Yes

Whether reportable

Yes