
(2026) 02 J&K CK 1651
In the Jammu And Kashmir High Court
Case No : SWP No. 1197 Of 2006

Bachan Singh

APPELLANT

Vs

UOI & ors

RESPONDENT

Date of Decision : 27-02-2026

Acts Referred:

Citation : (2026) 02 J&K CK 1651

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : Surinder Kour, Manpreet Kour, Vishal Sharma, Eishaan Dadhichi

Final Decision : Dismissed

Judgement

Sanjay Dhar, J

1. The petitioner has sought directions upon the respondents to promote him to the post of Havaldar and to give effect of the promotion retrospectively w.e.f., 25th August, 2005. The petitioner has also sought a direction that proper place in the seniority list of Havaldars be assigned to him by giving effect to his promotion and seniority retrospectively w.e.f., 25th August, 2005 when similarly situated persons were promoted and given seniority.

2. As per the case of the petitioner, he was appointed as Constable in ITBP on 23.08.1987 and he was allotted number 870121346. After undergoing training at Training Centre Ramgarh, he was posted in 12th Bn ITBP Punjab. He was transferred to several places during the performance of his duties. In the year 1994, the petitioner underwent cadre course for promotion to the post of L/Naik and he was declared qualified. In the year 2002, the petitioner again underwent cadre course for promotion to the post of Havaldar. Vide order dated 03.10.2002, the petitioner qualified the same and he was placed at serial No. 115. It is being submitted that the petitioner had not qualified Hindi paper but had qualified all other five subjects. The petitioner appeared in Hindi paper and he was declared qualified in the said subject on 17.10.2003. Vide order dated 04.04.2003, the

petitioner was brought in list "C" because he had qualified in five subjects out of six subjects and he was placed at serial No. 13 of the said list for the purpose of according promotion to him to the post of Havaladar.

3. It has been submitted that on 25.08.2005, two persons, namely, Bhanwar Lal and Chaman Lal, who were junior to him, were promoted leaving out the petitioner. It has been submitted that the petitioner made a representation to the Commandant 19th Bn in this regard. On 21.11.2005, the respondents are stated to have issued an order whereby name of the petitioner has been deleted from list "C" dated 04.04.2003 on the ground that he did not possess the requisite qualification at the relevant time.

4. The petitioner is stated to have made another representation to the respondents stating therein that he had qualified in all the subjects in the year 2003 itself and that his similarly situated juniors have been promoted. A communication dated 16.01.2006 was addressed by the Commanding Officer to the DIG in this regard but the respondents did not consider the case of the petitioner. It has been submitted that two persons, namely, Dashori Lal and Raj Kumar had also not qualified all the papers but they were

given promotion.

5. The respondents have contested the writ petition by filing their reply. In their reply, the respondents have submitted that the petitioner was appointed as Constable (GD) on 29.09.1987 and posted in 12th Bn ITBP. He had education qualification of 8th pass. It has been submitted that the petitioner qualified J.C.C w.e.f., 01.02.1996 to 05.07.1996 while he was posted in 12th Bn ITBP and he was brought on approved list "A" 8/96 vide 12th Bn signal No. 7636 dated 15.10.1998. The petitioner is stated to have qualified S.C.C w.e.f., 14.08.2000 to 11.10.2000 in terms of General Memo dated 04.04.2003. In the year 2002, the petitioner appeared in 1st Class Education Certificate Examination but could not clear all the subjects as he was declared fail in Hindi subject.

6. The petitioner is stated to have again appeared in 1st Class Education Certificate Examination which was held w.e.f., 28.04.2003 to 01.05.2003 and he passed the same vide General Memo dated 17.10.2003. It is the contention of the respondents that because the petitioner had not acquired the requisite qualification of Matric at the time of finalization of List "C", which becomes basis for promotion to the post of Havaladar, as such, he could not be promoted on the basis of said list. In fact, vide order dated 21.11.2005, the name of the petitioner was deleted from the provisional list "C" dated 04.04.2003.

7. It has been submitted that five personnel of the Unit, who were junior to the petitioner, were promoted to the rank of Head Constable w.e.f. 11.08.2005 vide order dated 11.08.2005. It has been submitted that the Unit where the petitioner was posted was intimated that name of the petitioner has been removed from list "C" of February, 2003 as he could not attain the requisite education qualification till 31.12.2002 and it was intimated that the petitioner would be figuring in list

"C" of first half of 2006.

8. Regarding Raj Kumar and Dashori Lal, it was submitted that they were promoted w.e.f., 07.02.2003 by amending their seniority from approved List "C" 2002 to 2001 as their seniority had not been fixed in accordance with the Date of Birth Rule applicable for fixation of seniority. It has been submitted that prior to November, 2001, education standard for appearing in "C" list test for promotion to the rank of HC/GD was prescribed as II Class Certificate of Education but vide Standing Order dated 02.11.2001, the minimum education qualification for appearing in "C" list test for promotion to the rank of HC/GD is Matric or equivalent/First Class Certificate of Education and III English certificate. The respondents have denied the contention of the petitioner that other persons were promoted without acquiring the prescribed educational qualification.

9. Regarding Bhanwar Lal and Chaman Lal, it has been submitted that they were promoted to the rank of Head Constable because they had qualified matriculation examination and because the petitioner was not fulfilling eligibility condition on the crucial date i.e., on 01.01.2003, as such, he could not be promoted to the next higher rank and his name was deleted from the approved list of 2003. It has been submitted that after withdrawal of name of the petitioner from approved List "C", he was given chance to appear in approved list "C" test subject to acquiring eligibility.

10. I have heard learned counsel for the parties and perused record of the case.

11. The case of the petitioner in short is that his juniors, who were similarly situated to the petitioner, were given promotion on the basis of approved List "C" issued on 04.04.2003 but his name was deleted from the list merely because he had not qualified in one subject. It is the case of the petitioner that even some of his juniors, whose names have been mentioned in the writ petition, had not qualified in all subjects and despite this, they were granted promotion to the post of Head Constable. On this basis, it is being contended that the petitioner is entitled to be granted promotion to the post of Head Constable from the date his juniors were promoted.

12. The contention of the respondents is that because the petitioner did not acquire the basic eligibility condition of passing matriculation examination on the cut-off date i.e., 01.01.2003, therefore, his name was deleted from the provisional list "C" and now that he has acquired requisite qualification in October, 2003, his name can be considered for next promotion.

13. In the above context, if we have a look at the Standing Order No. 3 of 2001, which governs promotion of GD cadre in ITBP police, it provides that for promotion from the post of Constable to Head Constable, inter alia, the education qualification of a candidate should be Matric or equivalent from recognized Board/ University. It further provides that seniority will be assigned in accordance with qualifying the approved list test for which the approved list is drawn. It is clarified in the said order that those who qualify the approved lists earlier will be

senior and that inter se seniority in the earlier rank will be maintained within each year for which respective approved lists are drawn.

14. From the above, it is clear that seniority of Constable for the purpose of their promotion to the post of Head Constable has to be in accordance with qualifying the approved list test for the year for which the approved list is drawn. Thus, those who qualify the approved list test prior in point of time will rank senior. In the instant case, the petitioner has qualified the approved list test by acquiring the qualification of matric in October, 2003 whereas, the respondents have taken a categorical stand that both Bhanwar Lal and Chaman Lal had already acquired the matriculation qualification at the time of preparation of approved list "C" dated 04.04.2003. By application of Rule 2 of Standing Order No. 3 of 2001, even though Bhanwar Lal and Chaman Lal were junior to the petitioner, they would rank senior to him as both of them have acquired the qualification of matriculation, which is the basic test for being included in approved list "C" prior in point of time to the petitioner, who has acquired the said qualification in October, 2003.

15. Regarding Raj Kumar and Dashori Lal, it has been submitted by the respondents that their seniority was amended from approved List "C" 2002 to approved list 2001 and in the year 2001, prior to November, 2001 Standing Order No. 3 of 2001 was not applicable. It has been submitted that at the relevant time, there was no requirement of qualifying matriculation examination and prescribed qualification was II class Education Certificate which both Raj Kumar and Dashori Lal were possessing in the year 2001. Thus, the petitioner cannot claim parity with Raj Kumar and Dashori Lal, who had been placed in the approved list "C" of 2001 when Standing Order No. 3 of 2001 was not in operation.

16. For what has been discussed hereinbefore, it cannot be stated that the petitioner has been discriminated against while promoting his juniors Bhanwar Lal and Chaman Lal, who had acquired the prescribed qualification in accordance with Standing Order No. 3 of 2001 prior to acquisition of such qualification by the petitioner. Similarly, the petitioner cannot be equated with Raj Kumar and Dashori Lal, who were given

promotion on the basis of approved list "C" of 2001 when Standing Order No. 3 of 2001 was not in operation.

17. For the foregoing reasons, I do not find any merit in the petition. The same is accordingly dismissed.