
(1991) 07 P&H CK 0010

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 14438 of 1990

C. Sarbjit Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 19-07-1991

Acts Referred:

Punjab Police Rules, 1934 — Rule 13.1, 13.1(1), 13.1(2), 13.10, 13.20

Citation : (1992) 1 ILR (P&H) 87

Hon'ble Judges : Gokal Chand Mitol, Acting C.J.; H.S. Bedi, J; A.P. Chowdhri, J

Bench : Full Bench

Advocate : D.S. Walia and K.S. Sidhu, for the Appellant; H.S. Mattewal, A.G., O.P. Goyal, Addl. A.G. and G.S. Kharbanda, for the Respondent

Final Decision : Dismissed

Judgement

Gokal Chand Mital, A.C.J.—During the course of motion hearing of the present case, counsel for the Petitioners placed reliance on a single Bench decision of this Court in Constable Ravinder Singh and Ors. v. State of Punjab and Ors. C.W.P. No. 5099 of 1985, decided on 17th February, 1986. It was also pointed out that the Letters Patent Appeal against the said judgment had been dismissed but Special Leave had been granted by the Supreme Court and stay of the operation of the judgment delivered by the High Court on February 17, 1986, had also been ordered. The Hon'ble Judges constituting the Division Bench were prima facie of the opinion that the judgment of the learned single Judge as upheld in the LPA needed reconsideration in view of the fact that if the reservation for the Scheduled Castes/Backward Classes was not made at the stage of deputing the candidates to the training course, then it would render the reservation made in their favour virtually redundant, as it would not be possible to get the requisite number of candidates from those classes for being available for promotion. The judgment rendered in C.W.P. No. 5099 of 1985 decided on 17th February, 1986, Annexure P-2 to the writ petition, was based on two earlier decisions of this Court i.e. Ram Kumar and Ors. v. The State of Haryana and Ors. 1983 (1) S.L.R.

435 and Sardul Singh v. I.G. Police Punjab and Ors. 1970 S.L.R. 505. In order to dispose of the present petition the above noted judgments will have to be specifically dealt with.

2. The facts relevant for the disposal of the writ petition are that the Petitioners are posted as Constables in the Punjab Police in various district's. It is averred that all of them are eligible to sit in the test which is held every year in the month of January for admission to the Lower School Course, which is a pre-requisite for promotion from Constable to Head Constable. It has been stated in the petition that Rule 13.7 of the Punjab Police Rules, 1934, (hereinafter referred to as the "Rules") provides for the maintenance of List "B" in which the names of all Constables eligible for being sent to the Lower School Course are entered. This eligibility is to be determined on the basis of educational qualification, year of service and also on the basis of a test, prescribed under the Rules and the Standing Order Annexure R-2 framed under Rule 13.20. The Deputy Inspector General of Police of the Range approved the names of candidates forwarded by various police districts for the year 1990, and the requisite list was prepared, and the final list Annexure P-1 to the petition was finally published and it was indicated therein that the Petitioners had been shown in 20 percent reserved/waiting list, whereas, all Constables from Serial Nos. 1 to 100 were to be deputed for the lower School Course for the first session with effect from April 1, 1990, and the remaining 110 Constables i.e. from 111 to 220 in the second session which was to commence from October 1, 1990. It has further been: averred in the writ petition that in the list Annexure P-1, 36 candidates belonging to the reserved category of Scheduled Castes had been given precedence over the Petitioners, although most of them had got less marks than the Petitioners in the test. It has also been stated that had no reservation been made in the case, all the Petitioners would have been included in the list of 220 candidates selected for the Lower School Course. In view of these facts, the Petitioners placed reliance on the decisions of the Full Bench of this Court in Sardul Singh's case (supra) and the Division Bench in Ram Kumar's case (supra). It may be noticed at the outset that the Rules do not. provide for any reservation for Scheduled Caste or Backward Class candidates, and the reservation has been introduced in the shape of a Roster under Annexure R-1 with the reply to the petition.

3. The basic question that arises for determination is as to whether the preparation of the list B-1 constitutes a step in the process of promotion of Constables to Head Constables, because should it be so, then the reservation of vacancies for Scheduled Castes and Backward Classes has to be made at the stage of preparation of that list and before the selected Constables are sent for the course would be valid. In CWP No. 5099 of 1985 and Ram Kumar's case (supra), it has been held that at the stage of preparation of this list, no process of promotion is involved and, as such, no reservation can be made at this stage in favour of the reserved categories alluded to above. The correctness of these decisions is under challenge before his Full Bench.

4. The decision of this case must necessarily turn on an interpretation of the Rules. Rule 13.1 of the Rules provides that promotion from one rank to another, and from one grade to another in the same rank, shall be made by selection tempered by seniority. Efficiency and honesty shall be the main factors governing selection. Sub-rule (3) of Rule 13.1 provides that for the purposes of regulating promotions amongst enrolled police officers, six promotion Lists A, B, C, D, E, and F will be maintained. Rules 13.7, 13.8 and 13.9 which are relevant for the disposal of this case are reproduced hereunder:

List B. Selection for admission to promotion course for constables at the Police training College. 13.7. (1) List "B" Form 13.7 shall be maintained by each Superintendent of Police. It will include the names of all Constables selected for admission to the promotion course for Constables at the Police Training College. Selection will be made in the month of January, each year and will be limited to the number of seats allotted to the districts for the year with a twenty percent reserve. Names will be entered in the list in order of merit determined by the Departmental Promotion Committee constituted by the Inspector-General of Police on the basis of tests in parade, general law (Indian Penal Code, Code of Criminal Procedure, Indian Evidence Act and local and Special Laws) interview and examination of records.

(2)

(3)

(4)

13.8 List-C 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 Constables. 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) Promotion 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 Constables up to a maximum of ten percent of vacancies.

13.9 List D. Selection of candidates for promotion course for Head Constables

Promotion to the Rank of Assistant Sub-Inspector:(1) List "D" shall be maintained in two parts for Head Constables in card index form No. 13.9 in each district. Selection for admission to the promotion course for Head Constables at the Police Training College, will be made from amongst all the confirmed Head Constables. No Head Constable shall be eligible for admission to the promotion Course for Head Constables at the Police Training College unless (1). He is below the age of forty years on the day of commencement of the next course.

(2)

Rule 13.20 of the Rules provides for the constitution of a Departmental Promotion Committee and it requires that the promotion test, subsequent interview, parade etc. will be done under the supervision of this Committee and it shall be the function of the Committee to prescribe the Syllabi for various tests and the qualifying percentage of marks. The composition of the Departmental Promotion Committee is to be prescribed by the Inspector General of Police in the form of a Standing Order. A copy of the Standing Order has been appended with the reply as Annexure R-2. As analysis of Rule 13.7 of the Rules reveals that the list in Form "B" shall be maintained by each Superintendent of Police and this list shall include the names of all constables selected for admission to the promotion course. It has also been indicated that the names in list "B" will be entered in order of merit determined by the Departmental Promotion Committee on the basis of tests prescribed under the rules. The procedure laid down in Rule 13.7 of the Rules is supplemented by the Standing Order appended as Annexure R-2. It will be clear from a reading of the aforesaid rule as also the Standing Order that an elaborate procedure detailing the various steps towards promotion has been prescribed therein, the total number of marks prescribed and the break-up is elaborately set out. The relevant portion of the Standing Order is reproduced below for ready reference:

Test and marking system:

(i) The written test in law would be conducted in accordance with the syllabus as given in Appendix "A" in the case of Constables of PAP and "C" (In the case of Constables of District Police and GRP) and shall carry:- 75 Marks

(ii) The test in Parade shall carry 10 Marks

(iii) Interview 5 Marks

(iv) Examination of Record 10 Marks

Rule 13.8, of the Rules provides for the maintenance of List "C" which consists of all Constables who have passed the Lower School Course and promotions to Head Constables will be made thereafter in accordance with the principle described in Sub-rule 13.1(1) and (2) and the order of merit in which examination have been passed shall be taken into consideration in comparing qualifications and other qualifications being equal, seniority in the police force shall be the deciding factor. It will be seen from this Rule as well, that the merit

of the candidates who have passed out of the Lower School Course will be one of the qualifications that will be kept in view while making promotions from Constables to Head Constables.

5. Rules 13.9 and 13.10 of the Rules deal with the maintenance of Lists "D" and "E" for promotion of Head Constables to the rank of Assistant Sub-Inspectors and for promotion from Assistant Sub-Inspectors to the rank of Sub-Inspectors. The comparison of Rule 13.7 with Rules 13.9 and 13.10 would indicate that whereas Rule 13.7 sets out an elaborate procedure for a qualifying test for the purpose of being considered for entry into the Lower School Course, no such test is prescribed in Rules 13.9 and 13.10 and that the candidates who are brought on these lists are so brought on the basis of their seniority alone. This matter was considered by the Full Bench in Sardul Singh's case (supra) and the distinction between the rules was noticed in the following words:

In that case the provision for selection has been made in the rule at stage of sending for Lower School Course. Those Constables, who successfully pass the Lower School Course and are considered eligible for promotion as Head Constables will be entitled to list "C" under rule 13.8. It is thus evident that the second selection for being admitted to list "C" starts after a Constable on list "B" passes the Lower School Course. His admission to list "C" will not be automatic thereafter but it will have to be considered whether he is fit for promotion to the rank of Head Constable. For that purpose, the marking in Sub-rule 13.5(2) and the notes of the Superintendent of Police or furnished by gazetted officers under whom the Constable has worked, on his qualifications and character are to be taken into consideration when admitting him to list "C" and promoting him, as Head Constable. It is not that such a procedure not known to the rule-making authorities for making selections for the training courses. The omission to make a provision for selection at the stage fit. Seeding the Head Constables for the Intermediate School Course in Rule 13.9 like the one made in Rule 13.7 leads to the conclusion that the omission by the rule-making authority was deliberate and the only inference that can be drawn from this omission is that no Head Constable is to be deprived of his right to go for the Intermediate School Course in order to qualify himself for consideration for promotion to the next rank of Assistant Sub-Inspector of Police.

6. Strong reliance was placed by the counsel for the Petitioners on the passage quoted above. He has also relied on Ram Kumar's case (supra) where while interpreting Rule 13.7 with the help of Sub-rule (1) of Rule 13.1, the Court made the following observations:

A bare reading of this sub-rule makes it manifestly clear that to undergo a training course is only one of the qualifications which makes a Constable eligible for being considered, for promotion to the next higher post, of a Head Constable. It is also clear from the phraseology of instructions P-1 that these envisage reservation to the post and not to eligibility or the training course.

7. As already mentioned above, the interpretation of Rule 13.7 was not specifically involved before the Full Bench in Sardul Singh's case and the observations made therein were with reference to the interpretation put by the Court on Rules 13.9 and 13.10 of the Rules.

8. We have re-examined the matter in the light of the various judgments and rules and find that Rule 13.7 is substantially different in its applicability and essence from Rules 13.9 and 13.10. It is to be borne in mind that as per the practice in the Department, no inter se seniority of Constables is maintained and all Constables who qualify in terms of the rule and the Standing Order are entitled to be put on List "B" for being sent to the Lower School Course. It is after passing the Lower School Course that a seniority list of Constables is framed under Rule 13.8, and are put in List "C" where in addition to other factors, the merit obtained in the course is to be kept in view. It is, therefore, apparent that the prescription of test at the stage, of the preparation of List "B" in terms of Rule 13.7 is essentially a step in the process of promotion of Constables to Head Constables. That being the situation, it would be mandatory on the authorities to make the reservation as provided by Annexure R-1 at the stage of selecting candidates for being put on List "B". Even in Sardul Singh's case (supra) the final conclusion drawn by the Full Bench was specifically with regard to the interpretation of Rules 13.9 and 13.10 of the Rules. This would be apparent from a reading of paragraphs 1 and 2 of the report.

9. We are of the view (as also noticed by the Motion Bench) that unless the reservation is made at this stage, the adequate number of reserved category candidates would not be reflected in List "C" which concededly does constitute a link in the process of promotion. We are, therefore, of the opinion that Sardul Singh's case (supra) is distinguishable on facts and does not help the case of the Petitioners. The Division Bench in Ram Kumar's case (supra) and the learned single Judge in CWP No. 5099 of 1985 Constable Ravinder Singh and Ors. v. State of Punjab and Ors. have not gone into the aspect of the matter as we have seen it and have substantially relied on the observations made in Sardul Singh's case. As already stated above, we are of the opinion that Sardul Singh's case is distinguishable, but the two other judgments mentioned above, i.e. Ram Kumar's case (supra) and Constable Ravinder Singh's case (supra) are wrongly decided and need be overruled.

10. The final argument raised by the counsel for the Petitioners is that the rules do not provide for any reservation for Scheduled Caste/Backward Class Candidates and, as such, no reservation can be made in this behalf. This argument also is misplaced. The government instructions relating to reservation of posts for Scheduled Caste/Backward Class or other reserved categories, are binding on the police department and have to be seen as supplemental to the departmental rules. The reservation made by Annexure R-1, is, therefore, valid. Having held as above, we hold that the preparation of the List B-1 in terms of Rule 13.7 constitutes a step in the process of promotion of Constables to Head

Constables, with the result that reservation for the reserved categories has to be made at the stage of the making of that list.

11. For the reasons recorded above, we overrule the judgments rendered by the Division Bench in Ram Kumar's case (supra) and by the Single Bench in Constable Ravinder Singh's case (supra) and find no merit in the present writ petition, which is dismissed. However, there will be no order as to costs.