
(2013) 11 P&H CK 0097
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 17003 of 2010

Constable Puran Chand and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 15-11-2013

Acts Referred:

Citation : (2013) 11 P&H CK 0097

Hon'ble Judges : Rajiv Narain Raina, J

Bench : Single Bench

Advocate : S.N. Yadav in CWP No. 17003 of 2010 and Mr. H.O. Sharma in CWP No. 17456 of 2011, for the Appellant; Sunil Nehra, D.A.G., for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Narain Raina, J.—This order will dispose of two connected petitions, i.e., CWP No. 17003 of 2010, CWP No. 17456 of 2011 as common questions of law and facts are involved therein. For the sake of convenience, the facts are culled out from CWP No. 17003 of 2010. The petitioners play different musical instruments and belong to the Band Staff which is a separate specialized group of police personnel with headquarters at Madhuban, Karnal, Haryana. Their seniority and promotions lie within the separate cadre of the Band Staff. The promotions of Band Staff in the Haryana Police are made on the basis of seniority cum merit. They are not transferred to any other cadre. They possibly cannot be transferred by virtue of the nature of their job. They are not involved in investigation of crime or maintenance of law and order. But they are given designations of Constables, Head Constables, Sub Inspectors and Band Master. The criteria for promotion is taken into account based on their service record and confidential rolls, the ability of play musical instruments and to have completed 8 years of service on a post. The sanctioned strength of the Pipe Band is 1 Sub Inspector, 4 Head Constables and 3 Constables. However, for the purpose of discipline, they are considered a part and parcel of Haryana Police.

2. The grievance of the petitioners is that they are not allowed to compete in the

process of selection of B-1 promotion course under rule 13.7 of Punjab Police Rules, 1934 as applicable to the State of Haryana. Rule 13.7 (2) reads as follows:-

13.7 (2)

(i) All constables irrespective of their educational qualifications shall be eligible to appear for B-test under 55% quota, 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 reserved category who is recruited after attaining the age of 27 years as per Government institution/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 up to a maximum of 40 years.

(ii) All constables irrespective of their educational qualifications shall be eligible to be brought on list B-I under 35% quota, 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.

3. They claim that they are fully eligible for promotion to course B-I in all the 3 categories, i.e. 55% quota on the basis of merit-cum-test, 35% on seniority-cum-merit and 10% for sports and bravery.

4. The petitioners' claim is based on parity of treatment citing an administrative precedent in the case of one Constable Kavrish Kumar Sharma who belonged to the Band Staff and was selected to undergo B-I course under 10% quota and was deputed to the Lower School Course. He is now a promoted Head Constable in Haryana Police. If this has been done in the case of 10% quota, there is no reason why the same should not be done for 35% and 55% quotas carved out in the rules. On being denied entry to B-I course, the petitioner (main case) submitted a representation dated 16.9.2009 (P-2) to the decision maker. No action has been taken by the respondents to address the grievances of being denied entry to B-I test which would pave their way to mainline police postings and promotions. A legal notice dated 7.8.2010 (P-3) was served which is pending consideration. It is submitted, on the strength of rule 13.7 as amended by the Punjab Police (Haryana Amendment) Rules, 2001 notified on 28.6.2001 that the expression "all constables" employed in the said rule irrespective of their educational qualifications shall be eligible to appear for B-I test. Therefore, according to them the expression "all constables" would include the petitioner/s as well.

5. In the written statement filed by the police department in response to notice issued by this Court the case of Kavrish Kumar has been explained. He was wrongly deputed to the course in 2008 and he had completed it. It is averred that on acquiring the condition of passing of the lower school course, he would not be entitled to seniority in the pipe band staff on the basis of having passed the lower school course. Therefore, a show cause notice was issued to Kavrish

Kumar for reversion to the rank of Constable and after adopting due process, he was reverted back to the rank of Constable in Band staff.

6. Ami Lal's case also relied upon by the petitioner/s has been explained away that he had been promoted Officiating Head Constable against a vacancy of general duty by the Commandant, 3rd Battalion, HAP, Madhuban, Karnal inadvertently out of turn. The order was recalled on 10.12.2007 and the consequential promotion given on 24.8.1993 has been withdrawn and his seniority has been re-fixed in the cadre of Band Staff. The selection of Band Men and their promotions it is said are based on passing of a prescribed test and on favourable certification by the Music Committee set up for the purpose as having qualified the test.

7. Heard the learned counsel for the parties.

8. Learned counsel for the petitioners submit that the Rules of Pipe Band, 1973 are not statutory rules and are merely executive instructions. Mere approval by the State Government vide its letter dated 30.5.1973 will not give them statutory status. This Court vide interim order dated 5.11.2012 called upon the respondents to demonstrate whether the subsequently drafted Rules of Pipe Band, 1993 have been notified or approved by the Government of Haryana or not? In response an affidavit of Shri Rajender Kumar, IPS, Commandant, 2nd Bn., Haryana Armed Police, Madhuban has been filed and it has been stated that the Police Brass Band Rules, 1993 have not been approved and notified by the State Government. However, these draft rules were received from Inspector General of Police, HPC, Madhuban vide letter dated 16.11.1993 for approval of DGP, Haryana. The same were approved by the DGP, Haryana vide office memo dated 29.12.1993. A revised draft dated 3.2.2002 was sent for approval and signatures of DGP, Haryana which was kept pending. The text of the draft rules has been placed on record through the affidavit. Neither 1973 rules nor 1993 draft rules contain any provision for deputing Band Staff to promotional courses under Punjab Police Rules, 1934 as applicable to the State of Haryana.

9. 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).

10. There is therefore little merit in this petition or for this Court to interfere in the matter. The petitions to stand dismissed. However, a direction is 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.