

(2000) 09 P&H CK 0189

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 9061 of 1995 (O and M)

HC Suresh Kumar

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 28-09-2000

Acts Referred:

Constitution of India, 1950 — Article 311

Punjab Police Rules, 1934 — Rule 13.1, 13.18, 13.4(2), 13.8(2), 16.24

Citation : (2000) 09 P&H CK 0189

Hon'ble Judges : Amar Dutt, J

Bench : Single Bench

Advocate : Mr. I.S. Balhara, for the Appellant; Mr. Ajay Pathak, General, Mr. S.S. Dahiya and Mr. P.C. Wadhwa, for the Respondent

Judgement

Amar Dutt, J.—This judgment will dispose of C.W.P. Nos. 9061, 9055, 9611, 9915 and 9783 of 1995. The common facts necessary for the disposal of the petitions have been taken from C.W.P. No. 9061 of 1995.

2. The petitioners were selected out of 15000 candidates in March 1998 for enrolment in the Haryana Commando Police Force (hereinafter referred to as the "Commando Force"), which was raised as a special branch of the Haryana Police in the year 1986-87. This force is governed by the Punjab Police Rules, 1934 (hereinafter referred as the Rules) as applicable to the State of Haryana. At the time of the recruitment 100 posts of Head Constables were sanctioned in the Commando Force and these were manned by deputationists from other Branches of the Haryana Police. As the work and conduct of the petitioners was outstanding a proposal was put forth by the respective Superintendents of Police to the Deputy Inspector General of Police for promotion of eligible Constables to the rank of Head Constables. As a result of this 20 Constables were recommended for promotion on the ground that they are qualified to be promoted as Head Constables because they had undergone the Ranger Commando Course at National Security Guards, Manesar. The petitioners were

thereafter promoted to the post of Head Constables and joined the permanent vacancies available in the cadre w.e.f. 17.7.1992. On promotion, they were put on probation and the appointments were made against permanent posts of Head Constables as such were to be governed by rule 13.18 of the Rules although in the order these promotions were shown to have been made on ad hoc basis (Annexure P-1). According to the petitioners, in *Rishal Singh Vs. State of Haryana and Others*, , the Apex Court has observed that there is no word "ad hoc" in the Police Rules and any promotion made in accordance with the Rules 13.1(2) or 13.18 of the Rules. On 29.6.1995, respondent No. 4 had ordered the reversion of the petitioners inspite of the fact that they had completed three years service and their work and conduct for more than two years was found to be outstanding. The petitioners seek to assail the orders of their reversion on the ground that in view of the judgment in *Rishal Singh's* case (supra) as they have completed two years" probation, they are entitled and deemed to have been confirmed and could not be reverted without complying with the provisions of Article 311 of the Constitution of India or without following the procedure laid down in rule 16.24. They also submit that although the petitioners have not passed their Lower School Course, they are entitled to be confirmed as Exemptee Head Constables under the provisions of Rule 13.8(2) of the Rules.

3. In the reply filed on behalf of respondents No. 1 to 4 by the Superintendent of Police, Commando, Newal Kamal, it is submitted that there was no provision for setting up the Commando Force in the Rules. According to the respondents, Commando Force is different from the General Police Force and the recruitment in it to the rank of Constables is made in accordance with the Director General of Police Standing Order No. 49 of 1988. It is also admitted that as Head Constables from the district and Haryana Armed Police were not coming forward for deputation in the Commando Force, so a proposal for promotion of suitable Commando Constables to the rank of Head Constables on ad hoc basis was sent to respondent No. 3-The Deputy Inspector General of Police, Railways and Commando, Haryana as a temporary measure. It was asserted that these proposals were temporary arrangements, which were to continue till the stage when the requisite experience and other requirement were attained by the Constables. In view of the fact that the promotion was only on ad hoc basis and fortuitous, the petitioners have no right over their seniors and could be reverted at any time without any formal show cause notice. In view of this, according to the respondents, Rule 13.18 of the Rules was not applicable to the case of the petitioners. Elaborating further on this submission, it was asserted that ad hoc promotions were given vide order dated 17.7.1992 as Lower School Course passed Constables were not available in the Commando Force. Since 106 Constables had passed the Lower School Course, out of which 70 had been promoted to the rank of Head Constables and, therefore, the petitioners were reverted back to their substantive rank vide the impugned order. In these circumstances, it was asserted by the respondents that the judgment in *Rishal Singh's* case (supra) is not applicable to the case of the petitioners and,

therefore, no relief can be given to them in law.

4. The private respondents filed a separate written statement in which a preliminary objection was taken on the basis of police letter dated 4.12.1991 in which it was indicated as under :-

"It has, therefore, been decided that in future no ad hoc promotion in any rank would be made by any Inspector General, Deputy Inspector General of Police and Superintendents of Police. All old cases, in which ad hoc promotions have been given, should be reviewed and where no stay order has been granted by the Courts the Officers should be immediately reverted to their original rank."

It was also submitted that according to the judgment of this Court in C.W.P. No. 459 of 1993 decided on 8.12.1993, ad hoc promotions can only be granted by the Director General of Police and, therefore, as the promotion of the petitioners did not have the approval of the Director General of Police, it did not create any vested right in the petitioners for being retained in the rank of Superintendents of Police. The private respondents too have submitted that recruitment and promotion for Constables in the Commando Force was governed by Standing Order No. 49 of 1988 and that the promotions were made on purely ad hoc basis as a temporary measure and as such the Constables did not have any vested right to continue to work on the posts of Head Constables. It was further submitted that the respondents had already undergone the Lower School Course and according to Rule 13.8(1) of the Rules, they are eligible for promotion to the rank of Head Constables because their names have been entered in List C-1. The assertion made on behalf of the petitioners that they should be considered to have been promoted against the 10% vacancies which were provided under Rule 13.82, according to the respondents, was not also applicable and, therefore, it was asserted that the petitions were devoid of merit and should be dismissed.

5. I have heard Shri I.S. Balhara and Shri S.S. Dahiya on behalf of the private respondent and Shri Ajay Patak appearing on behalf of the State. The controversy in the present case centres around two points, namely, (i) Whether the petitioners could in law have been promoted on ad hoc basis in view of the observations contained in Rishal Singh's case (supra); (ii) If not, whether the petitioners are entitled to assert that their case should be deemed to have been dealt with by the police authorities under Rule 13.8(2) of the Rules and they are entitled to be treated as selection grade Constables who have not passed the Lower School Course at the Police Training School and have been promoted with the approval of the Deputy Inspector General of Police against 10% vacancies which he can fill up in his discretion.

6. The facts in this case are not in dispute, the petitioners had been appointed in the Haryana Commando Police Force as Constables and in view of the permanent vacancies of Head Constables which were available they were promoted as officiating Head Constables with effect from 17.7.1992 without their having passed the lower school course. They continued working in this rank until the

orders for their reversion were passed on 29.6.1995. The petitioners submit that this order of reversion is illegal because they had already served for more than two years as Head Constables and for advancing this argument they relied on Rule 13.18 of the rules. They also assert that the order of reversion passed in their case is against the ratio of the judgment of the Apex Court in Rishal Singh's case (supra). According to them the sole criteria which has to be taken into consideration by the appointing authority in matters of promotion of Constables is efficiency and honesty as laid down in rule 13.1, which reads as under :-

"13.1. Promotion from one rank to another. - (1) 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. Specific qualifications, whether in the nature of training courses passed or practical experience shall be carefully considered in each case. When the qualifications of two officers are otherwise equal, the senior shall be prompted. This rule does not affect increments within a time scale."

In view of this, they submit that the order of reversion passed against them cannot be sustained and should be set aside. This submission which appears to be attractive at first sight does not stand to close scrutiny. It does not take into consideration the provisions of Rule 13.4(2) and (3), which specifically empower the authorities to make officiating promotions which read as under :-

" 13.4(2) Officiating promotions to the rank of Sub-Inspector, Assistant Sub-Inspector (For Haryana) and Head Constable shall be made by Superintendent of Police and Assistant Superintendent, Government Railway Police. If the flow of promotion is unevenly distributed among districts, the Deputy Inspector General of Police shall make suitable transfers of Assistant Sub-Inspectors, Head Constables (for Haryana and Constable) on the promotion lists from one district to another.

(3) All promotions concerning Inspectors, Sub-Inspectors, Assistant Sub-Inspectors and Head Constables made under this rule shall be published in the Police Gazette, and notifications by Superintendents shall be sent in through the Deputy Inspector General of Police, who shall have the power to revise such orders on recording reasons in each case. If any Superintendent has not enough men on lists C, D and E in his district to fill temporary appointments in either rank, which he is required to make, he shall apply to the Deputy Inspector General for a man from another District."

7. On perusal of the appointment order it is not clear that the petitioners have been made officiating Head Constables. The reliance which is being placed on Rule 13.18 of the Rules, reads as under :-

"13.18. Probationary period of promotion. -All Police Officers promoted in rank shall be on probation for two years, provided that the appointing authority may, by a special order in each case, permit period of officiating service to count

towards the period of probation. On the conclusion of the probationary period a report shall be rendered to the authority empowered to confirm the promotion who shall either confirm the officer or revert him. In no case shall the period of probation be extended beyond two years and confirming authority must arrive at a definite decision within a reasonable time soon after the expiry of that period whether the officer should be confirmed or reverted. While on probation officers may be reverted without departmental proceedings. Such reversion shall not be considered reduction for the purpose of rule 16.4." is clearly mis-conceived. The petitioners cannot by any stretch of imagination be held to be promoted to the rank of Head Constables as envisaged in the above , rule so as to enable them to rely upon the completion of the period of probation of two years prescribed in the Rules for challenging the order of reversion.

8. The matter can be looked into from another angle also. There being no dispute that none of the petitioners had passed their, lower school course or were selection grade constables at the time when they were given officiating promotions nor there being any assertion to the effect that their promotions have been made on account of the fact that they were outstanding sportsmen no reliance can be laced on rule 13.8(2) of the Rules, which reads as under:

"13.8(2) Promotions to Head Constable shall be made in accordance with the principle described in sub-rule 13.1(0 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 comprising (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 per cent of vacancies."

for holding that the petitioners should be deemed to have been promoted against the 10% quota and that the promotions given to them were not officiating but regular promotions and, therefore, after the expiry of two years they should not be reverted without following the procedure prescribed by law. The promotions of the petitioners being ad hoc in nature will have to be considered to be fortuitous and not conferring any right on the petitioners as has been held by this Court in C.W.P. No. 2704 of 1996 : 1996(4) SCT 662 (P&H)(DB) H.C. Brij Lal v. State of Haryana and others, decided on 5.8.1996. To the similar effect are the observations contained in Food Corporation of India v. Thaneshwar Kalita and others 1995(3) RSJ 298 : 1995(3) SCT 319 (SC) and Sarup Singh and others v. State of Punjab and others 1991(1) SLR 381.

For the reasons recorded above, the present petitions fails and are dismissed accordingly.

9. Petitions dismissed.