

(1981) 06 SHI CK 0002
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 288 of 1978

Hira Nand

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 04-06-1981

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Punjab Police Rules, 1934 — Rule 13.1, 13.10, 13.10(2), 13.18

Citation : (1981) 10 ILR HP 225

Hon'ble Judges : V.D. Misra, C.J

Bench : Single Bench

Advocate : Arun Kumar Goel, for the Appellant; L.S. Panta, D.A.G., for the Respondent

Judgement

V.D. Misra, C.J.—By this petition, the Petitioner has challenged the order of his confirmation as Sub-Inspector of Police.

2. In order to expedite the hearing of this petition, I had asked the learned Counsel for the parties to file written arguments so that time in deciding the petition may be cut short to the minimum. Written arguments were filed but I found that they were practically as lengthy and confused as the leadings were. Therefore, while hearing the learned Counsel for the parties, I directed them to confine themselves to the relevant material facts and warned them that I will not refer or take into consideration the facts and law which is not pointed out to me during the course of arguments.

3. The Petitioner was working as Assistant Sub-Inspector when he was promoted as Sub-Inspector against a vacancy vice another Sub-Inspector who had proceeded on leave preparatory to retirement. This was done vide order Annexure "A" dated 25th April, 1957. The Petitioner, therefore, took over as Sub-Inspector on 2nd May, 1957. After eight years, that is, on 1-4-1965, the Petitioner was sent for training for Upper Class Course. According to the practice the trainee is reverted by one rank. The Petitioner, therefore, was reverted as

Assistant Sub-Inspector and went for training as such. He completed his training and on 27th October, 1965, he joined back as Sub-Inspector. On 15th May, 1974, he was allowed to cross the efficiency bar with effect from 1st April, 1972.

4. A provisional seniority list as on 1st November, 1966, in respect of the police officers of the Himachal Pradesh was issued. The Petitioner was shown at Sr. No. 56. He was shown as officiating. The date of his continued service in the rank as Sub-Inspector was shown as 2nd May, 1957. Mr. Panta, learned Deputy Advocate General, at this stage points out that according to the list which is with him the Petitioner is shown at Sr. No. 63. However, the list referred to by Mr. Panta is of 9th November, 1970, whereas the provisional seniority list of Sub-Inspectors of Himachal Pradesh Police referred to by Petitioner was issued on 6th February, 1968.

5. Another joint seniority list as on 1-11-1966 (Annexure B-1) was issued. This list was the result of the re-organisation of the State of Punjab and the consequent allotment of Police Officers and other Government servants from the erstwhile State of Punjab to the then Union Territory of Himachal Pradesh. In this list the Petitioner is shown at Sr. No. 130 and the date of his continued service in the rank as Sub-Inspector is shown as 2nd May, 1957.

6. The Petitioner avers that on 26-12-1973 some of his juniors were confirmed as Sub-Inspectors. He, therefore, made a representation (Annexure "D") on 14th September, 1974. On 27-12-74 he sent a reminder (Annexure "E"). On 2nd March, 1975, the Superintendent of Police informed the Petitioner that his representation was under consideration (Annexure "F"). On 17th February, 1976, the Petitioner made a representation to the Inspector General of Police. It was on 22nd December, 1976, when the Superintendent of Police informed the Petitioner that the latter has been confirmed as Sub-Inspector with effect from that date, that is, 22nd December, 1976. On 4th March, 1977, a copy of the confidential memo, from the Inspector General of Police to the Deputy Inspector General of Police with reference to the representation of the Petitioner was sent to the Petitioner on 22nd April, 1977. It was inter-alia stated that the Petitioner could not be considered for promotion as Inspector by the D.P.C. as he was unconfirmed at the time of selection (Annexure "K"). The Petitioner made a representation (Annexure "L") to the Chief Minister requesting that the case of the Petitioner for confirmation from a previous date as well as for promotion be considered again by the Inspector General of Police. On 18th October, 1977, the Petitioner sent a reminder (Annexure "M") to the Chief Minister. On 1-11-77 the representation of the Petitioner dated 18-10-77 was forwarded by the Superintendent of Police to the Inspector General of Police. Still another representation (Annexure "N") was made by the Petitioner to the Inspector General of Police against the promotions given to his juniors. On 14th April, 1978, the Petitioner served a notice u/s 80 Code of Civil Procedure. On 24th April, 1978, the Petitioner was informed that his representation made to the State Government was under consideration of the Government (Annexure P. 1).

Thereafter, the Petitioner filed the present petition on 12-12-1978.

7. The facts detailed above are not in dispute. The stand of the State is that the Petitioner was not found fit to be confirmed till 22-12-1976. It is submitted that there were adverse entries in the service record of the Petitioner. These entries were to the effect that the Petitioner was in the habit of excessive drinking though otherwise he was a good officer. In another adverse entry, it was recorded that he was not pulling well with the local S.D.M.

8. The first adverse entry related to the period 25th March, 1972 to 27th October, 1972, but it was conveyed to the Petitioner after practically five years, that is, 21st May, 1977. (Annexure "T"). It may be remembered that by an order dated 15th May, 1974, the Petitioner was allowed to cross the efficiency bar with effect from 1-4-1972. In other words, when the decision was taken to allow the Petitioner to cross the efficiency bar, adverse entries were on record and they are presumed to have been considered. However, those entries were not perhaps considered of such a nature as to deny the Petitioner the benefit of efficiency bar.

9. The effect of allowing a person to cross the efficiency bar while the adverse entries are on record has been the subject matter of various decisions. I will notice my earlier decision in C.W.P. No. 435 of 1976: Ram Rattan Chauhan v. State of Himachal Pradesh and Ors., decided on 27th March, 1981. While deciding that case, the decision of the Supreme Court in The State of Punjab v. Dewan Ckuni Lal 1970 S.L.R. 375, as well as decision of the Delhi High Court in J.R. Jain v. Union of India and Ors. 1973 (2) S.L.R. 309, were taken into consideration. It was observed:

If the authorities were taking serious note of the punishment they would not have allowed the Petitioner to cross the efficiency bar soon thereafter. In any case, when a Government servant is allowed to cross the efficiency bar it is presumed that he has overcome his deficiency and has improved so much that the earlier drawbacks have become stale.

I would, therefore, hold that the effect of the adverse entries stood wiped out by the Petitioner being allowed to cross the efficiency bar. It may also be recalled that the Petitioner was not conveyed the first adverse entry till 21st May, 1977, and so it could not be used against him. It is now well settled that every government servant is entitled to know what the adverse entry is so that he gets a chance to make a representation against that entry. Only after the Petitioner has been heard about the adverse entry, which if maintained can be used against him. Similarly the adverse entries for the period 1-4-73 to 29-7-73 were communicated to the Petitioner only on 22-7-74. But these also did not affect the Petitioner in crossing the efficiency bar. The entry that the Petitioner was not pulling on well with the local S.D.M. perhaps could never be such a serious deficiency in the service career. In any case, the Petitioner contends that it was never conveyed to him and there is nothing on his service record to show that the S.P., who was directed to convey the adverse entry to the Petitioner, did in

fact communicate it. Be that as it may, these entries, as already observed, had no significance and the Respondents also did not attach any importance to them.

10. The main contention of the Petitioner is that under Rule 13.18 of the Police Rules the maximum probationary period is fixed and during this period the Petitioner should either be confirmed or reverted. Since the Petitioner was not reverted it should be presumed that he has been confirmed.

11. Now Chapter 13 of the Punjab Police Rules relates to promotion. Rule 13.1 lays down that promotion from one rank to another shall be made by selection tempered by seniority. It is also laid down that efficiency and honesty should be the main factors to the selection. However, the relevant provisions are Rule 13.10 and 13.18. Under Rule 13.10, list "E" has to be maintained. In this list, the names of all Assistant Sub-Inspectors who are found fit for promotion have to be entered. Officiating promotion of short durations can be made within the district but vacancies of long duration have to be filled by promotion of any eligible man in the range. Sub-rule (2) of Rule 13.10 lays down:

No assistant sub-inspector shall be confirmed in a substantive vacancy in the rank of sub-inspector unless he has been tested for at least a year as an officiating sub-inspector in independent charge of a police station in a district other than that in which his home is situated.

However, it is not the case of the Respondents that the name of the Petitioner was not on list "E" or that Sub-rule (2) was in the way of confirmation of the Petitioner. As already stated, the contention of the State is that the Petitioner was not found fit during his long service career as Sub-Inspector for confirmation as Sub-Inspector till 22-12-1976.

12. Now the provisions of Rule 13.18 be read:

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 periods 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 officer or revert him. In no case shall the period of probation be extended beyond two years and the 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.

(emphasis supplied)

It is obvious that the maximum period of probation is two years. During this period either a person is found fit for confirmation or he is to be reverted. It does not lie in the mouth of the State that the Petitioner was not fit for confirmation because in that case it was the duty of the State to revert him. The rule makes it imperative that the period of probation could not be extended beyond two years under any circumstance.

13. The effect of laying down the maximum period of probation has been the subject matter of various decisions. The Supreme Court in *State of Punjab Vs. Dharam Singh*, , ruled that where the maximum period of probation has been provided for "and an employee appointed or promoted to a post on probation is allowed to continue in that post after completion of the maximum period of probation without an express order of confirmation, he cannot be deemed to continue in that post as a probationer by implication....In such a case, it is permissible to draw the inference that the employee allowed to continue in the post on completion of the maximum period of probation has been confirmed in the post by implication." No decision of the Supreme Court to the contrary has been brought to my notice. On the other hand, decisions of the High Courts following *Dharam Singh*'s case have been cited by the learned Counsel for the Petitioner but I need not refer them. It has, therefore, to be presumed that the Petitioner continued to hold the post of Sub-Inspector as permanent since he was posted against a permanent vacancy and there is nothing on record to show that the probationary period was not completed successfully.

14. Now the order of promotion (Annexure "A") shows that the Inspector General of Police had made the order promoting the Petitioner as Sub-Inspector. Para-6 of the petition contains the details of the notification and the Respondents in their reply have admitted the same. It is true that the Petitioner was promoted as officiating Sub-Inspector. But the only reason advanced by the Respondents in Para-4 of their reply is that the period of promotion to the rank of Sub-Inspector of Police from May, 1957 to October, 1965, could not be counted towards a promotion as Sub-Inspector of Police. No reason is given why this period could not be counted and why the date of confirmation was selected as 22-12-1976. It is submitted by Mr. Panta that since the Petitioner had not completed his Upper School Course so this period could not be counted. But he has failed to show that the course was a necessary qualification before the Petitioner could be confirmed or his period of service could be counted. It will not be out of place to record that the Petitioner is crying hoarse that persons who never completed the said course and who were juniors to the Petitioner were indeed promoted and confirmed earlier. It is true that to begin with the Petitioner was promoted to officiate as Sub-Inspector when S.I. Nand Lal proceeded on leave preparatory to retirement. But this permanent post fell vacant after the retirement of S.I. Nand Lal. Moreover, I have not been shown any order by which the Petitioner was put on probation in this post. I have therefore, to presume that after the officiating period came to an end with the retirement of S.I. Nand Lal, the Petitioner started acting as Sub-Inspector on probation. He would, therefore, be taken to have been confirmed the moment he completed his period of probation since, as already stated, the Petitioner was never reverted in terms of Rule 13.18.

15. The petition is accepted and the Respondents Nos. 1 to 3 are directed to treat the Petitioner as confirmed with effect from his completing two years as Sub-Inspector after the retirement of S.I. Nand Lal . The Respondents are further directed to consider his case for further promotion keeping in view the aforesaid

date of his confirmation as Sub-Inspector. Needless to add that consequential benefit shall be given. The Petitioner will have his costs from the State.