

(1970) 05 P&H CK 0016
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1692 of 1969

Sardul Singh, Head Constable

APPELLANT

Vs

Inspector-General of Police and Others

RESPONDENT

Date of Decision : 05-05-1970

Acts Referred:

Constitution of India, 1950 — Article 16, 16(1), 226, 227, 311
Punjab Police Rules, 1934 — Rule 13.1, 13.10, 13.9

Citation : AIR 1970 P&H 481 : (1970) 2 ILR (P&H) 489

Hon'ble Judges : Mehar Singh, C.J; Harbans Singh, J; Bal Raj Tuli, J

Bench : Full Bench

Advocate : Abnasha Singh, for the Appellant; C.D. Dewan, A.A.G. and C.B. Kaushik, for the Respondent

Judgement

Bal Raj Tuli, J.—These 92 writ petitions have been placed for hearing before this Bench in pursuance of the order of reference recorded by a Division Bench of this Court on April 16, 1970. These cases can be grouped in three categories. In the first category are placed 62 writ petitions (C. W. Nos. 979, 1562 to 1569, 1613, 1614, 1632, 1641, 1642, 1653 to 1659, 1669 to 1671, 1692, 1694, 1710 to 1719, 1740, 1742, 1746 to 1748, 1758, 1793, 1832 to 1837, 1890, 1891, 1844, 1917, 1971, 2011, 2012, 2113, 2157, 2183 and 2821, 2823 and 2824 of 1909), which relate to Head Constables who claim the right to be sent for Intermediate School Course at the Police Training College, Phillaur, and the relevant rule for consideration is Rule 13.9 of the Police Rules, 1934.

2. The second category consists of 3 cases (C. W. Nos. 489, 2755 and 2822 of 1969) which relate to Assistant Sub-Inspectors of Police who claim the right to be sent for the Upper School Course at the Police Training College, Phillaur, and the relevant rule for consideration is Rule 13.10 of the Police Rules, 1934.

3. The third category consists of 27 petitions (C. W. Nos. 1824, 2064, 2459 to 2461, 2550 to 2558, 2674 to 2676, 2802 to 2808, 2825 and 2974 of 1969), in which the petitioners had been promoted as officiating Assistant Sub-Inspectors

of Police without passing the Intermediate School Course and have been reverted to their substantive posts of Head Constables on the ground that, they are untrained persons while trained persons have become available. The legality of that order is being challenged and it has also been prayed in some of them that they are entitled to be sent for the Intermediate School Course.

4. In the first two categories, most of the arguments are common and, therefore, they will be dealt with together.

5. In order to appreciate the points of law involved in the first category of cases, it is enough to state the facts of one of these cases. Before us the facts of C W. 1692 of 1969, H.C. Sardul Singh v. I. G. Police, Chandigarh and others, were read out and we proceed to state the same.

6. The petitioner passed his F. A. Examination in 1955 and joined the Punjab Police Force as Foot Constable on August 18, 1956. He passed the Police Recruits Training Course in 1957 standing first in his class and was awarded a baton of honour and Class II certificate with a cash reward of Rs. 20/- by the Deputy Inspector-General of Police, Jullundur Range. He was deputed to undergo Lower School Course at the Police Training School, Phillaur, in October, 1961, which he successfully completed by standing first in his class and was awarded a cup as well as Class III certificate with a cash reward of Rs. 30/-. The Superintendent of Police sent him a letter of congratulations on this distinction. His name was brought on list "C" on April 12, 1962, and he was promoted as officiating Head Constable with effect from the same date. He worked as Moharrir Head Constable at Police Station Saddar, Batala, from January 23, 1963 to October 4, 1964, and as investigating Head Constable at Police Station. Kalanaur, from October 25, 1964 to March 28, 1966. In 1964, Shri Ashwini Kumar, Deputy Inspector-General, Border Range, visited Gurdaspur district and the petitioner along with other Head Constables of the district appeared before him. The Superintendent of Police read out the last entry in the character roll of the petitioner which was to the effect "that the petitioner was an excellent Moharrir Head Constable. In appreciation of his work, the Deputy Inspector-General of Police directed the Superintendent of Police to recommend the petitioner's name for provisional list "D". In the return, it has been admitted that an entry exists in the petitioner's confidential service card under the signatures, of Shri Ashwini Kumar. I.P.S., Deputy Inspector-General of Police, Border Range, dated February 26, 1964, reading "to be recommended for "D" list". The petitioner had been awarded 16 commendation certificates with cash reward of Rs. 150/- for good work done by him.

7. The petitioner was promoted as Head Constable on probation with effect from April 1, 1968, and his name was recommended by the Superintendent of Police for the Intermediate School Course which commenced on June, 15, 1968. The Deputy Inspector-General of Police, however, did not select him for that course although 36 officiating Head Constables were selected from the Jullundur Range, many of whom were junior to the petitioner. In the return, it has been stated

that the petitioner was not selected, for the Intermediate School Course commencing with effect from June 15, 1968, because of his mixed record and because he needed more experience and watch. It has been admitted that some junior Head Constables were selected but it is pleaded that they were selected on merits.

8. The petitioner was confirmed as Head Constable on May 1, 1969, and in spite of that he was not selected for the Intermediate School Course which commenced on June 16, 1969, on the ground that he needed more experience in all the branches of police working. Some other Head Constables, who were either officiating or on probation, were selected for that course and it is stated that their selection was made on merits. The petitioner has also cited an instance of Head Constable Yashpal No. 506 who was selected for the Intermediate School Course in 1965 although he was junior to the petitioner and had stood in the Lower School Course whereas the petitioner had stood first. In reply, it has been stated in the written statement that Head Constable Yash Pal made a representation before the then Deputy Inspector-General, Border Range, for Intermediate School Course, who, by his order dated September 15, 1963, accepted his representation and deputed him for training although the Superintendent of Police, Gurdaspur, did not recommend him for the course. The petitioner has filed the present petition claiming that he has the right to be sent for the Intermediate School Course and it is prayed that a direction be issued to the respondents to depute the petitioner to undergo the Intermediate School Course at the Police Training College, Phillaur. which commenced on June 16, 1969.

9. In the return filed It has been stated that the petitioner has no right to be sent for the Intermediate School Course.

The only right he has is that he should be considered along with other Head Constables when an occasion arises for sending them for the Intermediate School Course. It has been further pleaded that the petitioner was considered along with other Head Constables on all the occasions and he was not sent because of his mixed record and because he needed more experience in all the branches of police working. The question that arises for decision in this case is whether the Deputy Inspector-General of Police or any other officer or authority has the right to make a selection from amongst the Head Constables before sending them for Intermediate School Course. The answer to this question in turn depends on the answer to another question, whether the passing of the Intermediate School Course is a step in the process of promotion from the rank of Head Constable to the next higher rank of Assistant Sub-Inspector of Police. Connected with this question is another question as to when the process of selection for promotion starts, that is, whether it starts when the cases of Head Constables are considered for being sent to the Police Training College at Phillaur for the Intermediate School Course or after they have passed that course and qualified themselves for being placed on list "D". This matter originally came up

before me in C. W. No. 2494 of 1968, Khushi Ram v. Inspector-General of Police, decided by me on 20-12-1968. In that case I took the view that the process of selection for promotion started after a Head Constable qualified for being placed on List "D" after passing the Intermediate School Course and not prior thereto. I, therefore, held that every Head Constable, who was willing to undergo the Intermediate School Course, has the right to be sent for that Course in his turn in accordance with his seniority and no obstacle can be placed in his way of acquiring the necessary qualification which has been prescribed in Rule 13.9 of the Police Rules. 1034, by any authority and if such an obstacle is placed in his way. it will amount to the violation of his fundamental right of being considered for promotion to a higher rank guaranteed to him under Article 16(1) of the Constitution of India. The further reason given by me in support of this view was that this particular course is conducted only by the Government and the Head Constable cannot go to any other institution for acquiring this qualification. When a particular qualification is prescribed by the State Government, and in order to acquire that qualification the training course is also run by the Government alone, then it becomes a duty of the Government to afford the opportunity to all eligible Head Constables to qualify themselves for that course. Identical views were expressed by me on the same day with regard to the right of the Assistant Sub-Inspectors of Police to be sent for the Upper School Course which makes them eligible for being admitted to list "E" from which list promotions are made to the next higher rank of Sub-Inspector of Police, in Kirpal Singh v. State of Punjab 1969 SLR 120 (Punj). Against those judgments, appeals under Clause 10 of the Letters Patent were filed which were heard along with some other appeals and writ petitions by the Bench consisting of Harbans Singh and Sandhawalia, JJ.. and the judgment rendered therein is reported as State of Punjab and Others Vs. Kirpal Singh and Others, . My brother Sandhawalia wrote the main judgment and did not accept the view that I had expressed. He wrote an elaborate judgment and sought support from various judgments of the Supreme Court and other High Courts for his own view. Harbans Singh, J., did not express any view on the point for the reason that the matter did not arise in that case because the appeals before the Bench had failed on the ground that the instructions issued by the Inspector-General of Police, on the basis of which selections were made, were contrary to the Police Rules. This was also the view that I had expressed with regard to those instructions in the cases decided by me and that view was unanimously endorsed by the Bench. In view of the conflict between my view and that of Sandhawalia. J., this matter has been referred for decision to a Full Bench.

10. As we have stated above, the main question to be determined in these cases is whether the process of selection for promotion of a Head Constable to the rank of Assistant Sub-Inspector of Police starts after the Head Constable qualifies in the Intermediate School Course or a step, prior thereto when he is to be sent for that course. The submission of the learned counsel for the petitioners is that the process of selection for promotion starts when the Deputy Inspector-General of

Police considers the cases of the Head Constables who have passed the Lower School Course and the Intermediate School Course at the Police Training College for admitting them to list "D". Reliance for this submission is placed on the language of Rule 13.9 which reads as under:--

"13.9. (1) A list shall be maintained in each district in card index Form 13.9(1) of those Head Constables who have passed the Lower School Course and the Intermediate School Course at the Police Training School and are approved by the Deputy Inspector-General as eligible for officiating or substantive promotion to the rank of Assistant Sub-Inspector. No Head Constable shall be admitted to this list who is not thoroughly efficient in all branches of the duties of a Constable and Head Constable and of established integrity,

(2) Officiating promotion to the rank of Assistant Sub-Inspector shall be made from the list prescribed in Sub-rule (1), as far as possible in rotation, so as to give each man a trial in the duties of the higher rank. Substantive promotion shall be made by the Deputy Inspector-General in accordance with the principles prescribed in Rule 13.1, and officiating promotion shall be made in accordance with sub-rule 13.4(2),

(3) Half-yearly reports in Form 13.9(3) on all Head Constables in this list shall be furnished on the 15th April and the 15th October, to the Deputy Inspector-General."

This rule deals with the preparation of list "D" for promotion to the rank of Assistant Sub-Inspectors. The Head Constables eligible for being admitted to this list are those who have passed the Lower School Course and the Intermediate School Course and unless they are so qualified, they have no right to be considered for being admitted to that list. Once a Head Constable qualifies by passing both the courses, his case is placed before the Deputy Inspector-General of Police for being brought on list "D" and it is at that time that his efficiency and integrity come up for consideration along with other relevant factors, one of them being whether he is fit for officiating or substantive promotion to the rank of Assistant Sub-Inspector. Merely because a Head Constable has passed the Intermediate School Course does not give him the right of being admitted to list "D". By passing that course, he only qualifies himself for being considered for admission to list "D". It can well happen that when a Head Constable passes an Intermediate School Course, he may not be considered thoroughly efficient in all branches of the duties of a Constable or Head Constable and some time later he attains that efficiency. He will then become eligible for being brought on list "D" which will open the way for him to be promoted to the "rank of officiating or substantive Assistant Sub-Inspector of Police. It is contended on behalf of the respondents that when he becomes efficient, he will be sent for the Intermediate School Course but it may happen that at that time he is unable to qualify in that examination either because of advanced age or physical unfitness. In that case it will mean that such a Head Constable is condemned for ever to remain as a Head Constable and cannot seek promotion to the next higher rank. We are, therefore,

of the opinion that it is inherent in Rule 13.9 and a legitimate inference can be drawn from the language of this rule that every Head Constable on list "C" has the right to be deputed for the Intermediate School Course on his turn and no obstacle can be placed in his way by any of the authorities because it is a necessary qualification prescribed by that rule and there is no other institution from where this qualification can be acquired. If a Head Constable could qualify himself by passing the Intermediate School Course from any other institution, no obligation would have been cast on the "Government to afford him an opportunity to pass that course and thus acquire that qualification just as educational qualifications are prescribed which can be acquired by the candidates from any of the numerous institutions. Since this qualification cannot be acquired in any other way but by admission to the Police Training College, the Head Constable willing to undergo that course must be afforded an opportunity to do so. Since the number of seats for the Intermediate School Course is limited, the Head Constables can be sent in the order of seniority, as stated hereinafter.

11. It was stated on behalf of the petitioners, and not denied by the respondents, that till the Inspector-General of Police, Punjab, issued instructions by memo No. 21146-206/B dated August 25, 1964, prescribing the method of selection of the Head Constables for being sent to the Police Training College, all the Head Constables used to be sent for that course in accordance with their seniority: This practice was departed from because of the instructions contained in the said memo. These instructions were held to be contrary to the Police Rules by me as well as the learned Judges of the Division Bench who heard the appeals against my judgments. This practice, which had been followed for about 30 years, clearly leads to the conclusion that no selection was contemplated by the rule-making authority at the time the Head Constables were to be sent for the Intermediate School Course.

12. In support of our above conclusion, we refer to some other rules in the Police Rules which have been relied upon by the learned counsel for the parties. The learned Advocate-General for the State of Punjab has laid great stress on Rule 13.1 which reads as under:--

"13.1. (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 promoted. This rule does not affect increments within a time-scale.

(2) Under the present constitution of the police force no lower subordinate will ordinarily be entrusted with the independent conduct of investigations or the independent charge of a police station or similar unit. It is necessary, therefore, that well-educated constables, having the attributes necessary for bearing the responsibilities of upper subordinate rank, should receive accelerated promotion

so as to reach that rank as soon as they have passed the courses prescribed for, and been tested and given practical training in the ranks of Constable and Head Constable.

(3) For the purposes of regulating promotion amongst enrolled police officers six promotion lists -- A, B, C, D, E and F will be maintained.

Lists A, B, C and D shall be maintained in each district as prescribed in rules 13.6, 13.7, 13.8 and 13.9 and will regulate promotion to the selection grade of Constables and to the ranks of Head Constables and Assistant Sub-Inspector. List E shall be maintained in the office of Deputy Inspectors-General as prescribed in Sub-rule 13.10 (1) and will regulate promotion to the rank of Sub-Inspector. List F shall be maintained in the office of the Inspector-General as prescribed in Sub-rule 13.15 (1) and will regulate promotion to the rank of Inspector.

Entry in or removal from A, B, C, D, or E lists shall be recorded in the order book and in the character roll of the police officer concerned. These lists are nominal rolls of those officers whose admission to them has been authorised. No actual selection shall be made without careful examination of character rolls."

The language of Rule 13.1(1) shows that this provision relates to promotion from one rank to another or from one grade to another in the same rank. In the cases before us, the promotion from one rank to another is involved and there is no question of promotion from one grade to another in the same rank. The promotion from one rank to another is to be made by selection tempered by seniority. The main factors to be considered at the time of making selection are efficiency and honesty. Under Rule 13.9 these two factors are to be taken into consideration by the Deputy Inspector-General of Police while admitting a Head Constable to list "D", which can be done only after a Head Constable qualifies himself by passing the Lower School Course and the Intermediate School Course. These two factors cannot be taken into consideration when a Head Constable is to be sent for Intermediate School Course. That is a specific qualification which has also to be considered in each case along with efficiency, honesty and suitability. A Head Constable can become eligible for being selected only after he acquires the specific qualification by passing the Intermediate School Course, without passing that course, he cannot be considered and, therefore, it can legitimately be said that the acquiring of the qualification does not constitute a part of the process of promotion; it only makes the Head Constable eligible for being considered for selection. It is not possible for us to subscribe to the very wide proposition canvassed by the learned Advocate-General for the State of Punjab that the process of promotion from the rank of Constable to the other higher ranks starts when a Constable is brought on list "A". It cannot be said that immediately thereafter the process of promotion from one rank to the other starts and that it is a continuing process till the Constable reaches the highest rank for which he is eligible. The process of promotion is to be seen in the case of every promotion from one rank to the next higher rank and not as a whole from the lowest to the highest rank. We may here refer to Rule 13.7 which reads

as under:--

"13.7. List B (in Form 13.7) shall also be maintained by each Superintendent of Police and shall be divided into two parts:

(1) Selection grade Constables considered suitable as candidates for the Lower School Course at the Police Training School.

(2) Constables (selection or time-scale) considered suitable for drill and other special courses at the Police Training School.

Selection shall be made from this list as vacancies occur for admission to the courses concerned at the Police Training School, provided that no Constable shall be considered eligible for any such course until the entry of his name in list "B" has been approved by the Deputy Inspector General of the Range. Ordinarily seniority in age shall be given prior consideration in making such selections, irrespective of the date of admission to the list, and care must be taken that a Constable borne on the list is not allowed to become over-age for admission to the school before being selected. The restrictions on admission to the Lower School Course and Instructors' courses at the Police Training School limit the conditions for admission to List B. No Constable shall be admitted to that list whose age is such that he cannot in the normal course be sent to the Training School before he attains the age of 30 years. No constable, who has failed to qualify at the Training School, shall be re-admitted to the list unless the Superintendent and the Principal of the School are in agreement that he is deserving of another chance of qualifying in the course; in the event of disagreement as to such a case the Deputy Inspector General shall decide."

In this rule, mention is made of selection grade Constables but we are told that the category of selection grade Constables has been abolished and there are only Constables who are brought on list "B" for being sent to the Lower School Course. List "A" is maintained under Rule 13.6 by each Superintendent of Police from amongst the Constables eligible under Rule 13.5 for promotion to a selection grade of Constables. The number of names in the list is not to exceed twenty per cent of the establishment of the grade in the district. Out of the Constables whose names are brought on list "A", selection has to be made of those Constables who are considered suitable as candidates for the Lower School Course. The names of the Constables considered suitable for the Lower School Course are entered in list "B" with the approval of the Deputy Inspector-General of the Range. It is thus clear from this provision that every Constable brought on list "A" has no right to go for the Lower School Course. A method of selection has been provided for sending the Constables on list "A" for that course, that is, the suitability of each Constable on list "A" has to be seen by the Superintendent of Police of the district under whom he is working and has to be approved by the Deputy Inspector General of the Range. In that case, the provision for selection has been made in the rule at the 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 admitted 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 was 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 of sending 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. We are, therefore, of the opinion that if a Head Constable aspires for further promotion, he has to arm himself with the Qualification of having passed the Intermediate School Course but if he is content with his lot as a Head Constable, he need not go through that course and there is no power in any authority to compel him to pass the course. If a Head Constable is sent for the intermediate School Course but does not succeed in passing the same, he will not be considered for being admitted to list "D" or for being promoted as Assistant Sub-Inspector in spite of the fact that he possesses all other qualifications and is considered to be efficient in all branches of the duties as a Constable and Head Constable" and is also a man of established integrity. Efficiency and honesty are the factors which have to be determined on the service record of every Head Constable for which he himself is responsible but the opportunity to arm himself, with the necessary qualification, which is a pre-requisite for his name to be considered for being admitted to list "D". has to be afforded to him by the Government, because the course is being run by it only and if such opportunity is not afforded to him, he can legitimately complain that his chances of promotion have been interfered with and thus his right to be considered for further promotion guaranteed under Article 16(1) of the Constitution has been violated. Once a Head Constable is admitted to list "D", he will be given officiating promotion to the rank of Assistant Sub-Inspector in rotation so as to find out his suitability for the higher rank. After this test of suitability, the Deputy Inspector General of Police shall grant him substantive promotion in accordance with the principles prescribed in Rule 13.1.

13. My brother Sandhawalia. has referred to various propositions of law in relation to the fundamental right guaranteed under Article 16 of the Constitution. These propositions are by now well settled by the pronouncements of the highest judicial authority in the land. One such proposition is that no civil servant, has

the right to be promoted to the higher rank and the only right that he has is the right to be considered for that promotion. If he is considered on merits and is not selected for promotion, he can have no cause of grievance except when he can successfully plead and prove that the selection made was either mala fide or based on irrelevant or extraneous considerations. It is also true that a process of grading, screening and progressive selection for the purpose of promotion can be prescribed and will not be violative of the provisions of Article 16 of the Constitution. All that has to be considered is when such a process commences. If the service rules prescribe for the process of grading, screening and progressive selection for purposes of promotion and those rules are followed while making the selection for promotion, no exception can be taken thereto but if there are no specific rules on the subject, the necessity arises to determine the stage at which the process of selection starts. All the cases relied upon by Sandhawalia, J., in his judgment referred to the stage at which the candidates were being selected for appointment or promotion and none of those cases referred to a stage for selecting them for a qualifying course. Those judgments are, therefore, of no help for the decision of the point before us. We are in complete agreement with Sandhawalia, J., in his reasoning and conclusion with regard to the scope and ambit of Article 16 of the Constitution but we are unable to endorse his view that the selection for the Intermediate School Course forms a part of the process of selection of a Head Constable for promotion to the rank of an Assistant Sub-Inspector. In our view, the selection for the Intermediate School Course does not form part of the process of promotion of a Head Constable to the rank of an Assistant Sub-Inspector of Police which process starts only from the stage when the names are considered for entry in list "D" under Rule 13.9 and that stage is reached only after a Head Constable has passed the Lower School Course and the Intermediate School Course. All the observations of Sandhawalia, J., will apply from that stage onwards and not from the stage prior thereto.

14. It has been argued on behalf of the respondents that the Deputy Inspector General of Police must be deemed to possess the authority to weed out the Head Constables whom he considers unfit for promotion at the stage of selection for the Intermediate School Course in view of the limited number of seats available as it will be useless to send such Head Constables for the course who are not likely to pass therein. In reply, the learned counsel for the petitioners have referred to Rule 19.1 of the Police Rules, 1934, wherein the importance of training has been described. This rule reads as under:--

"19.1. Successful police work depends very largely on each individual officer acting correctly on his own initiative. The police force of a district or province can be compared to an intricate machine, the inefficiency of one cog of which may mean in some important instance the inefficiency of the whole. It follows, therefore, that the training of each individual officer to do the work allotted to him is of the highest importance.

Superintendents of Police shall give their attention to the training of all officers

and men serving under them. The object of such training shall be to inculcate in police officers habits of physical health, activity, discipline, self-reliance, observation, punctuality, sobriety, courtesy and straightforwardness of dealing in the execution of their work as also a knowledge of the technical details of the work required of them. Training shall be a continuous process carried on in the course of work. All gazetted officers and upper subordinates are responsible that junior officers serving under them are given instruction and opportunities of acquiring experience of as many branches of police work as possible. Officers are required to communicate instruction received at the Police Training School and elsewhere to other officers serving under them."

On the basis of this rule it has been argued that even if a Head Constable is not successful in passing the Intermediate School Course, he will have got training which may make him a better Head Constable by inculcating in him habits of physical health, activity, discipline, self-reliance, observation, punctuality, sobriety, courtesy and straightforwardness of dealing in execution of his work, so that a training obtained by him will not go waste. In our view, this rule is not of much help to the petitioners because the main purpose of undergoing the Intermediate School Course is to qualify the Head Constable undergoing that course for promotion to the next rank, although it cannot be denied that the training during the course may also have some effect on improving the Head Constable concerned, even if he does not succeed in passing the examination but to deny him the opportunity of passing that course at the appropriate time will deprive him of further chances of promotion later on if he becomes unfit to undergo that course because of his age or physical unfitness or any other reason. We wish to emphasise that if a Head Constable passes the Intermediate School Course, he does not get the right immediately to be admitted to list "D" or to be promoted as an officiating Assistant Sub-Inspector of Police but he will become eligible for further promotion when he is found to be efficient and honest. We have noticed above that in Sardul Singh's case the Deputy Inspector General of Police did not select him because in his opinion he needed more experience. That experience he would have obtained even after passing the Intermediate School Course, so that on having gained the necessary experience there would have been nothing else standing in his way of promotion. On passing the Intermediate School Course, Sardul Sinsh would have been qualified to be admitted to list "D" and for promotion to the rank of Assistant Sub-Inspector of Police any time thereafter when found suitable therefor. Our attention has also been invited to the petition of Piara Singh (C. W. 1613 of 1969) in which the Superintendent of Police stated that there was no bad entry in the character roll of Piara Singh whereas the Deputy Inspector General of Police stated that his record was bad and, therefore, he was not selected. From these two instances, it becomes evident that if the service record of a Head Constable has to be scanned before he is sent for the Intermediate School Course, he might suffer irreparable injury when he improves his record but finds himself unable to pass the Intermediate School Course later on. We further find ourselves strengthened in our above

conclusion from the fact that a Head Constable is first given an officiating chance and if he proves his merit therein he is appointed on probation. He is only confirmed if he has successfully passed through his probation period, so that there are a number of stages at which an inefficient or dishonest Head Constable can be weeded out. It can legitimately be presumed that a Head Constable, who has been confirmed, has proved his merit for that rank and should be enabled to qualify himself for selection to the next higher rank by way of promotion. In the case of Sardul Singh, he was appointed as officiating Head Constable on April 1, 1962. and after six years was promoted as Head Constable on probation on April 1, 1968, and was confirmed as Head Constable on May, 1, 1969, that is, before the expiry of two years" period of probation prescribed under rule 13.18. which shows that he had shown his efficiency and honesty in a sufficient measure. His confirmation as Head Constable certainly shows that he was not considered unfit for holding that rank or going up by way of promotion. Not to send him for the Intermediate School Course on the ground that he needed more experience was highly unfair and unjust to him.

15. For the reasons given above, we are of the opinion that every Head Constable on list "C" has the right to be sent for the Intermediate School Course in the order of his seniority determined in accordance with Rule 13.8. While sending the Head Constables for the Intermediate School Course, the Deputy Inspector General of Police shall first send the confirmed Head Constables and after their list is exhausted, the Head Constables on probation will be sent and last of all officiating Head Constables will be sent. This appears to us to be the most reasonable, fair and equitable way of Complying with the provisions of Rule 13.9 of the Police Rules in the interest of all the Head Constables in the police force who legitimately aspire for promotion. Any Head Constable unwilling to undergo that course will of course be omitted.

16. For the reasons given above, these petitions are accepted and the respondents are directed to consider the cases of the petitioners" along with other Head Constables for being sent for the Intermediate School Course at the Police Training College, Phillaur, in order of seniority as stated above. The selection for the new course starting in June, 1970. and subsequent courses shall be made on this basis. In view of the difficult nature of the points of law involved, the parties are left to bear their own costs.

17. The second category of cases relates to Assistant Sub-Inspectors of Police who claim the right to be sent for the Upper School Course which has not been prescribed as a necessary qualification for promotion to the next rank of Sub-Inspector under any rule but has been introduced by executive instructions issued by the Inspector General of Police in the first instance by memo No. 4312/A, dated September 16, 1933, which were reiterated by the Inspector General of Police by notification dated November 12, 1952, published in the Punjab Police Gazette dated November 22, 1952. Paragraphs 4 and 5 of the said memo, read as under:--

"4. A new Upper School is being formed for the training of Assistant Sub-Inspectors for the rank of Sub-Inspector. The course will be for six months and classes will assemble on the 1st of April and on the 1st of October. The first class of the new Upper "School will assemble on the 1st of October. 1933. Only those Assistant Sub-Inspectors who have displayed investigating ability and who are likely to make good Station House Officers are to be selected for training. No Assistant Sub-Inspector over the age of forty will be admitted to the course.

A period of five years should normally lapse from the date of passing the Intermediate Course before an officer is admitted to the Upper School. The allotment of seats for this new class is given in the statement below.

5. The passing of the Upper School Course is one of the qualifications for promotion to the rank of Sub-Inspector. In special cases, however, Deputy Inspector General may waive this qualification. Officers over the age of forty, who were unable to undergo training in the Upper School on account of their promotion to the rank of Assistant Sub-Inspector late in life or for any other good reason, may be considered for promotion. The qualification is not to be waived as a matter of course in the case of men who become ineligible for training because they become overage. Each case must be considered on its merits and Deputy Inspector General should see and examine such officers before making a decision. Such officers must be able investigators. and fitted in every way to carry out the duties of a Station House Officer."

Without superseding the memo dated September 16, 1933, the Inspector General of Police, Punjab issued memo. No. 21146-206/B, dated August 25, 1964, to all Heads of Police Officers in the Punjab on the subject of "promotion system in the Police department" wherein departmental promotion committees were constituted at various levels for selecting police personnel for undergoing the various training courses conducted at the Police Training School, Phillaur. In this memo, it has been stated that the system of promotion in the police department had been under consideration for a long time and the matter was examined by two committees of senior administrative officers. The Punjab Police Commission also recommended vital changes in the structure of the police organisation on which the State Government had not taken a final decision. It was, however, considered worthwhile to frame a detailed scheme regulating promotions in the department and to take necessary steps to amend the relevant Punjab Police Rules unless Government decisions in this regard were taken. In the meantime, in order to ensure that the promotions are made on merit and extraneous influences do not come into play with regard to them, it was considered necessary, to take certain steps in that direction and the steps decided upon were the setting up of departmental promotion Committees. It is thus clear that the instructions contained in the memo, of the Inspector General of Police dated August 25, 1964, had not been approved by the State Government and had been issued by the Inspector General of Police on his own authority. These instructions run counter to the Police Rules and were struck

down by me as well as by the Division Bench which heard the appeals against my orders. In addition to the reasons given in those judgments, we are also of the opinion that the instructions issued in the memo dated September 16, 1963, and the memo. dated August 25, 1964, cannot be enforced as supplemental to the Police Rules because they were not issued by the I State Government which alone had the right to make rules under the Police Act, 5 of 1861. According to their Lordships of the Supreme Court, in Sant Ram Sharma Vs. State of Rajasthan and Another, . the supplemental instructions can only be issued by the State Government which is competent to make the rules provided they are not inconsistent with the rules already framed. The instructions being void and of no effect, no selection can be- made of the Assistant Sub-Inspectors of Police for being sent for the Upper School Course at the Police Training College, Phillaur. Whatever has been said above in regard to the first category of cases equally applies to these cases if we substitute list "E" for list "D". Sub-Inspectors for Assistant Sub-Inspectors, Assistant Sub-Inspectors for Head Constables and the Upper School Course for the Intermediate School Course. In their cases also, the selection should be made in accordance with seniority unless any particular Assistant Sub-Inspector of police is exempted from passing that course. While sending the Assistant Sub-Inspectors of Police for training for the Upper School Course, the confirmed Assistant Sub-Inspectors shall be considered first, thereafter the Assistant Sub-Inspectors on probation and last of all the officiating Assistant Sub-Inspectors.

18. For the reasons given above, these petitions are also accepted and the respondents are directed to consider the cases of the petitioners along with other Assistant Sub-Inspectors for being sent for the Upper School Course at the Police Training College, Phillaur, in order of seniority, as stated above, and the selection for the new course starting in June, 1970, and subsequent courses shall be made on this basis. In view of the difficult nature of the points of law involved, the parties are left to bear their own costs.

19. The petitioners in the third category of cases were Head Constables who were promoted as officiating Assistant Sub-Inspectors of Police without having passed the Intermediate School Course. They were reverted by order dated September 15, 1969, on the ground that Intermediate pass Head Constables had become available and the petitioners were being reverted as being untrained. The petitioner have challenged this order of reversion on the ground that they were not found unsuitable for the post of Assistant Sub-Inspector of Police and it was no fault of theirs that they were not sent for the Intermediate School Course before promoting them. In fact by their promotion as officiating Assistant Sub-Inspectors of Police they were lulled into the belief that the passing of the Intermediate School Course was not necessary in their cases. It is not possible for us to quash the order of reversion of the petitioners because they were holding the posts of Assistant Sub-Inspectors of Police in an officiating capacity and their reversion to their substantive rank was not by way of punishment nor cast any stigma on them. They had no right to the officiating posts and since

better qualified persons became available, according to Rule 13.9 of the Police Rules, the order of reversion was legal. Under Rule 13.9, no Head Constable can be appointed as an officiating Assistant Sub-Inspector of Police unless he has passed the Intermediate School Course and is admitted to list "D". These petitioners were admittedly never placed on list "D" but their names were placed on provisional list "D" for which there is no authority in the Police Rules. It appears that the department had evolved a practice in 1957 or thereabout to prepare a provisional list "D" on which the names of Head Constables were brought and after some trial selection was made out of them for being sent for the Intermediate School Course. These petitioners were never selected for that course although some of them held the post of Assistant Sub-Inspector of Police for six years or so. It is really very hard on the petitioners to be reverted in this manner but we feel that we cannot help the petitioners in their plight. It is for the Government and the high police officials to consider how to ameliorate their suffering which has been caused to them not because of their own fault but because of the wrong act of the higher police officials in promoting them contrary to the Police Rules. We do hope that the respondents shall find some way to do justice to these unfortunate petitioners. We, however, find force in their prayer that they should be sent for the Intermediate School Course according to the principle laid down by us in the first category of cases.

20. We, therefore, accept these petitions to the extent of directing the respondents to consider the petitioners for being sent for the Intermediate School Course in order of seniority on the principle laid down in the first category of cases if they are willing to undergo that course. The parties are left to bear their own costs.

Mehar Singh, C.J.

21. I agree.

Harbans Singh, J.

22. I also agree.