
(1969) 12 P&H CK 0008

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 159 of 1969

State of Punjab and Others

APPELLANT

Vs

Kirpal Singh and Others

RESPONDENT

Date of Decision : 15-12-1969

Acts Referred:

Constitution of India, 1950 — Article 16
Punjab Police Rules, 1934 — Rule 13, 13.10

Citation : AIR 1970 P&H 395

Hon'ble Judges : S.S. Sandhawalia, J; Harbans Singh, J

Bench : Division Bench

Advocate : B.S. Dhillon, General, for the Appellant; Abnasha Singh, for the Respondent

Final Decision : Dismissed

Judgement

1. The constitutional validity of the Instruction No. 21146-206/B dated the 25th of August, 1964, issued by the Inspector General of Police, Punjab, to all Heads of the Police Offices, and also its conflict with the relevant Punjab Police Rules are the primary questions which fall for determination in these five Letters Patent Appeals (159, 137, 165 of 1969, 471 and 527 of 1968) and two writ petitions (2245 and 2348 of 1968). Common questions of law and fact, arise in these cases and we deem it expedient to deal with all of them by this judgment.

2. The facts in Letters Patent Appeal No. 159 of 1969 (The State of Punjab v. Kirpal Singh) alone may be first noticed in detail. The respondent Kirpal Singh enlisted as a Foot Constable in the Punjab Police in 1941 and after promotion as Head Constable was confirmed as such in the year 1951. Dismissed on a charge of corruption after a departmental enquiry, he was, however, reinstated on the 18th of February, 1956, and subsequently his name was brought on the provisional list "D" maintained under Rule 13.9 of the Punjab Police Rules in the year 1957. Having qualified in the Intermediate School Course at the Police Training School at Phillaur in 1961, the name of the respondent was placed on

the confirmed list "D" under the rule above said. Thereafter, he was promoted as an officiating Asstt. Sub-Inspector and his name appeared at No. 1 in the "D" list whilst the other respondents in the writ petition filed by him figured below him. In October 1964, whilst attached to the Criminal Investigation Agency of the Government Railway Police at Ambala Cantonment the respondent was implicated and tried on a criminal charge along with one Rameshwar pick-pocket and was convicted by the Special Railway Magistrate, Ambala Cantonment, u/s 221, Indian Penal Code. On appeal, however, he was acquitted on the 21st of April, 1967, and was subsequently reinstated in service on the 26th of May, 1967. Subsequently a State appeal against his acquittal was dismissed in limine by a Division Bench of the High Court on the 14th of September, 1967.

3. According to the allegations in the writ petition by the respondent Kirpal Singh, during the period of 29 months, for which he remained suspended owing to the above said criminal case, a number of officiating Assistant Sub-Inspectors junior to him were sent to undergo the Upper School Course Training at Phillaur and on completion thereof were confirmed as Assistant Sub-Inspectors and subsequently also promoted as Sub-Inspectors of the Police. These allegations, however, stand denied on behalf of the State. It is also the admitted case that two adverse reports dated the 30th of November, 1964, and the 22nd of April, 1965, suggesting unreliability, corruption and harbouring of criminals were conveyed to the respondent and his representations against these adverse reports were rejected after consideration. In September, 1967, after his reinstatement, Kirpal Singh respondent applied for being deputed for training in the Upper School Course at Phillaur but the Assistant Inspector General of Police declined the request on the ground that as yet the appeal filed by the State against his acquittal was still pending in the High Court. The respondent then represented and interviewed the Inspector General of Police, Punjab, and was informed that the selection for the Upper School Course was to be made by a Departmental Promotion Committee (hereinafter referred to as Committee) consisting of the Deputy Inspector General of Police of the range and two Superintendents of Police. The respondent appeared before this Committee but was not selected, but later on the 26th of March, 1968, he appeared before this Committee and was recommended for training but since he was over-age his case was sent for approval to the Inspector General of Police for relaxation of the age limit. The Inspector General of Police directed the respondent to appear before another Committee which after interviewing him made a conditional order that if there were good reports of the respondent during the next 6 months and further that the district authorities recommended him then the respondent would be sent for the Upper School Course at Phillaur. In September, 1968, Shri Daljit Singh Dhillon, Assistant Inspector General of Police made only one recommendation pertaining to the respondent for the relaxation of the age limit and the matter was considered by a Committee consisting of Shri A. S. Midha, Deputy Inspector General of Police [C. I. D.], Shri Parkash Chand,, Assistant Inspector General of Police (I) and Shri B. R. Kapoor, Assistant Inspector General

of Police (II). This Committee, however, rejected the name of the respondent without interviewing him and the allegations of the respondent in the writ petition were that this rejection was based on the warnings and adverse remarks earlier communicated to him and also for the reason that he had not been confirmed as an Assistant Sub-Inspector. These allegations are not admitted on behalf of the State and the position taken up was that the Committee had taken into consideration the record of the respondent Kirpal Singh as a whole and therefore, did not recommend his name for relaxation of the prescribed age limit. The respondent then filed the writ petition which stands allowed by the learned Single Judge and is the subject-matter of the appeal under Clause 10 of the Letters Patent.

4. The police force within the States of Punjab and Haryana is constituted under the provisions of the Police Act of 1861. Detailed rules, however, for the governance thereof have been framed and are styled as the Punjab Police Rules 1934 (hereinafter called the Police Rules). Therein Chapter XIII of the Police Rules relates to promotions and contains the relevant provisions which fall for consideration in all these cases. The primary rule for promotion is laid out in 13.1 Sub-clause (1) and is in the following terms:--

"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."

For the purposes of regulating promotion amongst enrolled police officers Chapter XIII provides for six promotion lists, namely, A, B, C, D, E and F to be maintained under the relevant provisions of Chapter XIII is necessary. Rule 13.5 provides for the promotion to the Selection Grade from amongst the enrolled Constables and lays down the basic qualifications for such promotion. List A of eligible Constables fit for promotion to the selection grade is enjoined by Rule 13.6 whilst Rule 13.7 provides for two parts of List B from which selection for the candidates for admission to the courses in the Police Training School at Phillaur is to be made. Rule 13.8 provides that a List C of Constables who have passed the Lower School Course at Phillaur and are considered eligible for promotion to Head Constables be maintained and therefrom promotions shall be made in accordance with the principles described in Sub-rules (1) and (2) of Rule 13.1. Similarly, Rule 13.9 enjoins the maintenance in card index form of those Head Constables who had passed Lower School Course and the Intermediate School Course and are further approved by the D. I. G. and normally officiating promotion to the rank of Assistant Sub-Inspector is to be made from this list. List E maintained under Rule 13.10 in the same order provides for a list of all Assistant Sub-Inspectors who have been approved by the D. I. G. as fit for trial

in independent charge of a police station and promotion to the rank of Sub-Inspectors is normally to be made from this list. Identical provisions for maintaining List F for promotion to Inspector is enjoyed by Rule 13.15, whilst the rest of the provisions of the Chapter provide for the annual confidential reports; probationary period of promotion and special promotion to recipients of the President's Police and Fire Services Medal and the Police Medal etc. It deserves mention that the power to make promotions amongst gazetted officers and from non-gazetted to gazetted rank vests in the local Government with the concurrence of the Governor under Rule 13.3,

5. An analysis of these provisions in Chapter XIII discloses that selection is the key-note for the promotion to the next rank for the members of the police force. Efficiency and integrity have been made the premier factors influencing selection whilst specific qualifications, practical experience, passing of the requisite training courses and other things being equal seniority, and various other factors also necessarily enter for consideration in the process of selection. It is evident that for the purposes of selection, the rules provide a number of steps or stages before the final stage of promotion to the next higher rank. To take the matter at the lowest rung of promotion from the rank of enrolled Constables to that of Head Constables the relevant rules provided for the first step of eligibility in the shape of basic qualifications of physique, education, character etc. and further provide for an objective standard of awarding marks for various qualifications under Rule 13.5. Then falls the next step for bringing a limited number of eligible names on List "A" succeeded by bringing the name of a selected police constable on either of the two categories of List "B" in Rule 13.7 from which again selection is made for the Lower Course or for other Special Courses at the Police Training School, Phillaur. A candidate so selected may or may not successfully cross the hurdle of qualifying in such a course. If he has done so, his eligibility and the fact of having passed in the Lower School Course may entitle him to be brought on list "C" under Rule 13.8.

Even this does not guarantee automatic promotion to the rank of Head Constable. Such promotion has yet to satisfy the subjective test of the promoting authority in consonance with the basic provisions of Rule 13.1 Sub-clauses (1) and (2). After these are satisfied a Constable may be promoted to officiate as a Head Constable and having satisfied the conditions of service may then be confirmed as such. It thus appears that an enlisted Constable has to cross a hierarchy of hurdles or stages before he finally achieves promotion to the rank of Head Constable. Similarly Identical procedures are laid down in the Rules for promotion to the next higher ranks of the Assistant Sub-Inspector, Sub-Inspector and to that of an Inspector of Police.

6. The provisions of Chapter XIII of the Rules supplemented, where necessary, by instructions and longstanding practices, governed the mode of promotion of the non-gazetted ranks of the police force. However, in 1964 the impugned instruction was issued by the Inspector General of Police, Punjab, and it is

necessary to reproduce the relevant parts thereof in extenso:--

"From

Sardar Gurdial Singh, I. P.,
Inspector-General of Police,
Punjab.

To,

All Heads of Police Offices in the Punjab. No. 21146-206/B, dated, Chandigarh
the 25th August, 1964.

Subject: Promotion system in the Police Department, Departmental promotion
Committees at various levels,

Memo.

The system of promotions in the Police Department has been engaging our attention for some time past In January, 1962, a committee consisting of Range D. Is. G. and AIG/GRP was formed to look into the matter of promotions in pursuance of a decision taken in the Senior Administrative Officers Conference. Prior to the appointment of this committee, another committee had also examined this matter, Both the Committee recommended the constitution of departmental promotion committees at various levels to examine the promotion cases of Police personnel. The two committees also put forward various proposals relating to such like matters as competitive examinations, weight to be attached to the outdoor and written tests, age factor, educational qualifications, record of service, etc. etc.

2. The State Government have yet to take final decision on most of the recommendations of the Punjab Police Commission which has recommended vital changes In the structure of the Police Organisation. Unless Government decisions in this regard are taken, it will not be worthwhile to frame a detailed scheme regulating promotions in the department and to take necessary steps to amend the relevant Punjab Police Rules. In the meantime it is considered necessary that steps should be taken to ensure that the promotions are made on merit and extraneous influences do not come into play with regard to them. It is, therefore, proposed to set up Departmental Promotion Committees at various levels. It has been decided that the scheme explained below should come into force with immediate effect;--

(a) to (j) x x x x"

The rest of the above instruction created Promotion Committees at different levels for the purpose of selecting police per sonnel for undergoing various training courses conducted at the Police Training School at Phillaur. For example para 2(c) created a Promotion Committee consisting of the D. I. G. of the range along with two Superintendents of Police for making selections for the Upper

School Course at Phillaur from amongst the confirmed Assistant Sub-Inspectors of Police. The age limit, and the basic qualifications etc. for making this selection were also prescribed therein. It was further provided that after the completion of the Upper School Course, the names of the successful of fibers should be brought on list "E" in accordance with the order of merit obtained by them in the examination at the Phillaur School and that promotions to the rank of Sub-Inspectors was to be made from such a list "E" in accordance with the seniority of the officers on it. Identical provisions and Promotion Committees were constituted for the purpose of selection to the Intermediate School Course and for the Lower School Course conducted at the Police Training School. A provision for exemption from the age limit prescribed in the impugned instruction was also provided and an ancillary provision regarding the Government Railway Police, the Punjab Armed Police and regarding the superseded officers etc. was also made therein.

7. The above-said instructions were impugned in a number of writ petitions on the ground of being contrary to the corresponding Punjab Police Rules on the subject. In two writ petitions out of which L. P. As. Nos. 159 and 165 arise, a contention that these instructions were violative of the fundamental right of the police employees and that these were contrary to the provisions of Article 16 seems also to have been raised, though it does not find specific mention in the writ petitions. The learned Single Judge in allowing the writ petitions which are the subject of the above-said two Letters Patent Appeals in elaborate judgments accepted both these contentions. It is the correctness of this view, which has been the subject of challenge by the State in Letters Patent Appeals Nos. 159 and 165 along with the connected appeals. In view of the fact that elaborate arguments have been advanced, we find it necessary to briefly " summarise the findings of the learned Single Judge in L. P. As. 159 and 165 which are as follows:--

(i) that a police officer whose name is borne on list "D" maintained under Rule 13.9 has an inalienable right to go through the Upper School Training Course at Phillaur and he cannot be deprived thereof by prescribing any method for selection for that Course or by prescription of any age limit;

(ii) the refusal to send an Assistant Sub-Inspector, whose name is borne on list "D" to the Upper School Training Course at Phillaur in order to qualify for his name being brought to list "E" amounts to interference with his fundamental right guaranteed under Article 16 of the Constitution for seeking promotion to a higher post;

(iii) that it is the inalienable right of a Head Constable, whose name appears on list "C" to undergo the Intermediate School Training Course in case he is willing to do it and no obstruction can be placed in his right to do so;

(iv) that if the Government prescribes any qualifications for being eligible for promotion it must also provide opportunity to the officer concerned to acquire

that qualification and if the examination or training course is held or conducted by the Government, every officer willing to under go that examination or course in order to qualify himself for promotion has a right to pass that examination or to go through that course. No obstacle can be placed in his way by prescribing a method of selection of age limit;

(v) that the impugned instruction is contrary to the corresponding provision of the Police Rules and is against the old practice (under which every A. S. I. borne on "D" list was in due course of time entitled to go for the Upper School Training Course) and hence invalid. Further no provision prescribing a method for selection for those eligible to attend the Upper School Training Course can be provided by mere instructions which have no statutory force;

(vi) Fixation of age at 45 years by the instructions for eligibility for the Upper School Training Course is arbitrary and contrary to the Police Rules;

(vii) that these instructions by the Inspector General have not been approved by the Government; and

(viii) that the adverse remarks made against Kirpal Singh respondent on the basis of an earlier criminal case cannot be a matter for consideration alter his acquittal by a competent Court.

8. For the sake of convenience we would first take up the findings Nos. (i), (ii) and (iii) of the learned Single Judge as common arguments, for and against these, have been addressed by the learned counsel for the parties. These findings have been strenuously assailed by the learned Advocate-General for the State of Punjab on the ground that Article 16 of the Constitution does not lay down that each police officer whose name is borne on an eligibility list is absolutely or mathematically equal to the others on the said list, nor does it guarantee that a police officer has an indefeasible right to undergo training Courses conducted by the State for selected personnel, and lastly nor does Article 16 preclude the State from prescribing a reasonable mode for selecting the more efficient, honest and suitable persons out of large number of police employees for sending them to these training courses with a view to their subsequent promotion.

9. To appreciate the rival contentions the provision of Article 16 (1) and (2) around which the basic argument revolved deserves notice and is in the following terms: --

"16(1). There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State;

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the Slate."

A long line of precedent has settled the law that the provisions of the abovesaid

Article guarantee an equality of opportunity both at the stage of original appointment and also at the stage of subsequent promotion. It is equally axiomatic, however, that this equality of opportunity qua promotion only envisages that the eligible employees shall be considered for the same and it does not guarantee any indefeasible right to promotion. The learned Single Judge has opined that a police employee of the State has a fundamental right to the steps which may precede his ultimate promotion, to the higher rank. Whilst construing the conflict of the impugned instruction with the relevant Police Rules, the learned Single Judge had at great length elaborated the principle and cited authority in support of his finding. However, in arriving at the finding regarding the fundamental right of the respondents in L. P. As. 159 and 165 of 1969 to attend the Upper School and the Intermediate Training School Courses at Phillaur and the consequent constitutional invalidity of the impugned instructions, the learned Single Judge has not elaborately enunciated the principle or any authority on which he based himself for coming to this conclusion. On a close analysis of the two judgments, however, it appears that tenor of the observations therein show that the learned Single Judge proceeded on the premises that the fact of the names of the respondents having been brought on the eligibility lists "C" and "D" gave them an indefeasible right to attend the corresponding training courses and any method of making a selection from the said eligibility lists which may tend to bar this right would involve a violation of the equality of opportunity guaranteed by Article 16 of the Constitution.

10. With great respect to the learned Single Judge we regret our inability to agree. The relevant Police Rules nowhere lay down that the names of those borne on the eligibility lists "C" and "D" would ipso facto be entitled to attend the training courses conducted at the Police School at Phillaur. Nor in our view can Article 16 be construed to warrant that there exists any absolute or mathematical equality in all the police employees whose names may happen to be brought on lists "C" and "D" at a particular time which would preclude the authority from making any selection from the said lists for sending employees to the relevant training courses. That a doctrinaire approach to the provision of Article 16 (1) and (2) is to be avoided is apparent from a number of authoritative pronouncements by the Supreme Court and it is unnecessary to refer to all of them. In *The General Manager, Southern Railway Vs. Rangachari*, , their Lordships whilst decrying a technical approach to Article 16 observed as follows:--

"This equality of opportunity need not be confused with absolute equality as such. What is guaranteed is the equality of opportunity and nothing more. Article 16 (1) or (2) does not prohibit the prescription of reasonable rules for selection to any employment or appointment to any office. Any provision as to the qualifications for the employment or the appointment to office reasonably fixed and applicable to all citizens would certainly be consistent with the doctrine of the equality of opportunity; but in regard to employment like other terms and conditions associated with and incidental to it, the promotion to a selection post is also included in the matters relating to employment, and even in regard to

such a promotion to a selection post all that Article 16(1) guarantees is equality of opportunity to all citizens who enter service."

Again in *T. Devadasan Vs. The Union of India (UOI) and Another*, their Lordships whilst construing the cumulative effect of Articles 14 and 16 laid down the law as follows:--.

"What is meant by equality in this Article is, equality amongst equals. It does not provide that what is aimed at is an absolute equality of treatment to all persons in utter disregard in every conceivable circumstance of the differences such as age, sex, education and so on and so forth as may be found amongst people in general. Indeed, while the aim of this Article is to ensure that invidious distinction or arbitrary discrimination shall not be made by the State between a citizen and a citizen who answer the same description and the differences which may obtain between them are of no relevance for the purpose of applying a particular law, reasonable classification is permissible. It does not mean anything more."

11. It is evident from the above that Article 16 does not lay down any rule of abstruse and mathematical equality qua the employees of the State. After considering those who may be eligible for promotion, the promoting authority is entitled to have a process of selection and this is particularly so, when it is dealing with a large number of employees in the same class. For this end in view there can possibly be no bar for the prescription of reasonable rules which may be equally applicable to all its employees in the specific classification. Yet again, it is equally entitled to prescribe qualification or any pre-requisite conditions for promotions. All doubts on this score are laid to rest by the observations of their Lordships in *Banarsi Das and Others Vs. The State of Uttar Pradesh and Others*, in the following terms:--

"Article 16 of the Constitution is an instance of the application of the general rule of equality laid down in Article 14, with special reference to the opportunity for appointment and employment under the Government. Like all other employers. Government are also entitled to pick and choose from amongst a large number of candidates offering themselves for employment under the Government." This right to "pick and choose", as their Lordships have termed, is no other than a right to have a process of selection. In a large organisation for the purpose of promotion a continuous process of grading, screening and selective testing for culling out a nucleus from which promotion is to be ultimately made is not only necessary but inevitable. For purposes conducive to the efficiency of its employees, the State may provide aid in the shape of training courses etc. As in the present case the learned Advocate-General for the Punjab points out that even in the reorganised State of Punjab the police force consists of more than ten thousand Constables and corresponding number of higher ranks and at the time of the Issuance of the Impugned Instructions in the erstwhile State of Punjab, the number of police Constables was much larger. Can it be said that each one of them has a fundamental right to go through the corresponding

training courses which are conducted at the Police Training School at Phillaur? We are unable to subscribe to a view which would lead to this rather anomalous result. The argument *ab inconvenienti* apart, nothing has been pointed out either in principle or authority which would be a pointer to any such supposed right.

12. It thus falls to be determined whether a process of grading, screening and progressive selection for the purpose of promotion is valid and does not infringe the provisions of Article 16 of the Constitution. We believe it is patently so and apart from the fact that we see no bar to it in principle, there is considerable support of authority for this proposition as well. As early as 1952 the matter arose for consideration in the context of the integration of the State Forces of the Travancore-Cochin States with those of the Indian Army. A number of officers of the erstwhile Travancore-Cochin State Forces after a process of screening and selection were declined appointments in the Indian Army. The matter came up before Sankaran J. in *Vishnukrishnan Namboodiri v. K. N. Kripal* AIR 1952 SC 7 and the learned Judge observed as follows:--

"The screening of these Officers by the Selection Board was only a step in that direction. Even though the result of such screening has been unfavourable to these petitioners, they cannot now complain that it was the result of any discrimination shown against them. Discrimination as between those "acceptable" and those "unacceptable" is inevitable in any process of selection and grading and there can be nothing wrong in such a discrimination. Admittedly all officers of the Travancore-Cochin State Forces were subjected to the screening by the Selection Board, and those who were graded as "acceptable" were given Commission as Officers in the regular Indian Army. Thus as between Officers similarly situated, there has been no discrimination in the matter of being subjected to "screening" by the Selection Board. It follows, therefore, that the fundamental right guaranteed by Article 16 of the Constitution has not in anyway been violated or infringed by the proceedings which culminated in the sanction referred to in Exhibit I."

The above view of the law was expressly affirmed by Misra, C. J. and Mohammad Ahmed Ansari, J. in *Mohd. Hussain v. State of Hyderabad* AIR 1953 Hyd 298 with the following observations:--

"It was argued before us that the circular violates Article 16 of the Constitution; but in our opinion the power of selection and rules framed for purposes of choosing candidates to fill public services are not excluded by the Article. The case directly on point is -- *Vishnu Krishnan v. K. N. Kripal* AIR 1952 TC 7."

In *Sukhnandan Thakur v. State of Bihar* AIR 1957 Pat 617 Ramaswami J. (as he then was) on a difference of opinion between Das C. J. and Ahmed J., after an exhaustive consideration of the point, laid down as follows:--

"It is manifest that equality of opportunity mentioned in Article 16(1) is not mathematical equality. It is equally manifest that Article 16(1) does not preclude the administrative authority from making a selection from numerous candidates

before making appointments but the selective test employed must be reasonable and not arbitrary. The selective test must be based upon some reasonable principle.

XX XX XX The administrative authority may lay down qualifications for the office; qualifications not only of mental excellence but also of physical fitness, sense of discipline, moral integrity and loyalty to the State. In the case of technical appointments the administrative authorities may further require evidence of technical qualification and standards."

A similar opinion has been expressed by Madhavan Nair J. in V.K. Nambudiri Vs. Union of India (UOI), but a more succinct enunciation in the context of promotion of State employees was made by the Division Bench in N. Rudraradhya v. State of Mysore AIR 1961 Mys 247 as follows:--

"It is, we think, clear that a variety of considerations govern the promotion of an employee, none of which alone could render an employee suitable for promotion. Ordinarily, it would be for the State or the promoting authority to determine such suitability after an assessment of all relevant considerations, such as seniority, competence, rectitude, and antecedent official records, none of which is less important than the other, for the preservation of purity and efficiency in public service."

In the light of the above decisions it appears that there is a consensus of authority that a reasonable process of selection involving grading and screening at different stages for the purpose of promotion does not infringe the provisions of Article 16 or 14 of the Constitution.

13. As a corollary to the main argument regarding the infringement of Article 16 it had been strenuously urged by Mr. Abnasha Singh on behalf of Kirpal Singh respondent that a police officer has a fundamental right to go through all the stages which may be requisite for ensuring his eligibility for promotion to the next higher rank, and thus any selective process intervening at these stages is an infringement of his indefeasible rights. To particularise, it was contended before us that Kirpal Singh respondent has a fundamental right to go through the Upper School Training Course in order to become eligible for bringing his name on list "E" in order subsequently to seek promotion as a Sub-Inspector on the basis of the said list. This right it was vehemently contended, cannot be blocked by any system of graded selection or screening and it was submitted that irrespective of all other considerations the respondent is entitled to be considered at the final stage of selection for Sub-Inspectorship. All earlier hurdles which may be prescribed were characterised as unauthorised blocks in his fundamental right. We are afraid we cannot agree. The purpose of a promotion system is ultimately public weal and not the guaranteeing of any private interest of the employee. Leonard D. White in Chapter 26 relating to promotion in his authoritative work on Public Administration which was noticed with approval by the Supreme Court in Sant Ram Sharma Vs. State of Rajasthan and Another,

tersely states as follows regarding the object of a promotion system:--

"The principal object of a promotion system is to secure the best possible incumbents for the higher positions, while maintaining the morale of the whole organization. The main interest to be served is the public interest, not the personal interest of members of the official group concerned. The public interest is best secured when reasonable opportunities for promotion exist for all qualified employees, when really superior civil servants are enabled to move as rapidly up the promotion ladder as their merits deserve and as vacancies occur, and when selection for promotion is made on the sole basis of merit. For the merit system ought to apply as specifically in making promotions as in original recruitment."

The learned author rightly visualises the path of promotion to the next higher rank as a ladder which may have many rungs. To reach the top it is necessary for the employee to climb all these rungs on the promotion ladder and it is perfectly legitimate for the authority to prescribe qualifications and to exercise its discretion in selecting an employee to go from one rung to another. The State posed with the problem of dealing with a large number of employees is not precluded from having a promotion system and it is for it to decide the method by which it would select from its employees for that purpose in view. The necessity of resorting to a promotion system and the criteria which may be employed for the said purpose are again succinctly stated by Mr. Leonard D. White in the following terms:--

"More difficult is the problem of the grounds upon which promotion should rest. In a small organisation the answer is simple; a department head acts on the basis of his personal knowledge of the men under his control. But this rule breaks down in the huge administrative units of the larger governments; the superintendent of schools in New York City, the public welfare commissioner of Ohio, the Commissioner of Immigration and Naturalization, cannot possibly depend on their own acquaintance with their subordinates. Several methods are available where personal knowledge fails which are used either alone or in combination with each other. They include selection on the basis of a promotional examination, or an efficiency rating or service record, or seniority, or finally on the basis of the unabridged discretion of a higher official informed by conference with his immediate advisers."

and lastly the necessity, nay the inevitability of the exercise of discretion by these higher officials for the purpose of promotion has been stated in the following terms:--

"If the good judgment, freedom of action, and good intent of higher officials could be taken for granted at all points, the best basis for making promotions would be found in the free discretion of the responsible officials, informed by reference to efficiency records and other relevant data. Good intent normally prevails, although it may be and sometimes is obscured by political, factional, or personal considerations. Despite these human frailties, the final decision must be

left primarily to the judgment of high-ranking officials. No mechanical substitute has been devised which can precisely weigh and evaluate the many delicate factors which play a part in the final conclusion that A is more likely to succeed than B in a specific situation,"

14. It thus follows that in a large organisation running into thousands, like the police force of the State it is inevitable that the path of promotion of a police employee to the next rank may consist of a number of steps prescribed by the promoting authority. Each step may involve a selective process which may consist of an objective standard (e.g., a promotional examination or a physical test) or a subjective standard (e.g. the satisfaction or the discretion of the senior officer) or a combination of both. Those who fail in the initial or the intermediate steps may not be entitled to be at par with those who qualify through all. No employee has a fundamental right to go from one step to the other, if the authority in accordance with the prescribed rules, if any, does not deem him fit to do so. To put it in other words, promotion to the next rank may involve a number of stages. Would it be possible to say that those who even fail at the earliest or the intermediate steps, had nevertheless an inalienable right to reach the ultimate stage of eligibility for promotion irrespective of their total failure, inability or unsuitability to cross the initial hurdles? We believe that our answer must necessarily be in the negative, both on the basis of principle and authority. It was conceded before us and is otherwise settled law that an employee has no fundamental right of promotion to the higher rank. If that be so, we fail to see how he has an inalienable right to each of a number of stages which may lead to such a promotion. All that he could possibly claim is that he be equally considered at these relevant stages. An analogous matter arose regarding the various stages of promotion for consideration in the context of the Indian Administrative Service (Appointment by Promotion) Regulations 1955, before a Division Bench of this Court consisting of Narula J. and myself in *Union of India and Others Vs. P.C. Bahl and Others*, . It was held therein that even the process of determining the seniority on the provisional list prepared by the statutory committee may involve two steps; the first being the test of eligibility for promotion and the second being the subjective test whether an eligible-State civil servant should at all be brought on the provisional select list. Further steps are visualised by the regulation abovesaid including the forwarding of the list to the Public Service Commission and after due consideration and consultation, the approval of the said list by the Commission. Thereafter is yet another step under sub-regulation (9) relating to selection for appointment from the Select List prepared pursuant to the earlier regulation. All these steps in the promotion system were considered and *prima facie* held valid. In *Bikkar Singh v. State of Punjab* 1968 SLR 808 : (1969 Lab IC 56 Pandit J. in the context of the promotion to the post of Superintendent in the office of the Director of Public Instruction has observed as follows: --

"Admittedly, no service rules had been framed under Article 309 of the Constitution for regulating the appointments to the posts of Superintendents in

the office of the Director of Public Instruction. In the absence of such rules, the head of the Department, namely, the Director of Public Instruction, is entitled to apply his own judicious mind in making selections to higher posts. * *

In the instant case, the Director of Public Instruction along with the Deputy Director, Schools Administration and the Establishment Officer of the Department held a meeting and considered the case of the petitioner and other candidates. When the selection is made, it is obviously the subjective satisfaction of the Director of Public Instruction and the same is not justiciable and not subject to the judicial review of the Court under Article 226 of the Constitution, unless such selection is either mala fide or based on irrelevant or extraneous considerations. A comparative assessment of the various candidates based on their personal files and over-all assessment of their work and conduct, has to be made by the said officer. Even if this Court was inclined to take a different view, it could not substitute its own opinion in place of that of the officer concerned. In my view, it would be difficult to run any administration if one were to hold otherwise."

Lastly the Supreme Court authority which appears to be closest on the facts is G.S. Ramaswamy and Others Vs. Inspector-general of Police, Mysore, . Their Lordships were construing the provisions of the Hyderabad District Police Act (10 of 1329 F) and the Hyderabad District Police Manual under which Sub-Inspectors of Police were after interview by the Board put on the eligibility list for the posts of Circle Inspectors. A somewhat analogous question was posed and their Lordships observed therein as follows:--

"The first two questions that fall for consideration are whether the fact that a Sub-Inspector's name is put in the eligibility list gives an indefeasible right to him to promotion, and whether after such promotion on a temporary or officiating basis he gets a right not to be reverted under any circumstances. We are of the opinion that the fact that a Sub-Inspector's name is in the eligibility list gives him no right of the kind urged on behalf of the petitioners."

15. We believe that in nearly two decades, since the promulgation of the Constitution, a matter of the present nature canvassed before us allegedly infringing the guarantee of Article 16 could not possibly have remained res integra. We had repeatedly asked the learned counsel to cite authority in support of the proposition that Article 16 was infringed or that there was an indefeasible right to undergo a training course conducted by the State for its employees. The galaxy of the learned counsel appearing in all the cases frankly conceded that despite painstaking research through the whole gamut of service law, they are unable to cite a single decision on this point in their favour. In the ultimate analysis, therefore, we are of the view that Article 16 is not attracted to the facts of the case and there exists no inalienable right in favour of respondents to go through the upper and intermediate School Training Courses conducted at Phillaur, merely because their names exist on the eligibility lists. With respect we are of the view that the observations of the learned Single Judge to this effect are too broadly stated and do not lay down the legal position correctly,

16. We now proceed to consider finding (iv) of the learned Single Judge summarised above. The categorical finding under this head is two-fold and for clarity, each may be considered separately. It is observed first as follows:--

"It is no doubt true that no public servant has the right to be promoted but he has the right to be considered for promotion, if eligible. If the Government prescribes any qualification for being eligible it must also provide opportunity to the officer concerned to acquire that qualification."

With respect we differ. We do not find anything either in the Police Rules or the Police Act which lays any such burden on the Government to provide the qualification to its employees which may be prescribed for promotion, nor any provision has been brought to our notice which confers any such right on the employees. It was fairly conceded before us that the Government is entitled to prescribe the qualifications or the other prerequisites for promotion to the next I higher rank. If so, would the mere prescription of such a qualification impose an incumbent duty on the State to provide the necessary requisites to the officer concerned to acquire, that qualification. We do not think that it is so unless expressly provided by statute or by necessary implication therefrom. A rather extreme example may help to clear the Issue. Suppose the Government were to prescribe that a diploma in the famous police school at London called the "Scotland Yard" to be the requisite qualification for appointment or promotion to the rank of an Inspector of Police, would it then become incumbent for the Government to provide leave, foreign exchange passport and necessary entrance to the said School to every Sub-Inspector in order to enable him to provide himself with the opportunity to acquire this qualification? Obviously such an onerous burden cannot possibly be placed on an employer whether it be the State or a private employer unless the law categorically provides for such burden.

17. In the same context the learned Single Judge then proceeded to observe as follows:--

"..... it the examination or a training course is held or conducted by the Government, every officer willing to undergo that examination or course in order to qualify himself for promotion should be allowed to pass that examination or go through that course. No obstacle can be placed in his way by prescribing a method of selection or age limit."

We have closely examined the Police Act and the relevant Police Rules on the point and we are unable to find any provision therein which gives any such inalienable right to the police officer to go through the respective training courses conducted at the Police School at Phillaur. On the contrary some of the rules are indicative of the fact that deputing a person to undergo one of the courses is by selection. For example the relevant part of Rule 13.7 provides as follows:--

"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 * * * 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."

18. As regards the Upper School Training Course, it is evident that the Police Rules in Chapter 13 make no express mention thereof. Our attention has been drawn by the learned Advocate-General for the Punjab to the relevant Government instructions under which this Course was instituted and it deserves notice that Mr. Abnasha Singh on behalf of the respondent has not challenged the holding of this course but only claimed a right for his client to attend the same. The relevant instruction regarding the constitution of this course appears in the Punjab Police Gazette at page 58 of the 20th of September, 1933, Part I and the relevant paragraph 4 thereof, which deserves notice, is as follows:--

"A new Upper School is being formed for the training of Asstt. Sub-Inspectors for the rank of Sub-Inspectors. 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."

Merely because the Government conducts training courses conducive to the efficiency of its employees, in our opinion, does not give the police officers an indefeasible right to qualify in the course so conducted. We do not see any fundamental or inherent right of an employee to undergo an examination or a training course against the will of the employer unless it is provided expressly by statute, the relevant rules or the necessary conditions of the service of the employee. We find neither of these three applicable in the present case of the police employees nor are we able to subscribe to this view as a general or an abstract proposition. The Government by prescribing a training course conducted by it as a qualification does not necessarily burden itself with the liability to provide such training to each of its employees who may be willing to undergo the same. Nor does it thereby denude itself of its primary right to select those from the large number of its employees to whom it may deem worthwhile to provide such training. On the contrary if an employer provides a course it prima facie has the right to govern the admission to such a course. If there is no fundamental right to promotion then equally there can be no fundamental right to acquire the qualifications requisite for such a promotion. No precedent was cited before us in support of these rather widely stated propositions and we are regretfully unable to subscribe to the view of the learned Single Judge on this finding as well.

19. We proceed to consider the finding No. (v) at page 11 supra of the learned Single Judge and it is on the bedrock of direct conflict of the impugned

instruction with the corresponding provision of the Police Rules that the appeals filed by the State must founder. The learned Single Judge has given impeccable reasons and cited apt authority for his view that the instruction of the Inspector-General runs counter to the Police Rules.

Rule 13.10.

(I) A list of all Assistant Sub-Inspectors who have been approved by the Deputy Inspector-General as fit for trial in independent charge of a police station, or for specialist posts on the establishment of Sub-Inspectors, shall be maintained in card index form by each Deputy Inspector-General. Officiating promotions of short duration shall ordinarily be made within the district concerned (vide Sub-rule 13.4 (2)), but vacancies of long duration may be filled by the promotion of any eligible man in the range at the discretion of the Deputy Inspector-General. Half-yearly reports on all men entered in the list maintained under this rule shall be furnished in the form No. 13.9(3) by the 15th October in. We are wholly in agreement and wish to affirm the reasoning of the learned Single Judge without deeming it necessary to, traverse the same ground all over again. We would, hence very briefly notice the argument on behalf of the appellant and our reasons for repelling them.

20. The gravamen of the argument on behalf of the State was that the statutory Rules are silent on the point of selection etc., to the various training courses conducted at Phillaur School. This omission, it was contended, could be validly supplied and the rules be supplemented by means of executive instruction like the one issued by the Inspector-General In the present case. Reliance primarily was placed on Sant Ram Sharma's case. On behalf of the respondents the vires of the Punjab Police Rules 1934 were not challenged and also the validity of the power to hold the training courses at the Police School was not assailed. Similarly the power of prescribing qualifications and the pre-requisites for the purposes of promotion was conceded to vest in the promoting authority. On this aspect of the case the primary argument on behalf of the respondents was that the impugned Instruction, far from being supplementary was in direct and patent conflict with the statutory Police Rules.

21. The crux of the question on this aspect, therefore, is whether the impugned instruction is merely supplementary providing for lacunae in the Rules or is it in conflict therewith. A comparison of the manner of constituting list "E" for the purposes of subsequent selection therefrom to the rank of Sub-Inspector as provided for in the Rules on the one hand and in the impugned instruction on the other would clarify the issue. We would juxtapose these two provisions, namely; Rule 13.10 of the Police Rules and Clause(c) of the instruction against each other,--

Clause (c) of the Instruction. Selections for Upper School Courses.

A Committee consisting of the S. L. of the Range, whose cases are to be examined as President and two Superintendents of Police to be nominated in

rotation according to the alphabetical order of the names of the Districts in the Ranges, will make selections for the Upper School Course from among the confirmed Assistant Sub-Inspectors of Police who are below 45 years in age and have completed 5 years since the passing of the Intermediate School Course (relevant date will be the date of the commencement of the next Upper School Course). The Committee should scrutinise the cases of all eligible officers. In addition to going through their records of service. It may addition to the annual report to be submitted by the 15th April, in accordance with Police Rule 13.17(1).

(2) 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 if It so wishes. Interview any eligible officers and ask them to undergo parade and written tests. Assistant Sub-Inspectors of Police selected for the Upper School Course should be sent to the Police Training School in accordance with their inter se seniority in a particular batch. After the completion of the Upper School Course, the names of the successful officers" should be brought on list "E" in accordance with the order of merit obtained by them in the examination at the Police Training School. Promotions to the rank of Sub-Inspectors of Police should be made from list "E" in accordance with the seniority of officers on it. Departures from, these instructions should be permitted only where the officers concerned come "to adverse notice for corruption or utter inefficiency after they have been selected for the Upper School Course. The reasons for such departures should be recorded in detail.

A bare examination of the language and content of these two provisions clearly brings out the patent conflict betwixt them. What first meets the eye is that whilst Rule 13.10 does not even refer to the Upper School Course for the purpose of list "E", Clause(c) of the impugned instruction makes the qualification of the Upper School Course the sine qua non for bringing the name of an Assistant Sub-Inspector to list "E". Again whilst Rule 13 10 vests the discretion for bringing names on list "E" to the Deputy Inspector-General, Clause(c) on the contrary takes away this direction and vests it in an entirely new body called the Promotion Committee constituted of three persons, namely, the D.I.G. and two Superintendents of Police. Yet again Clause(c) of the impugned instruction virtually abandons all earlier rules and provisions for determining the seniority of the A.S.Is. of the police and makes it wholly dependent in the order of merit obtained by them in the Upper Training School Examination conducted at Phillaur. This is in direct conflict with Rule 12.2, which lays down the procedure for the seniority and probation of the Assistant Superintendents of Police and lastly the instruction categorically lays down that promotions to the rank of Sub-Inspector should be made from list "C" in accordance with the seniority of the officers on it and departures from this rule have been virtually ruled out of consideration. This again does not seem to be warranted by the relevant Police Rules. It is unnecessary to go to the other similar details where the conflict is also apparent.

Similarly the clauses (d) and (e) providing for the Promotion Committees for selection for the Intermediate School Course and for selection for the Lower School .Course run counter to the corresponding provision of the Police Rules. The learned Advocate-General had fairly conceded that the instruction cannot possibly override the Rule. We are, there-fore, in agreement with the learned Single Judge and clearly of the view that the impugned instruction directly conflicts with the corresponding provisions of the Police Rules. We have given our close attention to the impugned instruction and conflicting provisions thereof and these are so inextricably entangled with the others that it is impossible to separate them. Consequently the whole of the impugned instruction has to be struck down and is therefore declared invalid.

22. In view of the above finding and the consequent quashing of the instruction we deem it unnecessary to go into the question whether the fixation of age at 45 years by Clause(c) of the said instruction is necessarily arbitrary or contrary to the Police Rules. The learned Advocate-General had not challenged the quashing of the remarks against Kirpal Singh, respondent, in L. P. A. No. 159 of 1969 and it was further conceded before us that these instructions have not been approved by the Government. Consequently findings (vi), (vii) and (viii) of the learned Single Judge do not now fall for consideration.

23. In fairness to the learned counsel for the respondent in L. P. A. No. 165 of 1969, we must notice that it was contended that Sections 2 and 12 of the Police Act did not give any power whatsoever to issue any instruction in the nature of the impugned instruction. Similarly it was also contended that Rule 1.2 of the Police Rules also does not confer any such power. It was also contended that the provision of the written test and Clause(f) providing for exemption to the age limit was also not in conformity with the Rules. Detailed criticism was also directed to each part of the impugned instruction but as we have already held the whole of the same to be invalid, it is unnecessary to go into these Questions.

24. We have dealt above with L. P. As. Nos. 159 and 165 of 1969. However, identical points regarding the conflict of the impugned instructions with the Police Rules arise in the connected Letters Patent Appeals Nos. 137 of 1969, 471 and 527 of 1960. Therefore, in view of the foregoing discussion all the Letters Patent Appeals must fail but in the light of our observations regarding the findings (i) to (iv) of the learned Single Judge in L. P. As. Nos. 159 and 165 of 1969, the relief granted to the respondent therein has to be necessarily slightly modified. However, it has been stated before us that as no stay was granted by the Motion Bench whilst admitting these appeals the orders of the learned Single Judges have already been complied with and consequently no modification of these orders is now necessary or possible. In view of the complicated issues involved in these appeals, however, we make no order as to costs.

25. Civil Writs Nos. 2245 and 2348 of 1968 have been placed before this Bench in view of the orders of the learned Single Judge dated, 30th July, 1969. As the point arising therein is identical with that in Kirpal Singh's case (L. P. A. No. 159

of 1969) we have closely perused the petitions along with the return filed thereto on behalf of the State. Both the petitioners in these petitions are Head Constables whose names are borne on the eligibility list "C" and they claim the right to attend the Intermediate School Course at Phillaur on the said basis. Both the writ petitioners have been declined for selection to the Intermediate Course by the Promotion Committees constituted in pursuance of the impugned instructions issued by the Inspector-General of Police and the relevant parts thereof are annexed as annexures "B" and "C" to the said petitions. Mr. G. C. Mittal in support of both the petitions has pressed before us the sole point regarding the invalidity of the said Instructions. We have so held above. Accordingly, both these writ petitions have to be allowed and we, therefore, direct respondents Nos. 1 to 3 therein that the eligibility of the two petitioners for being sent up for the Intermediate Training Course and for promotion should be decided in accordance strictly with the Police Rules and in complete disregard of the Departmental Instructions issued by the Inspector-General of Police, which have been struck down. As above, we make no order as to costs.

Hakbans Singh, J.

26. I have carefully gone through the judgment prepared by my learned brother and, if I may say so with respect have great admiration for the clarity, elucidation and details with which his Lordship has discussed the extent of the application of the principles involved in Article 16 of the Constitution of India. Before us the learned counsel for the respondents in the Letters Patent Appeals and for the petitioners in the writ petitions mainly stressed the last point dealt with in the judgment of my learned brother, namely, that the impugned instructions were in conflict with the statutory police rules and for this reason deserve to be quashed. The application of Article 16 and also the fact that these persons must also be provided with the opportunity to acquire the qualification laid down by the Government and which qualification cannot be acquired except through the Police Training School, which was under the control of the Government, were no doubt also mentioned during the course of arguments but much stress was not laid on the same. In view of the fact that the impugned instructions are to be quashed because the same are in conflict with the statutory rules, I consider it hardly necessary to express any definite views with regard to the remaining matters. I, therefore, agree that the Letters Patent Appeals should be dismissed and the other writ petitions be allowed and the impugned instructions be quashed and directions issued that the eligibility of the persons concerned for being sent for Intermediate School Course and for promotion should be decided strictly in accordance with the Police Rules and in complete disregard of the Departmental Instructions issued by the Department which have been struck down.