
(1996) 05 P&H CK 0005
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 18192 of 1994

Surinder Singh and Others	Vs	APPELLANT
State of Haryana and Others		RESPONDENT

Date of Decision : 08-05-1996

Acts Referred:

Punjab Police Rules, 1934 — Rule 13.1(1), 13.1(2), 13.18, 13.5(2), 13.8

Citation : (1996) 2 ILR (P&H) 425

Hon'ble Judges : S.S. Sudhalkar, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : I.S. Balhara and N.K. Malhotra, for the Appellant; R.N. Raina, D.A.G., for the Respondent

Judgement

G.S. Singhvi, J.—All these petitions involve determination of an identical issue relating to the interpretation of Rule 13.18 of the Punjab Police Rules and as the prayers made by the Petitioners are also similar, we are deciding them by a common order.

Brief Facts:

CWP No. 18192/94:

2. Petitioners Surinder Singh, Jiwan Singh, Randhir Singh and Dilbag Singh joined service as Constables in Haryana Police on 2nd January, 1976, 1st September, 1974, 14th May, 1979 and 18th September, 1979 respectively. Petitioner Surinder Singh, was promoted as a Head Constable on 30th April, 1984. However, in the year. 1992 he was reverted. He filed CWP, No. 8785 of 1992 on the ground that his reversion was illegal Petitioner No. 1 says that a Division Bench of this Court stayed the operation of order of his reversion. Petitioners No. 2, 3, 4 were-promoted as Head Constables on 22nd October, 1986,..4th, October, 1985. and 23rd October, 1986 respectively." They to were reverted with effect from 2nd June, 1992. They too filed CWP No. 7602 of 1992 alongwith one Zile Singh and the Division Bench passed a stay, order in their

favour on 11th June, 1992 According to the Petitioners Surinder Singh was given promotion as Head Constable due to his hard work and distinction whereas the other three petitioners were promoted being outstanding sportsmen and on completion of two years of service, they acquired the right to be confirmed as Head Constables in view of the law laid down, by the, Supreme Court in Rishal Singh v. State of Haryana J.T. 1994 (2) S.C. 157 and a judgment of the learned Single Judge dated 5th October 1994 even in CWP No. 1225 of 1994, Jagat Singh v. State of Haryana. The

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Respondents to pass fresh orders within three months after affording opportunity of hearing to the Petitioners. It is stated that a show cause notice dated 20th October, 1995 was issued to the Petitioner and on 30th October, 1995, the impugned order has been passed again reverting him to the post of Constable. The Petitioner says that he has become entitled to be treated as confirmed on the post of Constable in terms of Rule 13.8(2) of the Punjab Police Rules and, therefore, his reversion is contrary to the provisions of the Constitution as well as the principles of natural justice. CWP No. 17164/95:

5. Head Constable Bhagwan Singh and Head Constable Chander Pal have instituted this petition for quashing of the order dated 30th October, 1995, passed by the Superintendent of Police, Faridabad. They have pleaded that promotion was accorded to them due to outstanding performance in the discharge of their duties and proven act of bravery. The Petitioners have stated that they were reverted,--vide order dated 27th May, 1992 which was quashed by the learned Single Judge on 23rd August, 1995. However, instead of implementing the decision of the learned single Judge in the correct spirit, the Respondents have passed the impugned order of reversion. In their reply the Respondents have justified the impugned order of reversion by alleging that the promotion accorded to the Petitioners was not justified.

6. Before we examine the various contentions advanced by the learned Counsel for the parties, it is necessary to point out that in none of these petitions the Petitioners have placed on record copies of the orders of promotion on the post of Head Constable although, learned Counsel for the parties have made oral submissions regarding the nature of such promotion. While deciding CWP No. 11747 of 1995, this Court has taken notice of the unfortunate practice which has developed over the years of non-production of basic and relevant documents by the parties and thereby compelling the court to make a guess work.

7. However, fortunately for us, the original, service record of all the Petitioners has been produced by the learned Deputy Advocate General for perusal. This record shows that Shri Surinder Singh was promoted as Head Constable by the Superintendent of Police, Rohtak on 30th April, 1984 against an existing temporary vacancy. His promotion was described as purely temporary and fortuitous with a specific condition that he will be liable to reversion without any

notice and he will have No. right of seniority due to such ad hoc promotion. For the purpose of ready reference the order of promotion of Petitioner Surinder Singh is reproduced below:

ORDER

Constable Surinder Singh No. 976/RTK of this district is hereby promoted as temporary Head Constable on ad hoc basis against existing temporary vacancy with effect from 30th April, 1984 being a good hockey player and good, athlete. His promotion is purely temporary and fortuitous. By this temporary and fortuitous promotion he will be liable to reversion without any notice. He can not claim any seniority due to this temporary promotion.

Sd/-

Superintendent of Police,

Rohtak. 30.4.84.

8. Service record of Surinder Singh shows that before promoting him as Head Constable on purely temporary basis the Superintendent of Police did not seek approval from the Deputy Inspector General of Police. Even after promoting him the Superintendent of Police did not seek confirmation of the order of promotion passed in favour of the Petitioner. Petitioner Jiwan Singh was promoted by the Superintendent of Police, Faridabad as officiating Head Constable on ad hoc basis. His promotion was also described as purely temporary with a clear stipulation that he will have no claim of seniority to the post of Head Constable and he will be liable to be reverted at any time without any notice. In the case of Dilbag Singh, the Superintendent of Police passed order promoting him on purely ad hoc basis. Similar promotion was accorded to Constable Bhagwan Singh,--vide order dated 22nd September, 1988. In the cases of Dilbag Singh and Bhagwan Singh, orders of promotion are not available but entries to that effect have been made in their service books. Petitioner Dhirender Singh was promoted as ad hoc Head Constable against the upgraded vacancy on purely temporary basis. He was promoted being the best athlete and outstanding wrestler but with a clear condition that he could be reverted at any time without any notice. Randhir Singh was given ad hoc promotion,--vide order dated 4th October, 1985. His promotion was described as purely temporary with a stipulation that he will have no right to claim seniority and he will be liable to reversion at any time without any notice. Chanderpal Singh was also given ad hoc promotion by the Superintendent of Police, Faridabad on 5th July, 1988. His order also contained the same condition which was incorporated in the orders of promotion of other Petitioners. Like Surinder Singh the record of none of other Petitioners shows that the approval of the Deputy Inspector General of Police was sought before promoting the Petitioners as Head Constables on ad hoc basis and after their promotion also the Superintendent of Police sought confirmation of the orders of promotions from the Deputy Inspector General of Police. In none of these cases there is a reference to Rule 13.8 of the Punjab Police Rules.

9. First argument of Shri Balhara is that the Petitioners could not be reverted to the posts of Constable after they have completed two years service as Head Constables and have become entitled to be treated as confirmed on the posts of Head Constables. Learned Counsel submitted that promotion of the Petitioners will be deemed to have been made under: Rule 13.8 (2) of the Punjab Police Rules and in terms of Rule 13.18 they will be deemed to have been automatically confirmed on the posts of Head Constables and without holding a regular enquiry the Respondents could not revert the Petitioners. Shri Balhara placed reliance on the decision of the Supreme Court in *Rishal Singh v. State of Haryana and Ors.* 1994 (2) R.S.J. 403, *Jagat Singh v. State of Haryana* 1995 (2) R.S.J. 229, and *Hardev Singh v. State of Haryana* 1995 (2) R.S.J. 282. The second contention of Shri Balhara is that some of the Petitioners have been promoted as Head Constables due to exceptionally meritorious service and they cannot be reverted without holding an enquiry consistent with the rules of natural justice. Third contention of Shri Balhara is that after" their earlier writ petitions were allowed by the High Court, the Superintendent of Police did not properly examine the claim of the Petitioners to be continued on the posts of Head Constables and he has passed the impugned order of reversion in a machinical manner. The learned Deputy Advocate General countered the contentions of Shri Balhara and argued that none of the Petitioners was promoted as Head Constables under Rules 13.8 (2) -and, therefore, they cannot be treated as promoted against 10 per cent vacancies specified in Rule 13.8 (2). Shri Raina submitted that the promotion accorded to the Petitioners to the posts of Head Constables were purely fortuitous and none of them acquired any right to hold the post of Head Constable and, therefore, the reversion of the Petitioners can neither be termed as arbitrary or unreasonable.. Shri Raina further argued that promotion under Rule 13.8 (2) could be. made only after approval by the Deputy Inspector General of Police and as no such approval was accorded by the D.I.G. in the cases of the Petitioners, they cannot be treated as promotee Head Constables against 10 per cent vacancies and are not entitled to be. treated, as confirmed Head Constables merely because they have served as Head Constables for a particular length of time. Shri Raina also argued that on the basis of purely fortuitous promotions which were given to the Petitioners without regard to the seniority of the Petitioners vis-a-vis other constables, no right came to vest in the Petitioners to hold the posts and, therefore, their reversion brought about for accommodating upgraded Constables who have passed lower school course and who have been found suitable cannot be... termed as arbitrary or unreasonable. Claim of the Petitioners to be sent for intermediate school course has also been challenged by, Shri Raina on the ground that out of turn promotion accorded to the Petitioners does not create any right in them and they cannot by-pass the senior persons.

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Lower School Course at Phillaur and are considered eligible for promotion to Head Constable. A card shall be prepared for each constable admitted to the list

and shall contain his marking under Sub-rule 13.5(2) and notes by the Superintendent himself, or furnished by Gazetted Officers under whom the Constable has worked, on his qualifications and character. The list shall be kept confidentially by the Superintendent and shall be scrutinized and approved by the Deputy Inspector General of Police at his annual inspection.

(2) Promotions to Head Constable shall be made in accordance with the principle described in sub-rules 13.1 (1) and (2). The date of admission to List C shall not be material, but the order of merit in which examinations have been passed shall be taken into consideration in comprising qualifications. In cases where other qualifications are equal, seniority in the police force shall be the deciding factor. Selection grade constables who have not passed the Lower School Course at the Police Training School but are otherwise considered suitable may, with the approval of the Deputy Inspector-General, be promoted to Head Constable up to a maximum of ten per cent of vacancies.

13.18. Probationary period of promotion.--All Police Officers promoted in rank shall be on probation for two years, provided that the appointing authority may, by a special order in each case, permit period of officiating service to count towards the period of probation. On the conclusion of the probationary period a report shall be rendered to the authority empowered to confirm the promotion who shall either confirm the officer or revert him. In no case shall the period of probation be extended beyond two years and the confirming authority must arrive at a definite decision within a reasonable time soon after the expiry of that period whether the officer should be confirmed or reverted. While on probation officers may be reverted without departmental proceedings. Such reversion shall not be considered reduction for the purpose of Rule 16.4.

This rule shall not apply to Constables and Sub Inspectors promoted to the selection grade, whose case is governed by Rules 13.5 and 13.14.

11. A careful study of Rule 13.8 (2) makes it clear that promotion to the rank of Head Constable is to be made according to the principle described in Rule 13.1 (1) and (2). Second part, of Rule 13.8 (2) provides for promotion of those selection grade Constables who have not passed the Lower School Course at the Police Training School but who are otherwise considered suitable., However, such-promotion can be accorded only with the approval of the Deputy Inspector General of Police and the maximum number of such promotions can be ten per cent of the vacancies.

12. As noticed earlier, all the Petitioners have been promoted by the Superintendent of Police concerned. In none of these cases, approval of the Deputy Inspector General of Police has been sought for and granted. It has also been shown that these promotions have been made against ten per cent of the total vacancies. That apart, all the promotions have been described as purely temporary and fortuitous without giving any right to the promotee to hold the post or to claim seniority on the post of Head Constable. This the Superintendent

of Police did because promotions were accorded to the Petitioners over-looking the seniority of large number of persons in the cadre of Constables and but for the conditions incorporated in the promotion orders of the Petitioners, all such promotions would have been nullified being contrary to the equality clause enshrined in the Constitution. Therefore, we are of opinion that the petitioners cannot be treated to have been promoted under Rule 13.8 (2) and they cannot be treated as automatically confirmed by being treated to have been appointed on probation as contemplated by Rule 13.18.

13. We may also refer to the instructions issued by the Director General of Police Haryana,--vide Circular No. 19626--43/B-3 dated 9th September, 1993 and Circular No. 27926-50/B-3 dated, 27th December, 1993 laying down the criteria for giving one rank promotion to police personnel showing exceptional courage, bravery and presence of mind on anti-terrorist front. In para (ii) of the circular dated 9th September, 1993, it has been made clear that every case must be examined minutely by the SP/DIG concerned, and the names of only those police personnel could be recommended who actually took part in, encountering the terrorists. Para (iv) further provides that ad hoc promotion accorded in, accordance, with, the circular dated 9th September 1993 will not be given as a matter of right but on merits and subject to availability of vacancies and further that the promotee will not get any right of seniority. Another rider incorporated in the circular is that all such cases for ad hoc promotion shall be sent for approval by the Director General of Police/ Government. Circular dated 27th December, 1993 provides for the contingency in which ad hoc promotee is found to have not worked satisfactorily and it speaks of reversion of such ad hoc promotee. We have made reference to these two circulars in order to emphasize that as and when out of turn" promotion is made, we are making a departure from the rule, a person promoted does not get any right to hold a post or to be treated as permanent.

14. Coming to the impugned orders of reversion, it is to be noted that so far as order, Annexure P.I is concerned, it has been challenged in CWP No. 18192 of 1994, it does not contain any reason. However, the show cause notices issued to the Petitioner Surinder Singh and three others show that the Superintendent of Police thought it necessary to revert the Petitioners because eligible Constables, who are rightful claimants for promotion to the posts of Head. Constables and, who are senior to the Petitioners have become available and, the promotions of the Petitioners were not made under Rule 13-8 (2). It has also been noticed that the Petitioners had not passed the Lower School Course. The order dated 30th October, 1995, which has been challenged in other two writ petitions contains detailed reasons. It proceeds on the promise that the promotion of Dhirender Singh, Bhagwan Singh and Chander Pal were promoting them, on purely ad hoc basis and none of them acquired any right to hold the post. Arguments of the Petitioners about the applicability of Rule 13.18 has been dealt with and rejected and in our opinion the Superintendent of Police has acted legally in reverting the Petitioners and in proposing the reversion of the Petitioners Surinder Singh etc.

because neither of them has been promoted under Rule 13.8 (2) and on the basis, of purely temporary and ad hoc promotions accorded to them, the Petitioners did not acquire any right to be treated as substantive Head Constables.

15. The three decisions on which Shri Balhara placed reliance have no bearing to the facts of these petitions. In Rishal Singh's case (supra) their Lordships of the Supreme Court noted that promotion was accorded to the Appellant by the Deputy Inspector General of Police against the ten per cent quota because he was a sports person and his promotion was treated in the sports quota. Their Lordships held that a promotion accorded under Rule 13.8(2) by a competent authority cannot be treated as fortuitous and the Appellant will be deemed to have been appointed on regular basis even though the order used the words temporary or ad hoc.

16. In Jagat Singh v. State of Haryana (supra) and in Hardev Singh v. State of Haryana (supra) also the Petitioners had claimed that their promotions were made under Rule 13.8(2) of the Punjab Police Rules. In Jagat Singh's case, no reply was filed by the Respondents but in the connected cases, the Respondents pleaded that, although the Petitioners had been promoted under Rule 13.8(2) of the Punjab Police Rules, their promotions were on ad hoc basis. The learned Single Judge relied on the observations made by the Supreme Court in Rishal Singh v. State of Haryana (supra) in the context of Rule 13.8(2) and held that in terms of Rule 13.8(2) the Petitioners would be deemed to have been confirmed on the promoted posts after completion of two years service.

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