
(2003) 11 P&H CK 0076

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 16997 of 2001

Tara Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 21-11-2003

Acts Referred:

Punjab Police Rules, 1934 — Rule 13.9

Citation : (2004) 136 PLR 418

Hon'ble Judges : K.C. Gupta, J

Bench : Single Bench

Advocate : I.S. Balhara, for the Appellant; S.S. Behl, Addl. A.G., for the Respondent

Final Decision : Allowed

Judgement

K.C. Gupta, J.—This is a petition under Article 226/227 of the Constitution of India filed by the petitioners for issuance of a writ in the nature of mandamus directing respondents No. 1 to 4 to detail the petitioners to the Intermediate School Course Commencing from 15.10.2001 being senior to respondents No. 5 to 11 and other more than 30 persons and further to issue such other directions as may be necessary that is to confirm them from the date when they had completed two years of their service as Head Constables in accordance with the P.P.R. 13.8.

2. Briefly stated the facts are that the petitioners and respondents No. 5 to 11 are citizens of India and are residents of State of Punjab and the petitioners were serving in the Punjab Government Railway Police. The service particulars of the petitioners as well as that of respondents No. 5 to 11 are given below to show that respondents No. 5 to 11 were junior to them in all respects.

Name Rank

DOE

LSC

C-1

From HC

Conf HC

S. No

1. Tara Singh HC No. 1380/GRP

24.4.79

1.10.83

1.4.84

13.8.86

1.1.2000

2. Ram Dass Batish HC NO. 415/GRP

20.11.79

1.10.83

1.4.84

10.10.86

1.1.2000

3. Gurdeep Singh HC No.421/GRP

11.9.79

1.10.83

1.4.84

13.8.86

1.1.2000

4. Devinder Singh HC No.370/GRP

4.8.79

1.10.83

1.4.84

10.10.86

1.1.2000

5. Gurcharan Singh HC No.58/GRP

14.10.77

1.10.83

1.4.84

10.10.86

1.1.2000

6. Ram Krishan HC No. 122/GRP

17.4.79

1.04.84

1.10.84

01.1.87

1.1.2000

7. Baldev Singh HC No. 15/GRP

02.5.79

1.04.84

1.10.84

30.3.87

1.1.2000

8. Mohd. Umair Saquib HC No.90/GRP

29.8.80

1.04.84

1.10.84

3.7.87

1.1.2000

9. Kashmir Singh HC No.498/GRP

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1.04.84

1.4.84

10.10.86

1.1.2000

10. Baldev Singh HC No.248/GRP

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9/84

1.10.84

01.7.87

1.1.2000

11. Saudagar Singh HC No.127/GRP

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9/84

1.10.84

01.7.87

1.1.2000

Junior Course 15.10.2001

C-I

P from as HC

Con as HC

1.

HC Gurcharan Singh 772/SGR

1.4.85

16.6.85

1.7.89

2.

HC Nirmal Singh 1793/PTA

1.4.85

16.6.85

1.7.89

3.

HC Harbans Singh 667/SGR

1.4.85

16.6.85

1.7.89

4.

HC Gurnam Singh 1568/SGR

1.4.85

16.6.85

1.7.89

5.

HC Pavitar Singh 791/SGR

1.4.85

16.6.85

1.7.89

6.

HC Harnek Singh 1492/SGR

1.4.85

16.6.85

1.7.89

7.

HC Madhwa Nand 44/PTA

1.9.84

13.6.85

1.7.89

3. It was next averred that the petitioners had passed their Lower School Course in the batches of October 1983, April 1984, September 1984 and were placed on C-I list much prior to the private respondents as the private respondents had passed the Lower School Course in April 1985 except respondent No. 11 who had passed it in September 1984 but he was also junior to 9 petitioners because of passing of Lower School Course and was also junior to petitioners No. 10 and 11 because he was lower in merit in the batch of petitioners No. 10 and 11. It was next averred that the promotion to the rank of Head Constable and placement in list C-I were in accordance with the Punjab Police Rules 13.8 but respondents No. 5 to 11 who were lower in merit than the petitioners and were serving in District Police and were juniors to them had been confirmed prior to them by their respective Superintendent of Police. It was further averred that they were not promoted though they were entitled to be confirmed in the year 1988 and 1989 after completion of 2 years on officiating promotion as Head Constables and they

were not confirmed for the reason best know to the respective Superintendent of Police.

4. It was next averred that the respondents had passed the order of confirmation as Head Constables in arbitrary and illegal manner on 21.7.2000 w.e.f. 1.1.2000 showing them to be on probation for six months though they had been promoted in the years 1986 and 1987 and actually they were entitled to be confirmed w.e.f. 1988-1989 or latest by 1991 in any circumstances. With these allegations the instant writ petition was filed.

5. Vide order dated 24.10.2001 notice of motion was issued.

6. Separate replies on behalf of respondent No. 1 to 4 were filed. Respondent No. 4 in his reply admitted that the petitioners had passed Lower School Course from Punjab Police Academy. Phillaur in the term ending March 1984 but denied the other allegations. Respondents No. 1 to 3, in their reply, stated that the petitioner were promoted as Head Constables during the period from August 1986 to July 1987 whereas respondents No. 5 to 11 were promoted in the month of June, 1985 i.e. much earlier to the petitioners and thus, respondents No. 5 to 11 were seniors than the petitioners. It was next averred that though the petitioners had undergone Lower School Course prior to the private respondents and their names were entered in the list C-I earlier than the private respondents but due to lack of vacancies in the rank of Head Constables in GRP they could not be promoted in their parent department i.e. GRP Punjab because the sanctioned strength of each District/Unit is separately maintained under PPR 12.4. They further stated that Rule 13.8 of the Punjab Police Rules, 1934 was only applicable for promotion to the rank of Head Constable but the Promotion to the rank of Assistant Sub Inspector was made in accordance with Rule 13.9 of the Punjab Police Rules, 1934. They next stated that the petitioners were promoted in the rank of Head Constables during the period from August 1986 to July 1987 whereas the private respondents No. 5 to 11 were promoted in the rank of the month of June, 1985 much earlier than the petitioners. They also stated that the petitioners could not be confirmed in the rank of Head Constables as per letter dated 8.4.1991, Annexure P1.

7. I have heard Mr. I.S. Balhara, counsel for the petitioners Mr. S.S. Behl, Addl. A.G. Punjab on behalf of the respondents and carefully gone through the file.

8. A perusal of order, Annexure P-2 shows that the petitioners vide order dated 21.7.2000, were confirmed as Head Constables w.e.f. 1.1.2000. Annexure P6 states that some of the petitioners, who had qualified Lower School Course in the term ending March, 1984 were brought on list C w.e.f. 1.4.1984. While order Annexure P7 shows that some other Constables were brought on list C1 w.e.f. 1.10.1984 having qualified Lower School Course. Rule 13.8 of the Punjab Police Rules relates to promotion to Head Constables. It reads as under:-

"13.8: List-C. Promotion to Head Constables;

(1) In each district a list shall be maintained in card index from (form 13.8 (1) of all constables who have passed the 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 making 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 scrutinised 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 of 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 upto a maximum of ten percent of vacancies.

9. Thus, according to the said rule, passing of the Lower School Course prior in time and merit of the Lower School Course in the same batch and not the date of promotion or confirmation as was done by the Superintendent of Police prior to the Standing Order No. 1/999 District wise was valid for preparing the seniority list for the State of Punjab qua the Head Constables. The petitioners had been confirmed as head Constables in an arbitrary, and illegal manner on 21.7.2000 showing them to be on probation for six months although they had been promoted in the years, 1986/1987. According to PPR 13.18, they were to be confirmed after their successfully completion of probation period i.e. w.e.f. 1988 or 1989 or latest by 1991, in any circumstances and not on the availability of the post. The petitioners are not to suffer if their date of confirmation has been delayed by the official respondents for the reasons best known to them. If no order is passed extending their probation or stating that they were not entitled to be confirmed, then they stand automatically confirmed after the expiry of probation period and only formal order is required to be passed. If the authority concerned neglects to pass the formal order, then a person shall be deemed to have been confirmed after the expiry of probation period if there is nothing against his integrity and working. Letter dated 8.4.1991, Annexure P-1 that they would be entitled to confirmation only in the entry grade is not applicable because it has got no retrospective effect. Moreover, it is stated in para 2 of the said instructions that the confirmation is delinked from the availability of permanent vacancy in the grade. In other words, an official who has successfully completed the probation may be considered for promotion.

10. It has been held by a Full Bench of this Court in *Sardul Singh v. State of Punjab* 1970 S.L.R. 505 that confirmed Head Constables shall be deputed to

undergo Intermediate School Course at first and when the list of confirmed Head Constables is exhausted, the Head Constables on probation will be deputed to undergo the said course and last of all officiating Head Constables will be sent. However, the petitioners had already undergone the Intermediate School Course prior to the private respondents No. 5 to 11, Thus, the petitioners are liable to be confirmed after two years of their promotion as Head Constables in the years 1986/1987 in accordance with PPR 13.8 and now after one year as per amended Rule 13.8 by the Government of Punjab vide Gazette Notification dated 14.3.2003.

11. It has been observed by this Court in *Hardev Singh v. State of Haryana* 1995(2) R.S.J. 282 that in view of Article 16 of the Constitution of India and 13.8(2) and 13.18 of Punjab Police Rules, 1934, the petitioners therein who have completed more than two years of probation period, if there is nothing on record to show that their conduct during the period of probation was not satisfactory would be deemed to have been confirmed on the post in question on completion of two years probation period. To the same effect is the authority of this Court in *Jagat Singh v. State of Haryana* 1995(2) R.S.J. 229.

12. Thus, the petitioners are entitled to be confirmed w.e.f. the years 1988/1989 after two years of their probation period and are entitled to further promotion on the basis of their confirmation and length of service. Consequently, the writ petition is accepted and respondents No. 1 to 4 are directed to confirm the petitioners as Head Constables w.e.f. 1988/1989 as they had been promoted in the years 1986/1987 as Head Constables. Further, they have the right to be considered for promotion in view of their considering date of promotion as from 1988-1989 and thus, seniority list be prepared accordingly.