

CASE NO.:
Appeal (civil) 2273 of 2004

PETITIONER:
S.I. Paras Kumar & Ors.

RESPONDENT:
S.I. Ram Charan & Ors.

DATE OF JUDGMENT: 12/04/2004

BENCH:
S. RAJENDRA BABU , RUMA PAL & B. P. SINGH.

JUDGMENT:
J U D G M E N T

(ARISING OUT OF S.L.P. (C) NO. 13389/1998)

[WITH CIVIL APPEALS NOS. \005\005\005.\005\005\005\005\005\005\005\005/2004
(ARISING OUT OF SLP (C) NOS. 17591/1998,
19246/1998, 15944/1998, 2083/1999, 18492/2001,
14283/1998, 16514/1998, 16102/1998, 2082/1999,
20840/1998, 15943/1998, 7817-18/1999, 2080/1999,
17648/1999, 15542/1998, 14694-95/1998, 14313/1998,
19245/1998, 20839/1998, 18493-94/2001, 18497/2001,
15945-46/1998 AND 16829/1998]

RAJENDRA BABU, J. :

Leave granted.

The legal validity of 'out of turn promotion' given to some Police Officials based upon their courage displayed during anti-terrorist operations or outstanding performance in Sports' is the foremost matter for judgment in this batch of cases.

Promotions based on courage displayed in Anti Terrorist Operations:

1. SLP (C) No 17591 OF 1998. [Arising from final judgment in CWP No. 403/ 97 of the Punjab and Haryana High Court]
Chander Pal & others v. Ram Charan & others.
All together 14 Petitioners are in this case. All of them were appointed as Constables during the period 1976-'89. They were promoted as Head Constables on the ground of showing bravery in anti-terrorist front or on the ground of outstanding performance in Sports. Show Cause notices were issued to them and they were reverted to the original rank. Their writ petitions were disposed of by the High Court vide common order in 403/97. Challenging this order the present SLP is filed.
2. SLP (C) No. 19246 of 1998. [Arising final judgment in CWP No. 403 of 1997 of the Punjab and Haryana High Court]
Narinder Singh & others v. Ram Charan
Appellants got out-of-turn promotion on the basis of bravery shown in Anti-Terrorist Front. The original WP was disposed of along with 403/97. Challenging this the instant SLP.

3. SLP(C) No. 15944 of 1998 - [Arising final judgment in CWP No. 403 of 1997 of the Punjab and Haryana High Court]

Sadhu Ram & Others v. Ram Charan & others

All together 16 Petitioners are in this case. All of them got one rank 'out of turn' promotion based on their bravery and exemplary courage during activities on Anti-Terrorist front. Subsequently the Respondents herein filed writ petition before the High Court challenging the out of turn promotion given to these Petitioners. High Court allows the Writ petition. Aggrieved by the impugned judgment, the present SLP.

4. SLP (C) No. 2083 of 1999 [against final judgment dated 19/5/98]

Rameshwar Singh v. State of Haryana

Petitioner was originally appointed as a constable and was promoted as Head Constable. Later was promoted as ASI on the basis of his bravery. Subsequently reversion order was passed and he was reverted to the rank of Constable. This reversion order was challenged. High Court disposed of the writ vide common order in 403/97. Challenging this the instant SLP was filed.

5. SLP (C) No. 18492 of 2001. [Against final order dated 31/8/2002 passed by Hon'ble Division Bench of Punjab and Haryana High Court in LPA No. 1957 of 2001].

Prem Das & others vs. Bachan Singh Randhwa & others.

All the petitioners in this case were given out of turn promotion on the basis of their meritorious service in Anti-terrorist front as Inspectors on ORP basis. They were not parties to Writ-Petition/Appeals. In accordance with the impugned order passed by the Punjab and Haryana High Court, Government is taking steps to revert the appellants. To prevent the furtherance of such an action, they approached the High Court. Both the petition and subsequent LPA were dismissed. Aggrieved by the same, the present SLP.

6. SLP (C) No. 14283 of 1998 [arising from final judgment dated 19/05/1998 in CWP No. 403/1997 of Punjab and Haryana High Court].

SI Ramesh Chander & Others v. SI Ram Charan & others.

Appellants 1 to 6 were given out of turn promotion on the basis of their courageous act in Anti-Terrorist Front. After the final judgment of the Punjab and Haryana High court in CWP No. 403/1997 they were reverted to lower ranks even without hearing. Present SLP challenges the said reversion orders.

7. SLP (C) No. 16514 of 1998. [Arising from judgment dated 19/05/98 in CWP No. 13023/1997].

Jahangir Singh v. State of Haryana

Appellant appointed as Constable. Later promoted as HC and then as ASI, his promotion was based on the activities in anti-terrorist front. Show Cause notice for reversion was served. Later an order of reversion was passed. Aggrieved by the decision he approached the High Court. High Court did not allow his prayer. Hence the present SLP.

8. SLP (C) No. 16102 of 1998. [Arising from final judgment in CWP No. 12536 of 1997].

Zile Singh and others v. State of Haryana

All the three petitioners were originally appointed as Constables during the period 1971-81. Later they were promoted as Head Constables and as ASIs. It was out of turn promotion based on the ground of bravery, which they have shown in anti-terrorist front. Later reversion order was passed whereby they were reverted to the substantive rank of Constables. They approached the High Court. High Court disposed of the matter saying that if they were outside the quota of 10%, then they might be demoted below the rank of Head Constable. Aggrieved by this the present SLP.

9. SLP (C) No. 2082 of 1999 \026 [arising from common order in CWP 403/97].

Chander Bhan & others v. Ram Charan & others

Petitioners got out of turn promotion on the basis of their performances in Sports or on the ground of bravery displayed in Anti-terrorist operations. Later reverted after issuing show cause notices. Their Writ to the High Court was disposed of by common order in 403/97. Aggrieved by this the present SLP.

Promotions based on performance in various Sports and Games:

1. SLP (C) No. 20840 of 1998. [Arising final judgment in CWP No. 403 of 1997 of the Punjab and Haryana High Court]

Naresh Kumar & another v. Ram Charan & others.

Petitioner No. 1 is promoted as Sub-Inspector of Police on the basis of displaying courage in anti-terrorist operations and Petitioner No. 2 is promoted as Head Constable on the basis of performance in Sports. Later a Show Cause notice is issued which is followed by reversion order. Challenging this the present SLP.

2. SLP (C) No. 15943 of 1998 - [Arising from final judgment in CWP No. 403/1997 of Punjab and Haryana High Court].

Ashok Kumar & others v. SI Ram Charan & others

18 Petitioners. All of them were originally appointed as Constables during the period 1976-'89. Later all of them were promoted to the post of Head Constable on the basis of their performance in various Sports items.

Subsequently the Respondents herein filed writ petition before the High Court challenging the out of turn promotion given to these Petitioners. High Court allows the Writ petition. Aggrieved by the impugned judgment, the present SLP.

3. SLP (C) 7817-18 of 1999. [Arising from CWP 15548 & 15550 / 1997 of Punjab and Haryana HC].

Anoop Singh and another v. DGP of Haryana.

The appellants originally were appointed as Constables. Later were promoted to Head-Constables and subsequently as ASIs. Promotion was based on their performance in Sports. Later they were reverted to the original rank after serving show-cause notices. The case of appellants was disposed of along with other cases on 19/5/98 vide the final judgment in CWP No. 403/1997 before the Punjab and Haryana High Court.

4. SLP(C) No 2080/99 of 1999 \026[arising from judgment dated 19/5/98 by Punjab and Haryana High

Court in CWP No. 12536 of 1997 which was disposed along with 403/97].

Baljith Singh v. State of Haryana & others

Appellant got promotion to the rank of Head Constable on the basis of his performance in Sports. Later he was served with a show-cause notice and was subsequently reverted to the rank of Constable. He challenges the reversion order before the High Court. It was disposed by common order in 403/97. Aggrieved by the same, the present SLP.

5. SLP (C) No. 17648/99. [Arising from final order dated 19/12/97 of Punjab and Haryana High Court in review application No. 292/97 in CWP No. 8672/97].

Shri Harpal Singh v. State of Haryana.

Petitioner was originally appointed as Constable. On the basis of his performance in Sports he was promoted as Head Constable and later as ASI. Order of reversion was served on him. He challenges the reversion order before the High Court. His case along with other cases was disposed of vide common order in 403/97. Review petition was also dismissed. Hence SLP.

6. SLP (C) No. 15542 of 1998 \026 [arising from final judgment dated 25/05/1998 in CWP No 13006/97 of Punjab and Haryana High Court].

Shamser Singh v. State of Haryana:

Petitioner was appointed as a Constable in Haryana. Later promoted as Head Constable. On the basis of his distinguished contribution in the field of Sports, he was promoted to the post of ASI. Later he was demoted as a Head Constable. Challenges this decision before the High Court. Dissatisfied by the High Court decision he filed the instant SLP.

7. SLP (C) No 14694-95 of 1998 \026 [arising from judgment dated 22/10/97 passed by Division Bench of Punjab and Haryana High Court in CWP Nos. 12827 of 1997 and 12829 of 1997]

HC Krishan Kumar & Others v. State of Haryana.

Appellants were promoted as Head \026 Constables in the Haryana on the basis of their distinguished achievements in Sports / Games. They were issued with Show-Cause notice of reversion. Reversion orders were passed. Appellants filed CWP Nos. 12827 of 1997 and 12829 of 1997 before Punjab and Haryana High Court. High Court quashed the reversion Order with the finding that the Show Cause notice issued to the appellants does not properly comply with the natural justice requirement. At the same time High Court granted liberty to Respondents therein to issue fresh show-cause notices and to revert this Appellants. Aggrieved by this conclusion, the present SLP.

8. SLP (C) No. 14313 of 1998 \026 [from judgment dated 19/05/1998 by Punjab and Haryana High Court in CWP No. 12536 of 1997 \026 this was disposed along with CWP No. 403/97].

Kuldeep Singh & others v. State of Haryana

Six Petitioners. They got 'out of turn promotion' on the basis of their distinguished achievements in the field of sports. Were promoted to Head Constable rank. Show Cause notices were issued and subsequently reverted to the rank of Head constable. Petitioners writ before the High Court was disposed with the common order in

403/1997. Aggrieved by the same the instant SLP.

9. SLP (C) No. 19245 of 1998. [Arising from the judgment dated 22/10/97 of P&H High Court in CWP No 13014/97]

Salinder Singh v. State of Haryana

Petitioner was originally appointed as Constable on the basis of his performance in Sports he was promoted to the next higher rank. Later he was served with Show Cause notice for reversion. Reversion order was passed. He challenges this decision in a Writ petition before the High Court. Though High Court quashed the reversion for want of natural justice requirement, permitted the State to revisit the decision by issuing fresh show cause notice. Challenging this the present SLP.

10. SLP (C) No. 20839 of 1998. [Arising from judgment dated 22/10/97 of P&H High Court in CWP No. 12703 of 1997].

Sohan Singh v. State of Haryana

Petitioner was appointed as Constable. Later promoted as Head Constable based on his performance in the field of Sports. Subsequently he was served with a show cause notice and was reverted later to the post of Constable. His writ before the High Court was disposed of without allowing his prayer. Challenging this the present SLP.

11. SLP (C) No. 15945-46 of 1998. [Arising from final Judgment dated 23.09.97 of Punjab and Haryana High Court in CWP No. 8620/97 and 8632 of 1997 which was disposed along with CWP No. 10129/1997]

Ashok Kumar and Others v. State of Haryana & others

There are 14 Petitioners. On the basis of their distinguished contribution in the field of Sports, all of them were promoted to the post of Head Constable. State later served them with Show Cause notices alleging that the promotions were not covered either by any rules or instructions by DGP and were subsequently reversed. This was challenged before the High Court. High Court allowed the petition for the reason but left it open to the State to initiate fresh proceedings as per law for reverting the Petitioners herein. SLP filed.

Promotions to superior ranks:

1. SLP (C) No 18493-94/2001 [Arising from final judgment dated 31/8/2001 passed by Punjab and Haryana HC in LPA No. 1957/2001].

Narinder Pal Singh & others v. Bachan Singh Randhawa & others

Petitioners are SPs and DySPs. They got 'out of turn promotion' on ORP basis to the respective present ranks on the basis of their extra ordinary bravery and courageous acts on Anti-Terrorist front. The respondent filed CWP No. 1386/96 before Punjab and Haryana High Court. The learned Single Judge disposed of the writ saying "creation and granting of ORP ranks are not in conformity with the rules applicable to Punjab Police Force." Appeal was preferred before Division Bench (Nos 1957/ 2001 and 1959/2001). The same was also dismissed. Aggrieved by this the present SLP.

2. SLP(C) No. 18497 of 2001 [Arising from final judgment dated 31/8/2001 passed by Punjab and Haryana HC in LPA No. 1957/2001].

Naginder Singh Rana & others v. Bachan Singh Randhwa & others.

All the Petitioners are appointed as DySPs on ORP basis. Respondent in this case filed petition before the High Court, challenging the promotion on ORP basis. Learned single Judge and subsequently the Division Bench were of the opinion that the ORP promotion is beyond the scope of the relevant rules. Aggrieved by this the present SLP.

Background of the present proceeding is as follows:

The Police forces in Punjab, Haryana and in some other states are covered by the Punjab Police Rules, 1934. On 11/11/1982 the Director General of Police (DGP) of Haryana issued a circular saying that Police Personnel selected to National Team is entitled to special consideration for promotion. On 09/09/1993 the DGP of Punjab issued guidelines and criteria for giving one rank promotion to Police Personnel who shows exemplary courage and bravery on Anti-terrorist operations. It is also mentioned in the said guideline that though there is no provision in the Punjab Police Rules, 1934 (Police Rules) for adhoc promotion, it is necessary that they may be given one rank promotion on adhoc basis. Based on these Circulars or guidelines some police officials were given 'out of turn promotion'. But, it is alleged, such promotions were also given to many other police officials even without citing any reasons.

Several cases were filed before Punjab and Haryana High Court challenging the very scheme of 'out of turn promotion.' Before the High Court, the Respondents herein challenged the 'out of turn promotion' given to the Appellants herein and some others. They also prayed to restrain the State from making any promotion that is contrary to the criteria as provided under Rule 13(1) of the Police Rules and to fill up the consequent vacancies according to the procedure prescribed under Rule 13 of the said Rules. Whereas, the Appellants stated that they got 'out of turn promotion' either on the basis of bravery that they have shown in Anti-terrorist operation or on their outstanding performance in Sports. By a common order dated 19/5/98 the High Court disposed of all the cases.

Relevant portion of the judgment dated 19/5/98 in CWP No. 403/1997 is extracted hereunder:

" \005It will be in the fitness of things if a working seniority is drawn by the Respondents of all the Head Constables (Both list C-I and list C-II combine) and then see if any Head Constables juniors to the Writ Petitioners is still working as Assistant Sub-Inspectors. If that is so any person who is senior to such an ASI will not be reverted till such an ASI is allowed to retain the rank. Learned counsel for the Respondents further state that the Petitioners whosoever is within the 10% quota of the List C-II would be deputed to the Intermediate School Course in their turn.

The reversion orders in these writ petitions are quashed to the extent that for the time being none of the petitioners would be reverted below the rank of Head Constable. However, if the petitioners are found to be beyond 10% quota meant under rule 13.8(2) of the Rules they may be reverted even below the rank of Head Constable. If after making a working seniority of Head Constables (as observed above) it is

found that any Head Constable who is junior to the petitioners as a Head Constable is still working as an ASI, though even on adhoc basis, then qua such senior Head Constable the reversion order from the post of ASI would be deemed to have been quashed, meaning thereby as if the reversion order was never passed and such a person would be allowed to continue as ASI even on officiating basis till his junior is allowed to continue as ASI."

This decision is impugned before us.

It is the definite case of these appellants; that their case was not discussed by the High Court while disposing of the Writ; that their case stands different since they got promotion on the basis of bravery and showing exemplary courage on Anti-terrorist activities or on the basis of their outstanding performance in Games/Sports; that such promotion altogether stands on a different pedestal while comparing with the regular promotions since they got it as a recognition/ reward of their superior work; that in the above dated Guideline issued by DGP dated 9/9/1993 it has specifically directed that promotions made for showing bravery and exemplary courage by Police Officials in dealing with Terrorist activities will be in addition to Police Rules; that the Writ ought not have been admitted by the High Court due to the inordinate delay on the part of the Respondents in approaching the High Court; that as per the dictum in P.S Sadasivaswamy v. State of Tamilnadu 1975(2) SCR 356: 1975 (1) SCC 152, a person who is aggrieved by the promotion of a junior would have to challenge such promotion order within six months or within a maximum of one year; that therefore it is submitted that the decision of High Court is liable to be reversed.

Some other Police Officials who got 'out of turn promotion' were ordered to be reverted to the original rank. They filed the other Writ Petitions before the High Court challenging the respective reversion orders. Dissatisfied by the decision, the Petitioners in those cases also preferred to appeal before this Court. The validity of 'out of turn promotion' given to some officials to higher ranks such as DSP/SP are to be decided in other connected matters. All these cases were clubbed together in the instant appeal.

Consequently, the question for consideration is - Whether out of turn Promotion based upon 'courage on anti-terrorist front or outstanding performance in Sports' by the Director General of Police is permissible under format of the Punjab Police Rules, 1934?

Punjab Police Rules were framed under section 2 of the Indian Police Act, 1861 (Police Act). The voluminous Punjab Police Rules cover all aspects of Police administration. It has withstood the test of time and underwent many amendments and modifications. Yet, the basic structure of the Rules has not changed. It is worthwhile to mention that the Punjab Police Rules is still in force in six states in India and even in some provinces in Pakistan. First of all it has to be clarified that the pay and other conditions of service of police has to be decided by the State Government under section 2 of the Police

Act. (See generally Constitution Bench decision of this Court in Ram Sharan v. DIG of Police, Ajmer AIR 1964 SC 1559 and also State of Rajasthan v. Ram Sharan AIR 1964 SC 1361). The right to be considered for promotion and procedure to be followed for effecting promotion is a condition of service. Promotions could be made only under section 2 of the Police Act and no other procedure could be adopted for effecting promotion. Since the Punjab Police Rules are framed under section 2 of the Police Act, the promotion could be made only by following the procedure established under the relevant Rules. No promotions could be made by any procedure outside the scope of section 2 of the Police Act. Therefore the exercise is to see whether the impugned promotions are made following the Punjab Police Rules, which are framed under section 2 of the Police Act.

Admittedly, even in the Memorandum issued by the DGP wherein the impugned adhoc promotion was detailed, it was clarified that the same were not based on the provisions of the Punjab Police Rules. In the instant case since the impugned promotions are not made under the Punjab Police Rules and as a result, those promotions are ultra vires to section 2 of the Police Act. Here, the powers exercised by the DGP could only be traced from section 12 of the Police Act. Powers under section 12 extend to administrative or organizational matters and the authority for promotion is not vested with the DGP. As per the scheme of the Police Act only the State Government is empowered to determine promotional aspects. Therefore, the impugned promotion made by the DGP cannot be treated as regular promotion under Chapter 13 of the Punjab Police Rules. The adhoc promotion carried out in the instant case is only ornamental in nature.

Though the regular promotion could not be made by the DGP, he can definitely forge some methods under section 12 of the Police Act so as to encourage efficient officers who did yeomen service in anti-terrorist front or who earned laurels to the department. The impugned adhoc promotion could be treated as one such method to improve the efficiency of the police force by according special status for meritorious officers. Similarly under the Punjab Police Rules, Rule 13.2A, a subordinate (enrolled) police officer could be given next higher rank as local rank, in the interest of better functioning of the force. Such granting of a next higher rank is only an exercise of section 12 powers of the Police Act by the IG/DGP so as to improve the efficiency of the force or for administrative convenience. At the same time, it cannot be treated as regular promotion under Chapter 13 of the Punjab Police Rules.

Anyhow, in accordance with the earlier-mentioned Circular/Guidelines issued by Director General of Police in the States of Haryana and Punjab, some officials were given out of turn promotion on adhoc basis. On December 6, 2000 while hearing these matters this Court made the following Order:

"After having heard the counsel for the parties for some time, it was suggested that it would be appropriate for the Government to explore the feasibility of regularizing its action in having promoted out of turn some of the petitioners before

us for their exemplary action in showing brave and courageous acts on anti terrorist front."

Pursuant to this order, after due deliberations the State proposed the "Own Rank and Pay" policy (ORP). The relevant portion of the affidavit submitted on behalf of the State before this Court wherein the ORP policy is explained as hereunder:

"\005After examining the pros and cons of the matter, it has now been decided that Constables promoted within the prescribed quota of 10% under P.P.R 13.8, may be granted regular promotion as per decision of the Hon'ble Punjab and Haryana High Court in CWP No. 14844 of 1997 titled Lachhman Singh v. State of Haryana. Those Head Constables who have been promoted on adhoc basis and are in excess on 10% quota prescribed under rule 13.8 of PPR and ASIs, SIs and Inspectors who have been granted adhoc/out of turn promotion shall continue to wear badges of their present rank against their substantive rank and pay. This will be known as promotion in their 'Own Rank and Pay'. A person who has been promoted in his own rank and pay for all intents and purposes shall be treated as an official in his substantive rank and will not consume or exhaust any substantive post of higher ranks in the regular channel of promotion\005\005However, in order to avoid financial hardship in respect of the officials falling in category (a) above, the pay of such officials will be fixed in the substantive rank and the difference of the existing pay as on 1-12-99 and their substantive pay will be adjusted as their personal pay.\005They would get their regular promotions as HCs, ASIs, SIs and Inspectors as per their turn and seniority subject to passing promotional courses on their own\005"

This Court had occasion to look into the validity of promotion to a Police Officer in accordance with Rule 13.8(2) in Rishal Singh v. State of Haryana and others, JT 1994 (2) SC 157. Here it was held that a promotion within the 10% quota as provided in Rule 13.8(2) could only be treated as a regular one and not as an adhoc / temporary promotion. It is also held that the language in which the appointment order is couched is irrelevant and such a promotion could never be an adhoc/temporary one. This view was again followed in Jagbir Singh v. State of Haryana and others, JT 1996 (4) SC 332. In the special circumstances of this case, though the impugned promotions are not promotions under the Rules, the State came up with a proposal of the ORP scheme so as to deal with the out of turn / adhoc promotes. Therefore, we are of the opinion that those officials who are promoted within the 10% limit of Rule 13.8(2) could be given regular promotion and those who are beyond the 10% limit of Rule 13.8(2) could be given ORP promotion which is

designed to encourage and reward the good work of meritorious officers without excessively burdening the exchequer.

Before parting with the case it has to be clarified that 'Out of turn' or adhoc promotion is to encourage the subordinate police officers and shall be given only to 'enrolled police officers' as under Rule 1.13 of the Punjab Police Rules i.e., up to the rank of Inspectors. As per Rule 13.3(1) the power to make promotions among gazetted officers and from non-gazetted to gazetted rank vests in the local government with the concurrence of the Governor. Therefore, the 'gazetted police officers' i.e., Deputy Superintendents and above cannot come under the ORP scheme which is essentially an exercise of powers under Section 12 of the Police Act. In order to avoid similar controversies in the future, it will be appropriate for the State government to formulate appropriate rules/policies so as to streamline the promotion for appreciation.

The appeals shall stand disposed of accordingly.

SLP (C) No. 16829 of 1998. [Arising from judgment dated 3.12.97 passed by Punjab and Haryana High Court in CWP 8460/97]
State of Haryana v. Dayal Chand.

Respondent served in Indian Army between 1970 and 1975. On September 30, 1976 he was recruited as a Constable (Dog Handler) in the dogs squad. After 18 years he was promoted as Head Constable (Dog Handler). Authorities served a reversion order to him saying that he was promoted 'out of turn'. High Court noted that the Department ignored no person senior to him while this respondent was promoted, and quashed the reversion. State has filed the present appeal by special leave.

There is no provision in the relevant Rules for promotion of Constable (Dog Handler) to the post of Head Constable. In view of the fact that the Respondent had put in long service, the department felt he should be promoted to the post of Head Constable even in the absence of Rules enabling the same. In the normal course when he could not have been promoted to a post which did not exist, the proper course for the Government would have been to create a post of Head Constable (Dog Handler), if necessary, with retrospective effect from the date he was promoted either by amending the relevant Rules or in exercise of its executive power under Article 162 of the Constitution. Unless such exercise is taken he could not be appointed to the post of Head Constable (Dog Handler). Hence High Court ought to have upheld the order of reversion.

Now that he has been in promoted cadre since the year 1994 and the High Court has quashed the order of reversion of the appellant, we do not think we should disturb that state of affairs but direct the Government to regularize the appointment made as indicated by us in the course of this order.

The appeal is disposed of accordingly.

JUDIS