

## **Naresh Kumar And Ors. vs State Of Haryana And Ors. on 20 February, 2002**

**Equivalent citations: JT2002(SUPPL1)SC153, AIRONLINE 2002 SC 326, (2002) 1 JT (SUPP) 153 (2002) 4 ALL WC 2655, (2002) 4 ALL WC 2655**

**Author: S.N. Variava**

**Bench: S.N. Variava**

### **ORDER**

1. This appeal by direct recruit wireless operators in the wireless department of the State of Haryana is directed against the judgment of the division bench of Punjab and Haryana High Court. The sole grievance of these appellants before the High Court was that the persons belonging to different other cadres of police department on being absorbed in the wireless department can claim seniority only from the date of absorption and not from the date of their enlistment in the police department, and necessarily therefore, the promotion to the post of head constables being on the basis of seniority-cum-merit the respondents who were absorbers could not have been promoted ignoring the claim of these appellants. In support of the stand, the appellants had filed the writ petition relying on the earlier order of the director general of police dated 2nd August, 1988. The stand of the state government before the High Court was that on 12.6.91, the superintendent of police (wireless) who is the appointing authority of the constables and the head constables under the provisions of the Punjab Police Rules which had been adopted by the State of Haryana, altered the criteria which was duly approved by the inspector general of police (telecom) Haryana and under the changed criteria the seniority in the cadre of wireless operators is required to be determined on the basis of their respective enlistment in the police department and not from the date of their absorption in the wireless department. The High Court having considered the respective stand of the parties came to the conclusion that, in the absence of a statutory rule, if the service condition is governed by a set of administrative instructions, there is no bar for issuance of another set of administrative instructions by the appointing authority. That being the position, the court did not find any infirmity with the issuance of the administrative instructions changing the criteria by order dated 12.6.91. The division bench having dismissed the LPA and affirmed the decision of the learned single judge in the writ petition, the present appellants have filed appeal in this Court by grant of special leave.

2. Ms. Indu Malhotra, learned counsel appearing for the appellants strenuously contended that the earlier order having been made by the director general of police who is the head of the police organisation, the same could have been varied to the disadvantage of the direct recruits wireless operators by a subordinate, like the superintendent of police and therefore the impugned judgment is vitiated and cannot be sustained. The counsel also further urged that in view of the unequivocal terms while absorbing these respondents, that their past services rendered in other departments cannot be counted for their seniority in the rank of wireless operators in the wireless department, the superintendent of police committed gross error in issuing the so called administrative order on

12.6.1991 and that should not be permitted to prevail, On examining the impugned judgment of the High Court and all other materials which are before us as well as the relevant provisions of Punjab police manual which is said to have been adopted by the State of Haryana, we do not find any substance in the arguments advanced by the counsel for the appellants. It is true that in 1988 the criteria for determination of seniority was different than the criteria which has been evolved in June 1991. In the absence of any statutory rule there cannot be any bar for altering and amending one administrative order by another administrative order. The only law embargo would be that issuing of a subsequent order must be by the competent authority. The question that arises for consideration therefore is whether the superintendent of police can be said to be the competent authority for governing the service conditions of the constables and the head constables. On looking at the provisions of the Punjab Police Rules, more particularly 12(1) thereof, it is clear that the superintendent of police is the competent authority in respect of constables and head constables, being the appointing authority. Appointing authority would have the right of governing the service conditions of the employees employed by him. In the case in hand, the order that was finally passed was only on approval of the inspector general of police (telecom). We see no infirmity with the issuance of the aforesaid order dated 12.6.91 which in fact alters the service conditions of the operators absorbed and the direct recruit wireless operators. In accordance with the said order of 12.6.91, the date of enlistment in the police department being the basis for determination of inter se seniority, there is no infirmity with the seniority that has been determined nor there is any infirmity with the order of promotion to the post of head constable, the criteria for promotion being seniority-cum-merit. We, therefore, do not find any merit in the appeal which is accordingly dismissed. No order as to costs.