

SUSHIL KUMAR

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v.

THE STATE OF HARYANA & ORS.

(Civil Appeal No. 401 of 2022)

JANUARY 19, 2022

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**[K. M. JOSEPH AND PAMIDIGHANTAM SRI
NARASIMHA, JJ.]**

Punjab Police Rules, 1934: rr. 12.10, 13.1, 13.7 – Promotion to Head Constable – Promotion under the 10% quota of outstanding performance for inclusion in the B-I List – Recommendation power of Departmental Promotion Committee (DPC) – Power of Inspector General of Police (IG) to review or substitute the recommendations of Superintendent of Police (SP) – Appellant was appointed as a Head Constable in the year 1995 – His name was recommended by the SP under the 10% quota of outstanding performance for inclusion in the B-I List for promotion to the post of Head Constable in the year 2004 – However, his name was dropped down by the IG – Three years later, i.e., in 2007, his name was again forwarded by the SP and this time it was passed by the IG, by virtue of which he was granted promotion and was made the Officiating Head Constable from 2008 – Appellant filed writ petition in 2011 seeking retrospective promotion with effect from 2004, his grievance was that he should have been promoted in the year 2004 itself and that the delay in appointing him in 2008 is illegal and arbitrary – High Court dismissed the petition on the ground that selection is not a matter of right – Held: In view of the clear procedure laid down under Rule 13.7, the claim of the appellant fail as the assumption that the recommendation of DPC headed by the SP is final and that the IG has no power to review or substitute the decision is misconceived – The Rule itself clarifies the position that the recommendation of the SP is not final until the same is approved by the IG – Further, the powers of the IG are elucidated clearly in r.13.7(14) – It is stated that the ‘approval’ is by the Cadre Controlling Authority of the SP – It is the IG, who shall accord ‘approval’ only upon scrutiny – This means if the IG is not satisfied, he shall not accord approval – The scope of the power vested in the IG is also indicated in the Rule which provides that he can seek clarifications

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- A *from the DPC and also refer the list back to the SP for corrections/ omissions if he thinks it is necessary – Thus, the recommendation of the DPC is not final and does not give any indefinite right to be appointed as Head Constable – Service law.*

Dismissing the appeal, the Court

- B **HELD: 1.1** In view of the clear procedure laid down under the Rule 13.7, the contentions of the Appellant must fail as the assumption that the recommendation of DPC headed by the SP is final and that the IG has no power to review or substitute the decision is misconceived. The Rule itself clarifies the position
 C that the recommendations of the SP are not final until the same is approved by the IG. Further, the powers of the IG are elucidated clearly in Rule 13.7(14). It is stated that the ‘*approval*’ is by the Cadre Controlling Authority of the SP. It is the IG, who shall accord ‘*approval*’ only upon scrutiny. This means if the IG is not
 D satisfied, he shall not accord approval. The scope of the power vested in the IG is also indicated in the Rule which provides that he can seek clarifications from the DPC and also refer the List back to the SP for corrections/omissions if he thinks it is necessary. The recommendation of the DPC is not final. It is also evident that the recommendation of the DPC does not give any indefinite
 E right to be appointed as Head Constable. [Para 8, 8.1][286-F-H; 287-A-B]

- 1.2** The third stage of scrutiny before a constable is selected as a Head Constable. requires the candidate to be sufficiently high in the State Level Comparative Merit of the candidates to
 F be selected under the 10% quota. Therefore, it can never be contended that mere recommendation of the SP at the initial stage is sufficient to claim a right for promotion. The further contention of the Appellant is that the power of the IG is “*not discretionary but mandatory*” is also incorrect as Sub-rule 14 of Rule 13.7 clearly
 G empowers the IG to exercise the power of scrutiny and grant approval. This power would also extend to not granting an approval if the IG is not satisfied. Therefore, the power is not be rested solely on the basis of the word “through” in Rule 13.7(9). [Para 8.2][287-B-D]

- 1.3** As far as the contention of Appellant that the subsequent
 H recommendation was also on the very same outstanding

performance is concerned, it is to be noted that the merits and accolades of the candidates recommended for promotion vary from year to year on a comparative merit scale. The competitive environment differs from year to year. The scrutiny is dynamic and cannot be adjudged on the basis of a previous year's performance. The Appellant's accolades may not have made a fit case to be recommended in the year 2004 but the same could make a fit case to be considered in a subsequent year. It is the domain of the IG as also the CDPC to analyse, consider and clear the names of the candidates found fit to be promoted in the List B-I for that year and it must best be left to the discretion of the said authorities. [Para 8.3][287-E-F]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 401 of 2022.

From the Judgment and Order dated 19.11.2015 of the High Court of Punjab and Haryana at Chandigarh in LPA No. 1910 of 2010.

Surender Kumar Gupta, Chitvan Singhal, Ms. Priyanka Terdal, Ms. Priya Mishra, Advs. for the Appellant.

Raj Singh Rana, Addl. AG, Pankaj Kumar Singh, Dinesh Kumar Mudgal, Vishwa Pal Singh, Ms. Kiran Bala Dewangan, Jhingan Ashwani Omprakash, Prijender Singh Dhull, Arihant Mehta, Vikas Gothwal, Advs. for the Respondents.

The Judgment of the Court was delivered by

PAMIDIGHANTAM SRI NARASIMHA, J.

Leave granted.

2. This Civil Appeal arises out of the final judgment and order dated 29.07.2015 of the High Court of Punjab and Haryana at Chandigarh passed in LPA No. 1910 of 2011.

3. The Appellant was appointed as a Constable in the year 1995. It is his case that he was positioned as a Head Constable under the extent ORP Policy on 21.08.2001. Due to his acts of bravery his name was recommended by the Superintendent of Police (hereinafter 'the SP') for promotion under the 10% quota of outstanding performance for inclusion in the B-I List for promotion to the post of Head Constable in

- A the year 21.01.2004. However, the Appellant's name was dropped down by the Inspector General of Police (hereinafter the 'IG'), when only 7 out of the 9 names were forwarded to the Central Departmental Promotion Committee (hereinafter the 'CDPC'). Three years thereafter, i.e., in 2007 his name was again forwarded by the SP and this time it was passed by the IG, by virtue of which he was granted promotion and was made the Officiating Head Constable from 26.10.2008. It is his grievance that he should have been promoted in the year 2004 itself and that the delay in appointing him in 2008 is illegal and arbitrary. He filed a writ petition in 2011 seeking retrospective promotion with effect from 21.01.2004. The Single Judge dismissed the petition on the ground that selection is not a matter of right. Writ appeal was also dismissed by the Division Bench by the order impugned herein.

4. The learned counsel for the Appellant, Shri Surender Kumar Gupta has argued that the IG has no power to interfere with the recommendation of the SP. He further alleges that when the SP has forwarded the decision of the Departmental Promotion Committee (hereinafter 'DPC'), the IG does not act as the appellate authority and cannot substitute his decision to that of the DPC. It is also contended that the IG has no power to adjudge the comparative merit in list B-I prepared by the DPC. He further submits that the IG has not given any reasons nor was the Appellant given any opportunity of hearing. He alleges that he is far more meritorious than the ones who have been recommended by the SP and approved by the IG in 2004. It is his case that the decision is arbitrary because the very same credentials enabled him to be selected and recommended in 2007. He has therefore prayed for retrospective promotion from the year 2004.

5. The learned Additional Advocate General for the Respondent-State, Shri Raj Singh Rana, has submitted that the names recommended by the SP to the CDPC are only provisional and subject to ratification by the IG, and mere forwarding of the name of the Appellant by the SP will not create any right of promotion in his favour. He has submitted that the word "through" in Rule 13.7(9) of the Punjab Police Rules, 1934 calls for application of mind by the IG and not mere forwarding of the recommendations as sent by the concerned unit head. The Respondents have alleged that the seven constables appointed were more qualified than the Appellant.

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The Rules:

6. The present appeal pertains to the promotion of Constables to the post of Head Constables in the State of Haryana. The matters relating to the promotion of Constables to the rank of Head Constables are governed under the Punjab police Rules, 1934 as applicable in the State of Haryana.

6.1 The scheme of appointment and promotion is governed by the provisions which are as follows:

12.10 Appointment of Head Constable: Head constables shall be appointed by promotion from selection grade constables in accordance with rules 13.7 and 13.8.

13.1 Promotion from one rank to another.

(3) For the purposes of regulating promotion amongst enrolled police officers six promotion lists- A,B,C,D,E and F will be maintained.

Lists A, B, C, and D shall be maintained in each district as prescribed in rules 13.6, 13.7, 13.8 and 13.9 and will regulate promotion to the selection grade of constables and to the ranks of head constables and assistant sub-inspector.....

6.2 Chapter 13 of the Rules lay down the scheme for promotion. Rule 13.7 is concerned with the selection of candidates for admission to the Lower School Course at the Police Training College out of which postings of Head Constables are made. The Head Constables are selected out of a list of Selection Grade Candidates which is made out of three sources being: **(a)** direct recruitment-(55% quota), **(b)** Seniority-cum-merit -(35% quota) **(c)** Outstanding performance-(10% quota). Rule 13.7 prescribing the method of selection, leading to the appointment of Head Constable, to the extent that it is relevant for the 10% quota is extracted herein below:

“13.7 Selection of candidates for admission to courses at the Police Training College: List B (in Form 13.7) shall be maintained by each Superintendent of Police. It shall include the names of all constables selected for admission to the Lower School Course to be held at the Police Training College. Selection to the list B shall be made in the month of January each year and shall be limited to the number of seats allotted

- A *to the district for the year. The number of seats in Lower School Course in a year shall be allotted on the basis of existing vacancies and the vacancies likely to be created within one year in the respective unit. 55% of the seats allotted to a unit in the Lower School Course shall be filled in on the basis of*
- B *a competitive examination, 35% on the basis of seniority-cum-fitness and 10% on the basis of consistent outstanding performance in job/obtaining Gold or Silver Medal in All India Police Games/Duty Meet/National Games or exceptional display of bravery during the course of performance of official duty.....*
- C **(2)(iii)** *All constables irrespective of their educations qualifications shall be eligible to be brought on list B-1, on the basis of consistent outstanding performance in job/obtaining Gold or Silver medal in All India Police Games/Duty Meets/National or International Games or exceptional*
- D *display of bravery during the course of performance of official duty if they are under the age of 40 years and have completed two years of service on the first day of January of the year in which selection is made. Only those constables shall be brought on list B-1 after two years of service, but*
- E *before five year of service who have won a medal in International Sports events like Olympics, Asian Games, Commonwealth Games or similar International events. Constables who have won medals in National Games/All India Police Games/Duty Meets and who are being considered for*
- F *exceptional bravery or consistent outstanding performance shall be considered only if, they have put in the minimum five year of service.....*
- G **(9)** *Various units shall be allotted only 90% of total seats of the year for list B and candidates for 10% seats common to all units shall be selected by Central Departmental Committee. For selecting 10% of the candidates on the basis of consistent outstanding performance in job/attaining Gold or Silver Medal in All India Police Games/Duty Meet/National Games or exceptional display of bravery in the job, each unit shall send its recommendation through the concerned Inspectors General of Police/Deputy Inspectors General of Police to the*
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Central Departmental Promotion Committee to be appointed for the entire State by the Director General of Police. These 10% seats shall be filled in on the basis of State level comparative merit of candidates sponsored by the units as above on the recommendation of the State level Departmental Promotion Committee. Such candidates recommended by the above Departmental Promotion Committee shall be assigned to various units for inclusion in list B against 10% quota irrespective of the unit to which the candidate originally belongs.....

(14) A Departmental Promotion Committee headed by the Superintendent of Police/commandant of the concerned district or unit and consisting of two Deputy Superintendents of Police shall prepare list B-I: Provided that list B-I shall not be final until the same is approved by the Inspector General of Police/Deputy Inspector General of Police, who is the controlling officer of the said Superintendent of Police or Commandant. The Inspector General of Police/Deputy Inspector General of Police shall accord his approval only after due scrutiny of the list about its correctness. He will also be competent to refer the list back to the Superintendent of Police or Commandant from whom it had been received for correction of errors/omission, if any, in the list and will also be competent to seek clarification about some points from the Departmental Promotion Committee if he considers necessary."

7. The mandate of the above rule for appointment to the post of Head Constable under the aforementioned 10% quota for outstanding performance can be restated as under -

7.1 There shall be a Departmental Promotion Committee (DPC) in every district/unit comprising of the SP/ Commandant and two Deputy Superintendent of Police, headed by the SP.

7.2 The DPC shall prepare a list called List B-I. The list will be prepared from among the eligible candidates to be appointed the requirement of which is specified under Rule 13.7. All constables irrespective of their educational qualifications shall be eligible to be brought on list B-I on the basis of consistent outstanding performance in

- A job or exceptional display of bravery during the course of performance of official duty if they are under the age of 40 years and have completed two years of service on the first day of January of the year in which selection is made.

- 7.3 The List prepared by the DPC, headed by the SP will be forwarded to the Inspector General of Police/ Deputy Inspector General of Police (hereinafter IG/DIG) who is the Cadre Controlling Officer of the SP/Commandant.

- (i) The IG/DIG will undertake and examine its correctness.
- (ii) The IG/DIG will be competent to seek clarifications from the DPC if he considers it to be necessary.
- (iii) He is also competent to refer the list back to the SP for correction of any error or omission.
- (iv) The IG/DIG shall thereafter accord his approval.
- (v) It is specifically provided that the List shall not be final until the same is approved by the IG/DIG.

7.4 IG/DIG shall send its recommendations on behalf of each unit to the CDPC. The CDPC is appointed by the Director General of Police, (hereinafter the DGP).

- 7.5 Finally, the 10% quota is allocated out of a State Level Comparative Merit List prepared on the basis of the list sent from each unit by the IG.

Findings-

8. In view of the clear procedure laid down under the Rule 13.7, the contentions of the Appellant must fail for the following reasons-

- 8.1 In the first place, the assumption that the recommendation of DPC headed by the SP is final and that the IG has no power to review or substitute the decision is misconceived. The Rule itself clarifies the position that the recommendations of the SP are not final until the same is approved by the IG. Further, the powers of the IG are elucidated clearly in Rule 13.7(14). It is stated that the '*approval*' is by the Cadre Controlling Authority of the SP. It is the IG, who shall accord '*approval*' only upon scrutiny. This means if the IG is not satisfied, he shall not accord approval. The scope of the power vested in the IG is also indicated in the Rule

which provides that he can seek clarifications from the DPC and also refer the List back to the SP for corrections/omissions if he thinks it is necessary. Having considered the Rule in its entirety, we are of the opinion that the recommendation of the DPC is not final. It is also evident that the recommendation of the DPC does not give any indefinite right to be appointed as Head Constable.

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8.2 The 10% quota for constables having outstanding performance will be filled on the basis of State level comparative merits. As indicated above, there is a three-stage scrutiny before a constable is selected as a Head Constable. The third stage requires the candidate to be sufficiently high in the State Level Comparative Merit of the candidates to be selected under the 10% quota. Therefore, it can never be contended that mere recommendation of the SP at the initial stage is sufficient to claim a right for promotion. The further contention of the Appellant is that the power of the IG is “*not discretionary but mandatory*” is also incorrect as Sub-rule 14 of Rule 13.7 clearly empowers the IG to exercise the power of scrutiny and grant approval. This power would also extend to not granting an approval if the IG is not satisfied. Therefore, the power is not be rested solely on the basis of the word “through” in Rule 13.7(9).

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8.3 As far as the contention of Appellant that the subsequent recommendation was also on the very same outstanding performance is concerned, it is to be noted that the merits and accolades of the candidates recommended for promotion vary from year to year on a comparative merit scale. The competitive environment differs from year to year. The scrutiny is dynamic and cannot be adjudged on the basis of a previous year’s performance. The Appellant’s accolades may not have made a fit case to be recommended in the year 2004 but the same could make a fit case to be considered in a subsequent year. It is the domain of the IG as also the CDPC to analyse, consider and clear the names of the candidates found fit to be promoted in the List B-I for that year and it must best be left to the discretion of the said authorities.

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8.4 The Single Judge as well as the Division Bench for good reasons refrained from going into the individual comparative merit. In judicial review proceedings, the Courts are concerned with the decision-making process and not the decision itself.

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9. We are of the opinion that there is no illegality or arbitrariness in the process of selection and for the reasons stated above we are not

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A inclined to interfere with the judgment of the High Court. Appeal, is therefore, dismissed. Parties to bear their own costs.

Devika Gujral and Amarendra Kumar
(Assisted by : Bodhi Ramteke, LCRA)

Appeal dismissed.