

Rishal Singh

v.

State of Haryana

(Supreme Court Of India)

HON'BLE MR. JUSTICE K. RAMASWAMY HON'BLE MR. JUSTICE B.L.
HANSARIA

Civil Appeal No. 852 Of 1994.(Special Leave Petition (Civil) No. 9332 Of
1993) | 21-01-1994

K. Ramaswamy, J.

Special leave granted.

2. The appellant was recruited as constable. Admittedly, he is a sportsman. He was temporarily promoted as head constable by an order passed by the Deputy Inspector General of Police with immediate effect in an existing vacancy. In the order it was stated that the appellant has no right to claim seniority over his seniors etc. and he would be reverted at any time without any formality of show cause notice. Subsequently, when he was sought to be reverted as a constable, he filed Civil Writ Petition No. 7601/92, but the High Court by its order dated November 11, 1992 dismissed it in limine. Thus this appeal by special leave.

3. Rule 13.1(1) of Chapter XIII of the Punjab Police Rules, 1934 postulates that
:

"Promotion from one rank to another and from one grade to another in the same rank, shall be made by selection tempered by seniority. Efficiency and honesty shall be the main factors governing selection. Specific qualifications, whether in the nature of training courses passed for practical experience, shall be carefully considered in each case. When the qualifications of two officers are otherwise equal, the senior shall be promoted. This rule does not affect increments within a time-scale."

Rule 13.8(2) provides for promotion as head constables in accordance with the principles laid down therein; an exception has, however, been engrafted thus :

"..... 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."

4. It is the case of the appellant that since he being a sports person, considering him to be eligible for promotion, the Deputy Inspector General of Police had considered him, within the 10% quota prescribed under the Rule 13.8(2), and promoted him as head constable in the sports quota and that therefore, the promotion though ostensibly was said to be temporary or ad hoc basis, was on regular basis and the order of reversion, therefore, was bad in law.

5. Sri V.R. Reddy, learned Addl. Solicitor General appearing for the State contended that the sub-rule would be applicable only to the constables who have completed 35 years of age under Rule 13.0(7) and were not otherwise eligible for promotion. In their cases only the benefit was given by exercising of discretion by the Deputy Inspector-General of Police. The appellant being below 35 years of age was not considered, otherwise than on fortuitous circumstances, namely, existence of vacancy. Therefore, the appellant is not entitled to rely on Rule 13.8(2) thereof. We find no force in the contention of the State. No such rule or administrative instructions are brought to our notice. Under Rule 13.1 there shall be selection tempered by seniority. Efficiency and honesty should be the main factors. Passing of training course is necessary. When the candidate did not pass such test, discretion has been given in Rule 13.8 to the Deputy Inspector General of Police to relax the mandatory requirement of passing of the training course, that too within the quota and promote a constable as head constable. The Rule expressly gives power to the Deputy Inspector General of Police in exceptional cases to promote the persons.

6. In this case it was within 10% quota. The appellant was considered in the sports quota and was found to be suitable in accordance with Rule 13.8(2). It would be obvious that the promotion could be on regular basis but not on ad hoc

basis. No rule or instructions having statutory force was brought to our notice to support the contention of the State. In fact in the counter affidavit it was specifically admitted that there is no rule for appointing on ad hoc basis. It is true that due to administrative exigencies ad hoc or temporary promotion is permissible. But it must be traceable to statutory source of power or instructions having force of law. No such rule has been brought to our notice.

7. In the light of this situation, the only conclusion would be that the promotion of the appellant under Rule 13.8(2) on regular basis, though specifically said to be on temporary or ad hoc basis. The appeal is allowed by setting aside the order of reversion, but in the circumstances without costs.