

Before Hon'ble G. S. Singhvi & S. S. Sudhalkar, JJ.

S.I. SATBIR SINGH,—Petitioner.

versus

THE STATE OF HARYANA AND OTHERS,—Respondents.

C.W.P. No. 11747 of 1995.

2nd May, 1996.

Constitution of India, 1950—Art. 226—Punjab Police Rules, 1934 (as applicable to State of Haryana)—Rls. 13.1, 13.3, 13.4, 13.12, 13.18 and 21.25—Repatriation—Deputation in C.I.D.—While on deputation, petitioner given officiating promotion as Assistant Sub Inspector—Petitioner repatriated to H.A.P. 3rd Bn. Hissar on complaint of smuggling of Narcotics to original post of Head Constable—Reversion order challenged—Deputation under Rule 21.25 does not confer legal right to hold a post higher than one held in parent unit—Not a case of regular promotion under Rule 13.1—Petitioner can be reverted to parent department—Rules of natural justice need not be followed—Juniors to petitioner remaining unpromoted in parent cadre—Repatriation order upheld.

Held, that the petitioner was taken on deputation to CID without regard to his seniority in the parent unit/district and he got fortuitous promotion as Assistant Sub-Inspector and Sub Inspector against C.I.D. vacancies. This obviously did not involve consideration of the candidatures of the persons who are senior to the petitioner in the parent unit/district. Rather persons who were senior to the petitioner in the parent unit/district could not have claimed that they should be considered for promotion against the C.I.D. vacancies because they were not on deputation with the C.I.D. In view of these facts, we do not find any merit in the contention of Shri Balhara that the petitioner acquired a right to hold the post of Sub Inspector in the C.I.D.

(Para 8)

Further held, that a careful reading of the Rules 13.1, 13.3, 13.4, 13.12, 13.18 and 21.25 reveals that while Rule 13 deals with regular promotion, Rule 21.25 specifically deals with deputation to the Criminal Investigation Department and officiating promotion while a person is on deputation with the Criminal Investigation Department Rule 21.25 (2) unequivocally postulates repatriation of a deputationist to the parent unit/district and protection of the rights available to the deputationist in his parent unit/district. Admittedly, the petitioner was on deputation with the Criminal Investigation Department and he received officiating promotions as Assistant Sub Inspector and Sub Inspector against the Criminal Investigation

Department vacancies. Such promotions cannot be treated as promotions made under Rule 13 of the Rules. Therefore, the edifice on which Shri Balhara has built up his contention with reference to Rule 13.8 is missing. In our opinion, the petitioner, who received officiating and fortuitous promotions while on deputation under Rule 21.25 (2) cannot claim that he should be treated as placed on probation and should be treated as automatically confirmed after the expiry of period of probation.

(Para 10)

Further held, that we do not find any justification to uphold the claim of the petitioner to be treated as substantive Sub Inspector on the basis of the provisions contained in Rule 13 in general and Rule 13.8 in particular.

(Para 11)

Further held, that there is no provision in the Rules which speaks of automatic absorption of a deputationist in the Criminal Investigation Department. Therefore, the fact that the petitioner has continued on deputation for a period of more than 6 years cannot enure to his benefit and he cannot claim automatic confirmation or absorption in the Criminal Investigation Department.

(Para 15)

Further held, that Petitioner's rights in the parent unit/district were to be protected. In this background, if the respondents decided to repatriate the petitioner to his parent unit, i.e. 3rd Battalion H.A.P. Hisar, after receiving the report of his involvement in the smuggling of narcotics, it is not possible to hold that the petitioner has been stigmatised or that he has been punished by the respondents. The reports about the activities of the petitioner merely furnished the motive for passing an order of repatriation of the petitioner to the parent unit. That order has not resulted in depriving the petitioner of any of his right in the parent unit and, therefore, he cannot plead that the respondents have acted in violation of the principles of natural justice. Petitioner's posting as Head Constable is a necessary corollary of the termination of his deputation.

(Para 16)

I. S. Balhara, Advocate, for the Petitioner.

R. N. Raina, Deputy Advocate General, for the State of Haryana.

JUDGMENT

S. S. Sudhalkar, J.

(1) Orders dated 30th December, 1994 and 19th October, 1995 passed respectively by the Inspector General of Police, C.I.D., Haryana, and the Director General of Police, Haryana, have been challenged in this petition by the petitioner, Satbir Singh, whose short prayer is to quash the impugned orders.

(2) The petitioner joined service as Constable in the Haryana Police with effect from 12th April, 1981. He competed for B-1 test in the year 1986 and after passing the Lower School Course, the petitioner was promoted as Head Constable in October, 1986. With effect from 1st July, 1988, he was transferred to Criminal Investigation Department, (for short 'C.I.D.'). While serving in the C.I.D., the petitioner was promoted as officiating Assistant Sub Inspector,—*vide* order dated 25th August, 1989 passed by the Deputy Inspector General of Police, C.I.D., Haryana. He also passed the Postal Censorship course at Training School, Panchkula. During this period, his service is said to have been commended by the various authorities. After over six years of his posting in the C.I.D. branch, the petitioner was transferred,—*vide* order dated 30th December, 1994 and he was posted in his parent department i.e. 3rd Bn. HAP, Hisar. The petitioner represented against this order. The Inspector General of Police (CID) passed order dated 10th March, 1995 and directed that the petitioner be taken back on deputation to C.I.D. with immediate effect. The Director General of Police, Haryana, also issued Savingram dated 15th March, 1995 and cancelled the transfer of the petitioner from the C.I.D., Bhiwani, to the 3rd Bn. HAP, Hisar. This was repeated by the Director General of Police,—*vide* Savingram dated 5th July, 1995. Deputy Inspector General of Police, HAP, Madhuban, also directed the Commandant, 3rd Bn. HAP, Hisar, that the petitioner be relieved for deputation to C.I.D. These orders were not complied with and, therefore, the petitioner again made representations dated 6th August, 1995 and 7th August, 1995. However, the Director General of Police, Haryana, issued Savingram dated 19th October, 1995 and cancelled the earlier Savingram dated 15th March, 1995 whereby his previous transfer to 3rd Bn. HAP, Hisar, was cancelled. The petitioner has challenged the orders dated 30th December, 1994 and 19th October, 1995 on the ground of violation of the provisions contained in the Punjab Police Rules and Article 311 of the Constitution of India. His contention is that once the order dated 30th December, 1994 was cancelled by the Director General of Police, he would be deemed to be in C.I.D. and, therefore, the action of the respondents in not allowing him to join as Sub Inspector in C.I.D. is arbitrary and illegal.

(3) In the reply, respondent Nos. 1 to 5 have stated that in compliance of interim direction issued by the High Court in this writ petition, all the arrears of salary have been paid to the petitioner for the period between 1st August, 1995 and 27th December, 1995. The respondents have pleaded that the petitioner was taken

on deputation to the C.I.D. under Rule 21.25 of the Punjab Police Rules as they are applicable to the State of Haryana and while serving on deputation with the C.I.D., the petitioner did not acquire any right whatsoever to the higher post on which he was promoted on officiating basis. The respondents have pleaded that promotion in the parent cadre is made as per the provision of Rule 13.1 after the names of the eligible officials are brought on different lists. It has further been pleaded that C.I.D. does not have a separate cadre and all the officials of the C.I.D. are taken on deputation from the various wings of the Police Department, and as suitable officials are not available with the C.I.D., officiating promotions from one rank to another are given in various ranks. The respondents have stated that against a sanctioned strength of 123 posts of Sub Inspectors, only 113 are in position and even out of them 85 have been given officiating promotion in the C.I.D. although in their parent unit/district, these persons do not have any right to be promoted on the higher posts. In the cadre of Assistant Sub Inspector, only 170 persons are in position as against 179 posts and out of them as many as 145 have been given officiating promotion. In the cadre of Head Constables, only 570 are in position as against 682 posts and out of them as many as 375 have been officiating promotion. Regarding the petitioner, it has been stated that he was promoted on *ad hoc* basis with effect from 23rd October, 1986 and on regular basis with effect from 13th December, 1986. Subsequently, he was taken on deputation in C.I.D. with effect from 24th June, 1988 in terms of Rule 21.25 of the Punjab Police Rules and while serving on deputation with the C.I.D. the petitioner was given *ad hoc* promotion as Assistant Sub Inspector with effect from 25th August, 1989. The respondents have further stated that in his parent cadre, a number of persons senior to the petitioner are available and they have not been given promotion to the higher post and, therefore, the petitioner cannot have any right to continue to hold the promoted post even on his repatriation to the parent unit. The respondents have pleaded that after the issue of Savingram dated 15th March, 1995, the correct position was brought to the notice of the Director General of Police,—*vide* letter No. 16027/EDSB-1, dated 21st July, 1995 and it was requested to cancel the order dated 15th March, 1995 and the Director General of Police cancelled that order after considering the reasons given by the Inspector General, C.I.D. It has also been pleaded by the respondents that after the passing of order dated 30th December, 1994, the petitioner was taken back in his parent unit in a substantive rank but he manipulated the orders of cancellation of the earlier order dated 30th December, 1994 and when correct facts were placed before the Director General of Police, he finally ordered reversion of the petitioner to the parent

cadre. The respondents have also stated that the petitioner has come to an adverse notice due to his involvement in the smuggling of narcotics and it was decided not to retain in CID an official with shady background and, therefore, a decision was taken to repatriate him to the parent unit.

(4) In his replication, the petitioner has reiterated the averments made in the writ petition. He has also pleaded that after completion of the period of probation specified in the Punjab Police Rules, the respondents cannot revert him to the lower post.

(5) First contention urged by Shri I. S. Balhara, learned counsel for the petitioner, is that after having worked on the post of Sub Inspector for a period of more than two years, the petitioner has acquired a legal right to be treated as permanent Sub Inspector and he cannot be reverted except after an inquiry in accordance with the Rules and the principles of natural justice. Shri Balhara contended that no inquiry was held by the respondents and, therefore, the order of reversion should be quashed as being contrary to the Rules and the principles of natural justice. Shri Balhara placed reliance on the judgments of the Supreme Court and this Court in *Risal Singh v. State of Haryana* (1), *Jagat Singh v. State of Haryana* (2) and *Hardev Singh v. State of Haryana* (3). Second contention urged by Shri Balhara is that after having been continued on deputation for a period of more than six years, the petitioner could not be reverted. He argued that even as per Rule 21.25, the respondents could not have continued the petitioner on deputation beyond a period of five years in all and, therefore, he must be deemed to have been permanently appointed in the CID. Third contention of Shri Balhara is that the impugned order dated 19th October, 1995 is liable to be quashed on the ground that it casts stigma on the petitioner because it has been passed on the basis of a report of the Inspector General, CID, that the petitioner is involved in the smuggling of narcotics and before taking action on the report of the Inspector General, CID, the respondents were duty bound to give a notice and an opportunity of hearing to the petitioner. Learned Deputy

(1) 1994 (2) R.S.J. 403.

(2) 1995 (2) R.S.J. 229.

(3) 1995 (2) R.S.J. 283.

Advocate General argued that the petitioner's appointment to CID was on deputation and he continued to retain his lien in the parent unit, i.e. 3rd Bn. HAP, Hisar, and it was within the competence of the Director General of Police to revert him to the parent unit. Learned counsel submitted that it is not a case of reversion as the term is ordinarily understood and, therefore, it was not necessary for the respondents to have made an inquiry or to have complied with the principles of natural justice before repatriation of the petitioner to his parent unit. Shri Raina argued that deputation to CID is governed by Rule 21.25 and not by Rule 13 and, therefore, the petitioner is not entitled to contend that he has acquired any legal right to hold a post higher than the one to which he would have been entitled in his parent unit. Shri Raina further argued that the petitioner had been given officiating promotion, while he was on deputation with the CID, without considering the cases of senior persons and no right came to vest in him to hold the higher post. Shri Raina further argued that when the petitioner was serving on deputation, he was repatriated to the parent unit because of the report received by the higher authorities regarding his involvement in activities which were not conducive to his retention in the CID and, therefore, the competent authority was fully justified in passing the impugned order of repatriation. Shri Raina argued that the reason which has been disclosed in the reply, filed by the respondents, cannot be made a ground for holding that innocuous order of repatriation is punitive in character.

(6) Before dealing with the rival contentions, we deem it proper to observe that neither the petitioner nor the respondents have chosen to place on record of the Court, the basic order of deputation of the petitioner to CID. Of course, the petitioner has placed order dated 5th July, 1990 by which he was given *ad hoc* and fortuitous promotion as officiating Sub Inspector but that order does not give any indication of the terms and conditions on which the petitioner was sent on deputation to CID, Haryana. It is indeed an unfortunate practice which has grown over the number of years that even the basic documents are not produced before the Court by the parties and a number of arguments are advanced with reference to the contents of such documents. In this case also, arguments have been made about the right of the petitioner to continue to remain on deputation and to enjoy the higher post and yet the petitioner has not even thought it fit to place on record the order of deputation so as to enable the Court to determine his right, if any, to remain on deputation with CID.

(7) The order dated 5th July, 1990 passed by the Deputy Inspector General, CID, Haryana, promoting the petitioner as officiating Sub Inspector reads as under :—

“Office of the Deputy Inspector General of Police, CID (H), Chandigarh.

ORDER

Promotion : ASI Satbir Singh 3/88, is promoted as officiating Sub Inspector on *ad hoc* basis against the existing vacancy in CID Haryana with immediate effect. His promotion is purely temporary and fortuitous and has been made without prejudice to his seniority in his district/unit. He is liable to be reverted without any notice.

Sd/- Vikas, IPS,

DIG/CID, Haryana, Chandigarh,
5-7-1990.”

Similarly, the order (Annexure P-6) dated 30th December, 1994 is reproduced below for ready reference :—

“Office of the Inspector General of Police, CID, Haryana.

ORDER

Sub Inspector Satbir Singh No. 3/88 promoted as such on *ad hoc* basis against CID vacancy is hereby reverted to the parent rank of Head Constable and further repatriated to his parent unit, i.e. 3rd Bn. HAP, Hisar. Please relieve him immediately under intimation to this office.

Sd/- V. N. Negi, IPS,

Inspector General of Police,
CID, Haryana, 30-12-1994.”

(8) A combined reading of these two orders shows that the petitioner was promoted as officiating Sub-Inspector on *ad hoc* basis against the vacancy in CID, Haryana. His promotion was purely temporary and fortuitous and without prejudice to his seniority in his district or unit with a rider that he can be reverted at any time without any notice. By order dated 30th December, 1994, he has been

reverted to his parent unit, i.e. 3rd Bn. HAP, Hisar and has been given his substantive rank of Head Constable. From these it is clear that the petitioner did not acquire any right to hold the post of Sub-Inspector. The very fact that his promotion was described as fortuitous supports the assertion made by the respondents that the petitioner was promoted against C.I.D. vacancy and he got the higher rank while his seniors in the parent unit/district continued to hold the rank of Head Constable. From the averments made in the writ petition, the reply and the various documents, it can reasonably be inferred that the petitioner was taken on deputation to C.I.D. without regard to his seniority in the parent unit/district and he got fortuitous promotion as Assistant Sub-Inspector and Sub-Inspector against C.I.D. vacancies. This obviously did not involve consideration of the candidatures of the persons who are senior to the petitioner in the parent unit/district. Rather persons who were senior to the petitioner in the parent unit/district could not have claimed that they should be considered for promotion against the C.I.D. vacancies because they were not on deputation with the C.I.D. In view of these facts, we do not find any merit in the contention of Shri Balhara that the petitioner acquired a right to hold the post of Sub Inspector in the C.I.D.

(9) We shall now deal with the contention of the learned counsel for the petitioner that he should be deemed to have been confirmed on the post of Sub Inspector in the C.I.D. Rules 13.1, 13.3, 13.4, 13.8, 13.12, 13.18 and 21.25 of the Punjab Police Rules, on which learned counsel for the parties have placed reliance in support of their contentions are reproduced below :—

“13.1.

- (1) 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 or 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.
- (2) Under the present constitution of the police force no lower subordinate will ordinarily be entrusted with the independent conduct of investigations or the independent charge of a police station or similar unit. It is necessary, therefore, that well-educated constables, having the attributes

necessary for bearing the responsibilities of upper subordinate rank, should receive accelerated promotion so as to reach that rank as soon as they have passed the courses prescribed for, and been tested and given practical training in, the ranks of constables and head constables.

- (3) For the purposes of regulating promotions 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. List E shall be maintained in the office of Deputy Inspector General as prescribed in sub-rule 13.10 (1) and will regulate to the rank of sub-inspector. List F shall be maintained in the office of the Inspector-General as prescribed in sub-rule 13.15 (1) and will regulate promotion to the rank of inspector.

Entry in or removal from A, B, C, D, or E lists shall be recorded in the order book and in the Character roll of the police officer concerned. These lists are nominal rolls of those officers whose admission to them has been authorised. No actual selection shall be made without careful examination of character rolls.

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 His Excellency the Governor.

- (2) Deputy Inspector-General and the Assistant Inspector-General, Government Railway Police, shall make promotions to the rank of Inspector. The Inspector General, who maintains promotions list "F",—vide Police Rule 13.15, of Sub-Inspectors and Sergeants will notify the Deputy Inspector-General or a Range or the Assistant Inspector-General, Government Railway Police, when a substantive vacancy in the rank of Inspector is to be filled by an officer under his control.

Substantive promotions to the rank of sub-inspector and assistant sub-inspector shall be made by Superintendents

of Police and the Assistant Superintendent, Government Railway Police, Deputy Inspectors-General of Ranges who maintain promotion lists "D" and "E" for these two ranks in the case of District Police, will notify the Superintendent of Police of a district when a vacancy in either rank is to be filled by an officer in his district.

Promotions to the rank of head constable shall be made by Superintendents of Police and the Assistant Superintendents, Government Railway Police.

- (3) The seniority of Inspectors, Sergeants, Sub-Inspectors and Assistant Sub-Inspectors is shown in the list printed annually under the orders of the Inspector-General. Seniority of head constables in districts will be recorded in form 10.88 (1).

13.4. *Power to make officiating promotions.* (1) Officiating promotions to the rank of Inspector shall be made by Deputy Inspector-General of ranges and the Assistant Inspector-General, Government Railway Police. If the flow of promotion is unevenly distributed amongst ranges, the Inspector-General of Police shall make suitable transfers of Sub-Inspectors on the promotion list from one range to another.

- (2) Officiating promotions to the rank of Sub-Inspector, Assistant Sub-Inspector and Head Constable shall be made by Superintendent of Police and Assistant Superintendent, Government Railway Police. If the flow of promotion is unevenly distributed among district, the Deputy Inspector-General shall make suitable transfers of Assistant Sub-Inspectors, Head Constables (For Haryana—and Constables) on the promotion lists from one district to another.

- (3) All promotions concerning Inspectors, Sub-Inspectors, Assistant Sub-Inspectors and Head-Constables made under this rule shall be published in the Police Gazette, and notifications by Superintendents shall be sent in through the Deputy Inspector-General, who shall have the power to revise such orders on recording reasons in each case. If any Superintendent has not enough men on lists C, D and E in his district to fill temporary appointments in either

rank, which he is required to make, he shall apply to the Deputy Inspector-General for a man from another district.

13.8. *List C. Promotion to Head Constables.*—(1) In each district a list shall be maintained in card index form [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 marking 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 scrutinized 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 to 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 up to a maximum of ten per cent of vacancies.

13.12. *Method of filling temporary vacancies in the rank of Sub-Inspector.*—(1) In filling temporary vacancies in the rank of Sub-Inspector the object shall be to test all men on list E as fully as possible in independent charges. The order in which names occur in the list should be disregarded, the opportunities of officiating in the higher rank being distributed as evenly as possible. An Assistant Sub-Inspector officiating as a Sub-Inspector should ordinarily continue so to officiate for the duration of the vacancy, and should not be reverted merely because another Assistant Sub-Inspector senior to him is not officiating. This principle may, however, be modified if

in any case its observance would result in a thoroughly competent man being deprived by a man markedly his junior of an officiating appointment of more than 8 months' duration.

- (2) The conduct and efficiency of men on lists D and E shall be at all times watched with special care. Any officer, who, whether in his substantive rank or while officiating as an Assistant Sub-Inspector or Sub-Inspector, is guilty of grave misconduct of a tenure reflecting upon his character or fitness for responsibility, or who shows either by specific acts or by his record as a whole, that he is unfit for promotion to higher rank shall be reported to the Deputy Inspector-General for removal from list D or list E, as the case may be. In interpreting this rule discrimination shall be shown between faults which are capable of elimination by experience and further training, and those which indicate definite incompetence and defects of character. Officers whose names have been removed from either list D or list E may be restored by order of the Deputy Inspector-General in recognition of subsequent work or conduct of outstanding merit.

- 13.18. *Probationary period of promotion.*—All Police Officers promoted in rank shall be on probation for two years, provided that the appointing authority may, by a special order in each case, permit period of officiating service to count towards the period of probation. On the conclusion of the probationary period a report shall be rendered to the authority empowered to confirm the promotion who shall either confirm the officer or revert him. In no case shall the period of probation be extended beyond two years and the confirming authority must arrive at a definite decision within a reasonable time soon after the expiry of that period whether the officer should be confirmed or reverted. While on probation officers may be reverted without departmental proceedings. Such reversion shall not be considered reduction for the purpose of rule 16.4.

This rule shall not apply to Constables and Sub-Inspectors promoted to the selection grade, whose case is governed by Rules 13.5 and 13.14.

- 21.25. *Appointment to Criminal Investigation Department.*---

- (1) Upper and lower subordinate posts other than those of inspectors in the Criminal Investigation Department shall

be filled by the deputation of suitable men from districts for periods three years extensible by not more than two years at a time at the discretion of the Deputy Inspector-General, Criminal Investigation Department.

- (2) A police officer on deputation to the Criminal Investigation Department will retain his original position in the cadre of his district or range. While in the Criminal Investigation Department he will be eligible for officiating promotion in that branch; on reversion from the Criminal Investigation Department he will assume his place in his original cadre. Officiating promotion may be given in the district or range in the place of an officer deputed to the Criminal Investigation Department, such officiating post lapsing on the officer's reversion.
- (3) When an officer borne on the rolls of a district or range reaches a place in seniority which would entitle him to be considered for substantive promotion if he were serving in the establishment to which he belongs permanently, he shall be informed and given the opportunity of returning to district police work. No officer on deputation to the Criminal Investigation Department shall be substantively promoted to head constable or higher rank unless both the Deputy Inspector-General, Criminal Investigation Department and the Deputy Inspector-General of the range to which he belongs agree that he is qualified for such promotion by all the prescribed standards.
- (4) The Deputy Inspector General, Criminal Investigation Department, may make recommendation on behalf of sub-inspectors serving under him to the Deputy Inspector-General of the range and the Inspector General of Police, respectively, for promotion to the selection grade of admission to List F. A sub-inspector who becomes eligible while serving in the Criminal Investigation Department for grade promotion in the selection grade, shall receive such promotion, if the Deputy Inspector-General of the range and Criminal Investigation Department agree that he is fit for it.
- (5) Annual reports on upper subordinates serving on deputation in the Criminal Investigation Department shall be

sent by the Deputy Inspector General, Criminal Investigation Department, to the range Deputy Inspector-General concerned for record and other necessary action.

- (6) In very exceptional cases and for the political branch only and with the written sanction of the Deputy Inspector General personally, direct enrolment as constable or in higher ranks, may be made to the Criminal Investigation Department. Specialists shall, however, when possible, be entertained on contract terms, so that their services may be dispensed with when their utility ceases or deteriorates."

(10) A careful reading of the above-quoted rules reveals that while Rule 13 deals with regular promotion, Rule 21.25 specifically deals with deputation to the Criminal Investigation Department and officiating promotion while a person is on deputation with the Criminal Investigation Department. Rule 21.25 (2) unequivocally postulates repatriation of a deputationist to the parent unit/district and protection of the rights available to the deputationist in his parent unit/district. Admittedly, the petitioner was on deputation with the Criminal Investigation Department and he received officiating promotions as Assistant Sub-Inspector and Sub-Inspector against the Criminal Investigation Department vacancies. Such promotions cannot be treated as promotions made under Rule 13 of the Rules. Therefore, the edifice on which Shri Balhara has built up his contention with reference to Rule 13.8 is missing. In our opinion, the petitioner, who received officiating and fortuitous promotions while on deputation under Rule 21.25 (2) cannot claim that he should be treated as placed on probation and should be treated as automatically confirmed after the expiry of period of probation.

(11) There is another reason for not accepting the contention of Shri Balhara in regard to the right of the petitioner to hold the post of Assistant Sub-Inspector or Sub-Inspector. Undisputedly, claims of the persons senior to the petitioner in the parent unit/district for promotion to the posts of Assistant Sub-Inspector and Sub-Inspector had not been considered when the petitioner was accorded fortuitous promotion,—*vide* orders dated 25th August, 1989 and 5th July, 1990. If these promotions were to be treated as promotion in the parent unit/district, the same will have to be treated as clearly contrary to the equality clause enshrined in the Constitution. If promotions were to be made in the parent unit/district, the persons senior to the petitioner would have been considered and

perhaps the petitioner may not have at all been promoted. His seniors could not complain of officiating and fortuitous promotion given to the petitioner because he was on deputation with the Criminal Investigation Department. However, if these fortuitous promotions were to be treated as conferring right on the petitioner to hold the higher post, certainly the rights of the senior persons will be seriously jeopardised and we do not find any justification to uphold the claim of the petitioner to be treated as substantive Sub-Inspector on the basis of the provisions contained in Rule 13 in general and Rule 13.8 in particular.

(12) In *Risal Singh v. State of Haryana* (supra) the appellant, who was a sportsman, was promoted under Rule 13.8 (2) within the 10 per cent quota. Their lordships noted that when the appellant had been promoted within the 10 per cent quota enumerated in Rule 13.8 (2), such promotion has to be treated to be on regular basis and not on *ad hoc* basis and, therefore, the appellant could not have been reverted.

(13) In *Jagat Singh v. State of Haryana* (supra) and in *Hardev Singh v. State of Haryana* (supra) also the petitioners had claimed that their promotions were made under Rule 13.8 (2) of the Punjab Police Rules. In *Jagat Singh's* case, no reply was filed by the respondents but in the connected cases, the respondents pleaded that although the petitioners had been promoted under Rule 13.8 (2) of the Punjab Police Rules, their promotions were on *ad hoc* basis. The learned Single Judge relied on the observations made by the Supreme Court in *Risal Singh v. State of Haryana* (supra) in the context of Rule 13.8 (2) and held that in terms of Rule 13.8 (2) the petitioners would be deemed to have been confirmed on the promoted posts after completion of two years' service.

(14) In neither of these decisions, the Supreme Court or this Court considered the case of a person, like the petitioner, who was sent on deputation to Criminal Investigation Department and who was given officiating and fortuitous promotion while on deputation with the Criminal Investigation Department. In all the three decisions, on which Shri Balhara places reliance, the appellant/petitioners had been given promotion in the regular line and by exercise of power under Rule 13.8 which empowers the competent authority to accord promotion to those persons who may not have passed the necessary test. Thus, none of these decisions can be of any support to the petitioner's case.

(15) Contention of the learned counsel for the petitioner that after having been allowed to continue on deputation for a period of more than five years, the petitioner must be deemed to have acquired a right to remain on deputation also merits rejection. Rule 21.25 speaks of deputation for a period of three years in first instance which can be extended on the discretion of the Deputy Inspector-General, Criminal Investigation Department. The only limitation on the exercise of power of extension is that such extension shall not be for more than 2 years at a time. Thus, the Rule clearly contemplates more than one extensions. Moreover, there is no provision in the Rules which speaks of automatic absorption of a deputationist in the Criminal Investigation Department. Therefore, the fact that the petitioner has continued on deputation for a period of more than 6 years cannot enure to his benefit and he cannot claim automatic confirmation or absorption in the Criminal Investigation Department.

(16) This brings us to the last contention of the learned counsel that the impugned orders are stigmatic and, therefore, the same should be quashed. Learned counsel laid emphasis on the fact that as per the reply, the repatriation of the petitioner has been ordered because of the report containing allegation of his involvement in the smuggling of narcotics and as no inquiry was held by the respondents, the impugned action should be nullified as being contrary to the principle of natural justice. Perusal of the order (Annexure P6) and the Savingram dated 19th October, 1995 shows that they do not in so many words cast aspersion or stigma on the petitioner. The petitioner was serving in a sensitive wing of the Police Department as a deputationist. His continuance on deputation depended on satisfactory work and conduct. While on deputation the petitioner did not acquire any right and the respondents could repatriate him to his parent unit/district at any time. However, his rights in the parent unit/district were to be protected. In this background, if the respondents decided to repatriate the petitioner to his parent unit, i.e. 3rd Battalian H.A.P. Hisar, after receiving the report of his involvement in the smuggling of narcotics, it is not possible to hold that the petitioner has been stigmatised or that he has been punished by the respondents. The reports about the activities of the petitioner merely furnished the motive for passing an order of repatriation of the petitioner to the parent unit. That order has not resulted in depriving the petitioner of any of his right in the parent unit and, therefore, he cannot plead that the respondents have acted in violation of the principles of natural justice. Absence of any right in the petitioner to continue on

deputation for indefinite period also buttresses the conclusion that the order of repatriation which necessarily results in placing the petitioner in his rank within the parent unit does not infringe any vested right of the petitioner. His posting as Head Constable is a necessary corollary of the termination of his deputation. Thus, we do not find any illegality in the impugned orders.

(17) For the reasons mentioned above, the writ petition is dismissed. The parties are left to bear their own costs.

R.N.R.

Before Hon'ble R. P. Sethi & K. S. Kumaran, JJ.

LAKHMI CHAND,—Petitioner.

versus

STATE OF HARYANA & ANOTHER,—Respondents.

C.W.P. 8180 of 1995

21st September, 1995

Constitution of India, 1950—Arts. 226/227—Benefit to employees who are declared unfit during service—Petitioner declared invalid and retired from service after giving compensation—Seeking mandamus for grant of job for his son on the basis of policy issued by Chief Secretary to give job to one dependant of Government employee who has been rendered unfit—Not entitled to benefit from both schemes.

Held that a perusal of Annexure R/1 would indicate that it was intended to get rid of medically unfit Drivers by appropriately compensating them after compliance of the directions issued by the Hon'ble Supreme Court in Anand Bihari's case. Whereas policy Annexure R/1 specifically dealt with the Drivers the policy Annexure P/3 was issued by the Chief Secretary apparently on behalf of the Government of Haryana for the benefit of all the employees of the Government who were declared unfit or were blind by providing job to one of their dependents.

(Para 6)

Further held that the concessions granted by the aforesaid two policies were applicable to different situations and to different sets of employees. The policies could not be held to be supplementary