

Bhagwan Singh v. The State of Haryana, etc. (Tuli, J.)

That order can be quashed under section 215 of the Criminal Procedure Code by the High Court only on a question of law. The Additional Sessions Judge has reported the case for reference to the High Court for the commitment order dated November 17, 1969 being quashed. Thus the above order of commitment has been made as a result of proceedings conducted in utter disregard of the statutory provisions of sections 208 to 212 of the Criminal Procedure Code and deserves to be quashed. Under section 208 of the Criminal Procedure Code it was obligatory upon the Magistrate to take evidence that was sought to be produced in support of the complaint on behalf of the complainant. This mandatory provision of law has been ignored to be complied with by the Magistrate in not caring to examine the two material witnesses of the complainant including the complainant himself.

(5) For the reasons recorded above, I accept the reference and quash the commitment order dated November 17, 1969 and direct the Magistrate to record the evidence of the complainant and his witness Lachhman Singh apart from the evidence already recorded by him in support of the complaint and require the accused to file the list of witnesses as enjoined by section 211 of the Code of Criminal Procedure and exercise his discretionary power under section 212 of the Code for the purpose of summoning and examining his witnesses. It is, thereafter that he will make the order under Section 213 of the Code. The evidence already produced on behalf of the complainant in support of the complaint need not be recorded twice over.

K. S. K.

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

BHAGWAN SINGH,—*Petitioner.*

versus

THE STATE OF HARYANA, ETC.—*Respondents.*

Civil Writ No. 161 of 1971.

July 21, 1971.

Punjab Police Rules (1934)—Rules 12.2(3), 13.15(3) and 13.15 (4)—Interpretation of—Seniority of Inspectors and Sub-Inspectors of

Police—How determined—List 'F'—Whether prepared every year in substitution of the list of the previous year—Question of a 'batch for the purpose of seniority of the officers in the list'—Whether arises.

Held, that the reading together of Rules 12.2(3) and 13.15(4) of Punjab Police Rules, 1934, clearly leads to the conclusion that till a Sub-Inspector is confirmed as an Inspector of Police, the seniority will be determined according to his date of confirmation as Sub-Inspector of Police Selection Grade and if there is no such Sub-Inspector, then as a Sub-Inspector time-scale. This seniority remains in the rank of Sub-Inspectors before a person is promoted as Inspector. But once he is confirmed as an Inspector of Police, his seniority amongst the Inspectors of Police will be determined in accordance with the date of his confirmation in that post and not in accordance with the dates of confirmation of the various officers in the rank of Sub-Inspector of Police. According to rule 13.15(3), list 'F' is revised every year, that is, the Deputy Inspectors General of Police are required every year to submit their specific recommendations as to the retention and removal of officers already admitted to the list along with their recommendations for the addition of new names. This provision evidently means that every year the list has to be scrutinised and it has to be decided as to who should be retained, who should be removed and who should be added. It follows that every year a fresh list is prepared in substitution of the list for the previous year. There is, therefore, no question of a 'batch'. The seniority of officers placed on list 'F' every year has to be determined in accordance with the date of confirmation of the Sub-Inspectors whose names figure in that list. The Sub-Inspectors who are promoted as Inspectors, whether officiating or substantive permanent, evidently go out of list 'F' for the purposes of rule 13.15(3) and their names are not to be considered in the years subsequent to their promotion as Inspectors when list 'F' is recast. (Para 5)

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of Certiorari, Mandamus-Quo-Warranto or any other suitable writ, direction or order be issued directing the Government to fix the petitioner's seniority on list 'F' in accordance with the correct interpretation of police rules and to consider the petitioner's claim for promotion to the post of Inspector and then the Deputy Superintendent as also being brought on list 'G' as if neither the enquiry, nor the order of reversion had intervened and with effect from the date a person junior to the petitioner was promoted and declaring that the petitioner is entitled to all the consequential reliefs, including the grant of seniority, arrears of salary etc. and quashing the order dated 24th December, 1970.

J. L. GUPTA, ADVOCATE, for the petitioner.

R. N. MITTAL, ADVOCATE FOR ADVOCATE-GENERAL, HARYANA, for Respondent No. 1.

M. S. SANDHU, DEPUTY ADVOCATE-GENERAL, PUNJAB, for Respondent No. 2.

Bhagwan Singh v. The State of Haryana, etc. (Tuli, J.)

JUDGMENT

TULI, J.—(1) The petitioner, Bhagwan Singh, joined service as Sub-Inspector of Police in the erstwhile State of Kalsia on April 24, 1946, from which date he was confirmed in that post. In 1948, the Patiala and East Punjab States Union was formed by integrating eight princely States of East Punjab including the State of Kalsia. The service personnel of all the integrating States were integrated into the Service of the Union with effect from September 1, 1948, and the petitioner was integrated as a confirmed Sub-Inspector of Police. In 1952, he was serving at Patiala where Shri Janak Raj was posted as the Superintendent of Police. The petitioner was dismissed by the Superintendent of Police on June 5, 1952, on a charge of gross negligence of duties and lack of control over his subordinates. The petitioner filed an appeal against that order which was rejected by the Inspector-General of Police, Pepsu. He then filed a civil writ petition in the Pepsu High Court which was accepted on July 13, 1954, on the ground that the petitioner could not be dismissed by the Superintendent of Police when he had been originally appointed by the Kalsia State. In consequence of that decision, the petitioner was reinstated as Sub-Inspector of Police on August 12, 1954 with effect from the date on which he was dismissed. After reinstatement, a notice was issued to him by the Inspector-General of Police, Pepsu, to show cause why he should not be dismissed from service on the charges which had been delivered to him by the Superintendent of Police in 1952. After considering his explanation, the Inspector-General of Police passed an order reducing him to the rank of Assistant Sub-Inspector of Police with effect from July 9, 1955. Against that order, the petitioner filed an appeal to the Government which was pending when the merger of the erstwhile States of Punjab and Pepsu took place on November 1, 1956. His appeal was decided on June 20, 1959, and the order of his reduction in rank was set aside but his annual increment was stopped for two years without cumulative effect in terms of rule 16.5 of the Punjab Police Rules, 1934 (hereinafter referred to as the Rules).

(2) Even in spite of the acceptance of his appeal, the petitioner was not allowed the arrears of his salary nor was his seniority revised. He, therefore, filed a civil suit and obtained a decree for Rs. 6,262.75 on account of arrears of salary on September 5, 1962. The petitioner's name was considered for being brought on list 'F' in 1962, 1963 and 1964, but he was not found fit. In 1965, however, he was

considered suitable and brought on list 'F' with effect from September 21, 1965. He was promoted from that list as officiating Inspector of Police on November 4, 1965. The re-organisation of the erstwhile State of Punjab took place with effect from November 1, 1966, and the petitioner was allocated to the State of Haryana. A seniority list of the officers of the Police Department as on July 31, 1968, was published on March 24, 1969, which was actually received by the petitioner on June 12, 1969, but he had obtained knowledge of that list as soon as it was published because on April 4, 1969, he made a representation against his placement on that list. In that list, the date of petitioner's promotion to list 'F' was shown as November 4, 1964, which was a typographical mistake for September 21, 1965, as has been explained in the return. That representation was not decided by the Inspector-General of Police expeditiously and in December, 1969, the petitioner filed C.W. 3073 of 1969 in this Court challenging that seniority list. That writ petition came up for hearing before this Court on October 27, 1970, when it was dismissed as premature on the ground that the representation of the petitioner was pending decision with the Inspector-General of Police who was directed to decide it within a period of two months after giving an opportunity of hearing to the petitioner. In pursuance of that order, the Inspector-General of Police issued a notice to the petitioner on November 19, 1970, directing him to appear before him in connection with his representation. Instead of appearing personally before the Inspector-General of Police, the petitioner submitted another representation on December 1, 1970, a copy of which is annexure 'C' to the writ petition. The petitioner was again asked to appear before the Inspector-General of Police on December 22, 1970. In response to that notice, the petitioner appeared before the Inspector-General of Police who considered his representation after hearing him personally and by an order dated December 24, 1970, rejected that representation. The petitioner thereafter filed the present petition on January 12, 1971, claiming the following reliefs :—

- (i) A direction to the Government to fix the petitioner's seniority on list 'F' in accordance with the correct interpretation of Police Rules as stated in the petition ;
- (ii) a direction to the Government to consider the petitioner's claim for promotion to the post of Inspector and thereafter to the post of Deputy Superintendent as also for being brought on list 'G' as if neither the enquiry nor the order

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of reversion had intervened and with effect from the date a person junior to the petitioner was promoted ;

- (iii) to quash the order of the Inspector-General of Police, dated December 24, 1970, rejecting his representation; and
- (iv) that the petitioner should be declared entitled to all consequential reliefs including the grant of seniority, arrears of salary, etc., etc.

In his petition, the petitioner has alleged that he should have been considered for promotion to list 'F' and as Inspector of Police from that list when the first officer junior to him was so promoted. He has, however, not named that officer and has made only respondents 3 and 4 parties to his petition which implies that he wishes his claim to promotion to be considered as against them only.

(3) Written statements have been filed by the State of Haryana as well as the State of Punjab who have also been made respondents to the petition.

(4) The first point vehemently argued by the learned counsel for the petitioner is that the petitioner should have been considered for promotion to list 'F' in 1952 and in every subsequent year because earlier to 1962 he was not considered for that promotion due to the reason that he had been first dismissed from service and then reduced in rank. Since both the orders had been set aside, one in 1954 and the other in 1959, he was entitled to be considered for his name being brought on list 'F' in those years as if no enquiry had been held nor any order passed to his prejudice. I regret my inability to agree to this submission. In the petition, the petitioner stated that no list 'F' was being maintained in Pepsu but in the returns filed by respondents 1 and 2, it has been stated that such a list was being maintained in accordance with the Rules which were in force in that State. The procedure for bringing Sub-Inspectors of Police on list 'F' is prescribed in rule 13.15 of the Rules. According to this rule, the Superintendent of Police has to make recommendation of Sub-Inspector of Police considered fit by him to be brought on list 'F' to the Deputy Inspector-General of Police of the Range in April each year. If the Deputy Inspector-General of Police agrees with the recommendation of the Superintendent of Police, he is to forward the papers to the Inspector-General of Police with his own recommendation by October each year. In case he does not agree with the recommendation of the Superintendent of Police, the papers are not

sent to the Inspector-General of Police but his own order is communicated to the Superintendent of Police while the recommendation by the Superintendent of Police is placed on the file of the Sub-Inspector concerned. On receipt of the recommendations from the Deputy Inspectors-General of Police in the State, the Inspector-General of Police considers their cases for bringing them on the record and if he agrees with the recommendations, the names are entered in that list. It is from list 'F' that promotions are made to the post of Inspector of Police. It is now too late to take up the matter with effect from the year 1952. The petitioner should have made this request to the Inspector-General of Police after the decision of his appeal by the Punjab Government in 1959 reinstating him as Sub-Inspector of Police. He made no such request then. In fact he did not make any such request till he made the representation dated December 1, 1970. Along with his petition, the petitioner has filed a copy of his representation to the Inspector-General of Police, Punjab, Chandigarh, dated August 2, 1965, praying that his name may be brought on list 'F' without any delay. This representation shows that the petitioner had been informed that his case for bringing his name on list 'F' could be considered only after he had been tried as Station House Officer for a period of six months on the ground that after his reinstatement in 1954, he had remained in the Punjab Armed Police till 1961 and thereafter he served in the C.I.D. Punjab on deputation. It was thus felt that he had to be tried as Station House Officer in order to consider his suitability for further promotion. In this representation, the petitioner never urged that he was entitled to be considered for his name being brought on list 'F' in earlier years. The Superintendent of Police has to make a recommendation in form 13.15 (1) wherein one of the columns is—"Is he a man of good and strong character who can enforce discipline" and another query to be answered is—"Does he possess your confidence generally" From what has been stated above, in 1952 the petitioner was found to be negligent in his duties and lacking control over his subordinates. Evidently, in view of this charge his case could not have been recommended by the Superintendent of Police for inclusion in list 'F'. Even when his appeal was ultimately accepted by the Government in 1959, he was not completely exonerated of the charge; only the punishment was reduced. It has to be remembered that he was punished in 1955 on that very charge and, therefore, it is legitimate to infer that his name would not have been recommended till 1959 for inclusion in list 'F'. Thereafter, his name was considered four times

in 1962, 1963 and 1964, but he was not found fit. Ultimately, it was in 1965 that he was considered fit and his name was brought on list 'F' and he was granted further promotion as officiating Inspector with effect from November 4, 1965. In view of these facts, I do not consider that any useful purpose will be served by directing respondent 1 to consider the name of the petitioner for being included in list 'F' from 1952 onwards. The submission made by the learned counsel on this point is, therefore, repelled.

(5) The second point argued by the learned counsel for the petitioner is with regard to the seniority allotted to the petitioner in list 'F'. According to the return, the petitioner has been allotted his due seniority in his batch according to the date of his confirmation as Sub-Inspector. It is not at all clear from the return as to what is meant by the 'batch'. If it means the Sub-Inspectors who were added to list 'F' on September 21, 1965, without taking into consideration the Sub-Inspectors already on that list, then, in my opinion, the seniority was not correctly determined. The relevant provisions with regard to the determination of seniority of officers on list 'F' before they are promoted to the rank of Inspector are contained in rule 12.2(3) and rule 13.15(4) which read as under :—

"12.2(3). All appointments of enrolled police officers are on probation according to the rules in this chapter applicable to each rank.

Seniority, in the case of upper subordinates, will be reckoned in the first instance from date of first appointment, officers promoted from a lower rank being considered senior to persons appointed direct on the same date, and the seniority of officers appointed direct on the same date being reckoned according to age. Seniority shall, however, be finally settled by dates of confirmation, the seniority *inter se* of several officers confirmed on the same date being that allotted to them on first appointment. Provided that any officer whose promotion or confirmation is delayed by reason of his being on deputation outside his range or district shall, on being promoted or confirmed, regain the seniority which he originally held *vis-a-vis* any officers promoted or confirmed before him during his deputation.

The seniority of lower subordinates shall be reckoned from dates of appointment subject to the conditions of rule 12.24

and provided that a promoted officer shall rank senior to an officer appointed direct to the same rank on the same date."

"13.15(4) Sub-Inspectors admitted to list 'F' will be placed in that list in order according to their date of permanent promotion to selection grade and, if the date of permanent promotion to selection grade is the same in the case of two or more Sub-Inspectors admitted to list 'F' on one and the same date, then according to date of permanent promotion to the time-scale. Sergeants will be shown in list 'F' according to the date of entry in the list. When, however, two or more sergeants are admitted to list 'F' on the same date, their names will be shown in order of seniority among themselves."

The reading together of these two rules clearly leads to the conclusion that till a Sub-Inspector is confirmed as an Inspector of Police, the seniority will be determined according to his date of confirmation, as Sub-Inspector of Police Selection Grade and if there is no such Sub-Inspector, then as a Sub-Inspector time-scale. This seniority remains in the rank of Sub-Inspectors before a person is promoted as Inspector. But once he is confirmed as an Inspector of Police his seniority amongst the Inspectors of Police will be determined in accordance with the date of his confirmation in that post and not in accordance with the dates of confirmation of the various officers in the rank of Sub-Inspector of Police. According to rule 13.15 (3), list 'F' is revised every year, that is, the Deputy Inspectors General of Police are required every year to submit their specific recommendations as to the retention and removal of officers already admitted to the list along with their recommendations for the addition of new names. This provision evidently means that every year the list has to be scrutinised and it has to be decided as to who should be retained, who should be removed and who should be added. It follows that every year a fresh list is prepared in substitution of the list for the previous year. There is, therefore, no question of a 'batch'. The seniority of officers placed on list 'F' every year has to be determined in accordance with the date of confirmation of the Sub-Inspectors whose names figure in that list. The Sub-Inspectors who are promoted as Inspectors, whether officiating or substantive permanent, evidently go out of list 'F' for the purposes of rule 13.15 (3) and their names are not to be considered in the years subsequent to

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(Sandhawalia, J.)

their promotion as Inspectors when list 'F' is recast. As I have said above, the petitioner has challenged the promotion of only respondent 3 and 4 in this petition and of no other officer. The particulars with regard to these respondents are that respondent 3 was brought on list 'F' on March 4, 1961, was promoted as Inspector on May 19, 1961, and was further promoted as Deputy Superintendent of Police on December 1, 1967, while respondent 4 was brought on list 'F' on June 11, 1962, promoted as Inspector on November 5, 1962, and further promoted as Deputy Superintendent of Police on January 1, 1968. When the name of the petitioner was brought on list 'F' on September 21, 1965, evidently these two respondents had gone out of that list because of their promotion as Inspectors of Police and the petitioner's seniority in list 'F' could not be fixed *vis-a-vis* these respondents. The petitioner can, therefore, have no grievance and is not entitled to any relief against them.

(6) The petitioner has been in possession of the seniority list since June 12, 1969, but he has not mentioned, in the writ petition, the names of Sub-Inspector of Police who were on list 'F' on September 21, 1965, when his name was brought on that list and whose seniority qua him had been fixed wrongly. Moreover, the seniority on list 'F' is no more of any importance as the petitioner has already been promoted as an Inspector of Police. His further promotion to list 'G' and the rank of Deputy Superintendent of Police will depend on his performance in the rank of Inspector of Police and not on his seniority in list 'F'. It is, therefore, not possible to grant any relief to the petitioner in this writ petition.

(7) For the reasons given above, I find no merit in this petition which is dismissed but without any order as to costs.

• K.S.K.

CIVIL MISCELLANEOUS

Before D. K. Mahajan and S. S. Sandhawalia, JJ.

MRS. RAGHUBANS SAUDAGAR SINGH,—Petitioner.

versus

THE STATE OF PUNJAB, ETC.—Respondents.

Civil Writ No. 1115 of 1966.

July 23, 1971.

Constitution of India (1950)—Article 16(2)—Interpretation of—Disparity of sex detracting from the capacity to hold a particular post—Whether can be considered by the State—Order of the State Government making