

budget had not been sanctioned. We are of the view that if later on with effect from a particular date, budget is sanctioned, it does not mean that those *ad hoc*/temporary employee, who were earlier employed and their services stood terminated, should be recalled. An advertisement has been issued in this case, in which all eligible persons, including the petitioners, can apply.

(19) For the foregoing reasons, we find no merit in this writ petition, which is hereby dismissed.

**S.C.K.**

*Before Jawahar Lal Gupta and K.S. Garewal, JJ.*

SUKHMANDAR SINGH,—*Petitioner*

*versus*

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

C.W.P. No. 2369 of 2000

6th July, 2000

*Constitution of India, 1950—Art. 226—Punjab Police Rules, 1934—RI. 13.21—Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995—A Sub Inspector seeking exemption from qualifying the Upper School Course on the ground of physical handicap suffered while performing his official duties—RI. 13.21 of the 1934 Rules empowers the DGP to relax the provision—Though petitioner's case was duly recommended by the SSP yet the DGP rejecting his claim without recording any reason—Petitioner had a better claim than those persons who have been granted exemption only on account of their family circumstances—Action of the respondent in declining the request of the petitioner for exemption not fair—Impugned order quashed with a direction to respondent to consider his request afresh.*

*Held*, that the petitioner has qualified the lower School Course and the Intermediate School Course. He had made a prayer for exemption from passing the Upper School Course on account of the physical handicap suffered by him while performing his duty. This claim for the grant of exemption from passing the promotional course had to be considered fairly and objectively. Relevant considerations had to be kept in view. The authority cannot act arbitrarily or whimsically.

(Para 5)

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*Further held*, that a perusal of Rule 13.21 of the 1934 Rules shows that it is only when the competent authority is satisfied that it is necessary or expedient so to do that it can relax the provision. Still further, it has to record reasons for granting a relaxation. Petitioner's claim had been duly recommended by the Senior Superintendent of Police. Yet, his claim was rejected without recording any reason. Various persons have been granted exemption only on account of their family circumstances. A person who had suffered a handicap in the discharge of his duties had a better claim. The respondents have not acted fairly in rejecting it.

(Paras 8 & 9)

*Further held*, that a handicapped person deserved sympathy. In fact, the legislative policy is to promote the welfare of the handicapped persons. The Parliament has promulgated the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, with the avowed object of helping the handicapped persons. The element of sympathy should have been all the more greater in view of the fact that the petitioner had suffered the handicap while performing his duty. We are not very happy with the manner in which the petitioner's case has been dealt with. Thus, the impugned order is quashed. The respondents are directed to consider the matter afresh.

(Paras 8 and 11)

G.S. Bal, Advocate, *for the petitioner*.

Charu Tuli, DAG Punjab for Respondent Nos. 1 and 2,  
Rajan Gupta, Advocate, *for respondent No. 3*.

### JUDGMENT

*Jawahar Lal Gupta, J.*

(1) The petitioner is a member of the Punjab Armed Police. He has been working on the post of Sub Inspector Since 30th May, 1986. He is on deputation to the Union Territory of Chandigarh. On 5th September, 1989, he was deputed to go to Jabalpur for depositing certain arms and ammunition. On his way back, he met with an accident. He suffered injuries. In particular, there was fracture of the right femur. His thigh muscle was crushed. As a result, he had to remain admitted in the Hospital at Gawalior and thereafter in the PGI as an indoor patient. He suffered 35% disability in his general working condition while there was greater handicap in the use of the right leg. The petitioner approached the respondents for the grant of exemption from qualifying the Upper School Course which is considered necessary

for becoming eligible for promotion to the post of Sub Inspector and Inspector. His case was duly recommended by the Senior Superintendent of Police, Union Territory, Chandigarh *vide*,—his letter dated 27th August, 1997. Even a note regarding the petitioner's performance was forwarded. *Vide* order dated 22nd January, 1998, the petitioner's request was declined by the Director General of Police, Punjab. No reason was assigned. Aggrieved by the order, the petitioner represented. Having failed to get a positive response, he has approached this Court through the present writ petition.

(2) The petitioner alleges that the action of the respondents is totally arbitrary and unfair. He also states that the action suffers from the vice of discrimination. It has been averred that in the case of ASI Rajinder Singh, exemption was granted "merely because he was to look after his aged parents and sick wife besides having two minor school-going children." Similarly, ASI Baldev Singh and Head Constable Subhash Chander had been granted exemption.

(3) In the written statement filed on behalf of the State of Punjab and the Director General of Police, it has been *inter alia* averred that "it is sufficient that we are tolerating handicapped persons in the force when physically fit persons are available. Actually, in such matters, persons should be sent on disability pension. No exemption and no promotion should be our policy....." It has also been averred that under Punjab Police Rule 13.21. "It is the sole discretion of the IGP (now DGP) to grant or decline the prayer of the petitioner for according him exemption from passing the prescribed Upper School Course." Still further, in answer to the charge of discrimination, it has been stated that "the grant/deline of the prayers for exemption is the sole discretion of IGP (now DGP) under PPR 13.21. It is submitted that the case of the petitioner was considered and rejected on merits by the DGP....." It has also been averred that ASI Rajinder Singh was granted exemption due to his outstanding record.

(4) Mr. G.S. Bal, learned counsel for the petitioner contends that the action of the respondents in declining the prayer for exemption is totally arbitrary and unfair. On the other hand, even though on perusal of the personal file of Assistant Sub Inspector Rajinder Singh, Ms. Tuli appearing for the respondents concedes that he had earned only 'satisfactory' reports after his promotion as ASI, she still maintains that the action is not discriminatory. It is also not disputed that the petitioner's record is certainly much better than that of ASI Rajinder Singh.

(5) It is not disputed that the petitioner has qualified the Lower School Course and the Intermediate School Course. He had made a

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prayer for exemption from passing the Upper School Course on account of the physical handicap suffered by him while performing the duty. This claim for the grant of exemption from passing the promotional course had to be considered fairly and objectively. Relevant considerations had to be kept in view. The authority cannot act arbitrarily or whimsically. It is the admitted position that various persons have been granted exemption. The action in the grant of exemption to ASI Rajinder Singh is sought to be justified on the ground that he has an outstanding record. Despite being asked repeatedly, Ms. Tuli is unable to show even a single outstanding report that may have been earned by ASI Rajinder Singh. In fact, after his promotion to the rank of ASI, the reports earned by him are stated to be 'satisfactory'. As against this, the petitioner's record of service is certainly much better. His reports from 1st April, 1994 onwards range from 'Good' to 'V. Good'. Yet, his prayer for exemption has been declined. That too despite the fact that he had suffered a handicap while performing his official duties. In this situation, it is clear that the petitioner's claim was at a much higher pedestal than that of the persons to whom exemption had been granted by the respondents.

(6) Ms. Tuli has referred to the provisions of Rule 13.21 to contend that the statutory rules grant a complete discretion to the authority and that the exercise of this discretion should not be interfered with by the court.

(7) Rule 13.21 provides as under :

“Power of relaxation : Where the Inspector General of Police is of the opinion that it is necessary or expedient so to do, he may, by order for reasons to be recorded in writing relax any of the provisions of this Chapter with respect of any class or category of persons”.

(8) A perusal of the above provisions shows that it is only when the competent authority is satisfied that “it is necessary or expedient so to do that it can relax the provision”. Still further, it has to record reasons for granting a relaxation. In the present case, the petitioner's claim had been duly recommended by the Senior Superintendent of Police. It had been pointed out that the official “is very industrious, loyal and hard-worker who always takes keen interest to discharge the assigned duties with utmost devotion and produced fruitful results at all the jobs”. It was further mentioned that he had been awarded as many as 7 Commendation Certificates of Class-I, 6 in Class-II and 23 Commendation Certificates in Class-III. Still further, it was also pointed out that he has remained posted as a Law Instructor at the Recruitment

Training Centre. He is a trained mechanic. He is looking after the Motor Transport Section of the Department. Yet, the petitioner's claim was rejected without recording any reason. It is only in the written statement that it has been pointed out that the Director General of Police had approved the note wherein it was observed that "it is sufficient that we are tolerating handicapped person....." In our view, a handicapped person deserved sympathy. In fact, the legislative policy is to promote the welfare of the handicapped persons. The Parliament has promulgated the 'Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995' with the avowed object of helping the handicapped persons. The element of sympathy should have been all the more greater in view of the fact that the petitioner had suffered the handicap while performing his duty. We are not very happy with the manner in which the petitioner's case has been dealt with.

(9) It may be noticed that various persons have been granted exemption only on account of their family circumstances. A person who had suffered a handicap in the discharge of his duties had a better claim. The respondents have not acted fairly in rejecting it.

(10) No other point has been raised.

(11) In view of the above, the impugned order is quashed. The respondents are directed to consider the matter afresh. The needful shall be done within two months from the date of receipt of a certified copy of this order. Further consequences shall follow.

(12) The writ petition is, accordingly, disposed of. No costs.

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**R.N.R.**

*Before G.S. Singhvi & Bakhshish Kaur, JJ*

MUNICIPAL CORPORATION, LUDHIANA,—*Petitioner*

*versus*

SURINDER KUMAR & ANOTHER,—*Respondent*

C.W.P.No. 6071 of 2000

14th July, 2000

*Constitution of India, 1950—Art. 226—Punjab Civil Services (Punishment & Appeal) Rules, 1970—Rl. 19(2)—Disciplinary authority imposing extreme penalty of dismissal from service after enquiry—Appellate authority under Rl. 19(2) modifying the order of punishment to one of reversion to the lower rank in the time scale of pay & treating*