

APPELLATE CIVIL

Before R. S. Narula, C.J., and A. S. Bains, J.

THE SUPERINTENDENT OF POLICE, GURDASPUR
AND OTHERS,—Appellants.

versus

KASHMIR SINGH CONSTABLE AND OTHERS,—Respondents.

L.P.A. No. 282 of 1974.

April 4, 1975.

The Punjab Police Rules 1934—Rules 13.7(1) and (2) and 13.8-A—Constitution of India 1950—Article 16—Proviso to rule 13.7(2)—Whether inconsistent with rules 13.7(1) and 13.8-A and violative of Article 16—Rule 13.7(2) debarring constables after the age of thirty years for being sent for promotion course—Whether ultra vires Article 16.

Held, that a bare reading of rule 13.7(1) of the Punjab Police Rules 1934 shows that List 'B' in Form 13.7 has to be maintained by each Superintendent of Police, that it will include the names of all Constables selected for admission to the Promotion Course for Constables at the Police Training College, that the selection shall be made in the month of January each year, that it will be limited to the number of seats allotted to the districts for the year with a twenty per cent reserve, and that the names in the list are to be entered in order of merit which is to be determined by the Departmental Promotion Committee. The rule does not provide that the list is to be carried forward for the next year. The list is to be prepared every year in the month of January on the basis of merit. The proviso to rule 13.7(2) says that if any constable, whose name has been brought on the list, is not sent to the Police Training College in that year, he will be required to compete again with the new candidates, if he is still eligible for admission to the said list under the rules. According to rule 13.8-A only those constables on whom major punishment is inflicted, would incur disqualification for admission or retention in the list, provided, of course, the disqualification can be waived by the Superintendent of Police in each case with the approval of the Deputy Inspector-General. This means that even during the year if any major punishment is inflicted on a constable, his name will not be entered in the list and if his name be already there on the list, then it cannot be retained. It cannot be said that the proviso to rule 13.7(2) is inconsistent with the provisions of rule 13.7(1) or 13.8-A or violative of Article 16 of the Constitution of India 1950. Every constable is entitled to compete and be brought on the list 'B' if he fulfils the conditions as prescribed in rule 13.7(1) and (2). The proviso to rule 13.7(2) does not put hurdle in the way of any particular constable as all the constables are treated alike-whosoever passes the test and fulfils other condi-

tions as laid down in the rules becomes eligible to be brought on the list. This provision is made in the interest of efficiency in the Police Force so that the constables may remain alert and fit in every respect and do not in any way become lethargic once their names are brought on the list. Thus, the proviso to rule 13.7(2) is not inconsistent with rules 13.7(1) and 13.8-A and does not violate article 16.

(Paras 3 and 4)

Held, that the age of superannuation of constables is 58 years in Punjab and it seems highly unreasonable and arbitrary that the constables after having attained 30 years of age, are debarred from consideration for further promotion for a period of 28 years. The fixation of age limit debarring the constables for further promotion, after they become 30 years of age, would lead to frustration and rusting and will result in inefficiency in the Police Force. In that event the constables who have crossed 30 years of age, would have no incentive to hard work and honesty because they know that their future career is blocked. The bar has been placed on a constable at such an early stage of his life that it has denied him the chance of any promotion during the last 28 years of his service career. Rule 13.7(2) has no connection with the object sought to be achieved namely, honesty, hard work and efficiency and is, therefore *ultra vires* article 16.

(Para 5)

Letters Patent Appeal under clause X of the Letters Patent against the judgment dated 28th March, 1974, of Hon'ble Mr. Justice Pritam Singh Pattar passed in Civil Writ No. 4487 of 1973.

H. S. Brar, Senior Deputy Advocate-General, Punjab, for the appellants.

S. S. Kang, Advocate, for the respondents.

JUDGMENT

Bains, J.—(1) Kashmir Singh, Sukhdev Singh and Natha Singh petitioner-respondents were posted as Constables at Police Station, Fatehgarh Churian, Dera Baba Nanak and Check Post Dhangu Road, Pathankot, respectively, at the time of filing the writ petition. In the matter of promotion, etc., they are governed by the Punjab Police Rules, 1934 (hereinafter called the 'Rules') as amended upto date. Rule 13.7 of the Rules deals with the maintenance of list 'B' by each Superintendent of Police in a district to include the names of all Constables selected for admission to the Promotion Course at the Police Training College, Phillaur. It is averred in the petition that the petitioners were brought on list 'B' in accordance with the Rules,—*vide* order, dated February 5, 1973, passed

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by respondent-appellant No. 2 (copy attached with the writ petition as annexure 'A'). The names of the petitioner-respondents appear at serial Nos. 12, 13 and 15 in the list. Subsequently,—*vide* order dated December 5, 1973, appellant-respondent No. 1 directed the completion of service record of all the Constables who were desirous of taking the test for bringing their names on list 'B', and it was further directed that the Constables whose names were already on list 'B', would also participate in the test. Copy of this letter is attached to the petition as annexure 'B'. It is in these circumstances that the petitioners filed writ petition against the said order (annexure 'B'),—*vide* which they were directed to participate in the test. The writ petition was allowed by the learned Single Judge mainly on the following grounds:—

1. Once the name of a constable is brought on the list, it cannot be removed except in the manner provided in rule 13.8-A and that the impugned order impliedly removed the names of the petitioners from list 'B' as they are required to appear again in the test for bringing their names on that list, which is not legal.
2. Proviso to rule 13.7(2) is inconsistent with the provisions of rule 13.7(1) and rule 13.8-A and is ultra-vires Article 16 of the Constitution as it puts a hurdle in the way of the Constables, whose names have been validly and legally brought on the list 'B', to acquire the necessary qualifications by passing the Promotion Course in the Police Training College, Phillaur, in order to become eligible for promotion as Head Constables.
3. Prescription of the age of 30 years for Constables, on attaining which they are debarred under rule 13.7(2) from being considered for selection for admission to the Promotion Course for Constables at the Police Training College is unreasonable and an infringement of their fundamental rights under article 16 of the Constitution of India and that the restriction of age cannot be provided for as it has no nexus to the object to be achieved thereby, i.e., promotion to the post of Head Constable.

It is against this judgment of the learned Single Judge that the present appeal has been filed under Clause 'X' of the Letters Patent.

(2) It is urged on behalf of the appellants that proviso to rule 13.7(2) is not inconsistent with the rules 13.7(1) and 13.8-A and that rule 13.7(2) prescribing the age of thirty years for the Constables after which they are debarred from being set for Promotion Course at Police Training College, Phillaur, is not arbitrary and violative of Article 16 of the Constitution. Before discussing the contentions of the learned counsel for the appellants, it is necessary to examine rule 13.7, as amended upto date. It reads as under:—

“13.7(1). List ‘B’, in Form 13.7 shall be maintained by each Superintendent of Police. It will include the names of all Constables selected for admission to the Promotion Course for Constables at the Police Training College. Selection will be made in the month of January, each year and will be limited to the number of seats allotted to the districts for the year with a twenty per cent reserve. Names will be entered in the list in order of merit determined by the Departmental Promotion Committee constituted by the Inspector-General of Police on the basis of tests in parade, general law (Indian Penal Code, Criminal Procedure Code, Indian Evidence Act and Local and Special Laws), interview and examination of records.

(2) All constables—

- (a) who are middle pass and have put in more than four years of service;
- (b) who are at least matriculates and have put in more than three years of service; or
- (c) who obtain first class with credit in the Recruits Course specified in rule 19.2: will be eligible to have their names entered on the aforesaid list, if they are not above thirty years of age on the first day of July in the year in which the selection is made:

Provided that no Constable who has been awarded a major punishment within a period of three years preceding the first day of January of the year in which selection is made will be eligible for admission to this list and if any constable whose name has been

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brought on this list is not sent to the Police Training College in that year, he will be required to compete again with the new candidates, if he is still eligible for admission to the said list under the rules.

- (3) Temporary Constables brought on List 'B' shall be absorbed in the regular establishment in preference to others.
- (4) No Constable who has failed to qualify in the promotion course for Constables shall be admitted, to list 'B' unless the Principal, Police Training College, for the reasons to be recorded in writing considers him deserving of another chance and he is still eligible. The reasons are to be communicated to the Superintendent of Police concerned."

(3) It is evident from the bare reading of rule 13.7(1) that List 'B' in Form 13.7 shall be maintained by each Superintendent of Police; that it will include the names of all Constables selected for admission to the Promotion Course for Constables at the Police Training College, that the selection shall be made in the month of January each year; that it will be limited to the number of seats allotted to the districts for the year with a twenty per cent reserve; and that the names in the list are to be entered in order of merit which is to be determined by the Departmental Promotion Committee. The rule does not provide that the list is to be carried forward for the next year. The list is to be prepared every year in the month of January on the basis of merit as aforesaid. Otherwise, if the list was to be carried forward, then the language of rule 13.7(1) would have been entirely different. In that event there would have been indication in the rule that the list would be carried to the next year; that the new eligible constables would be placed at the bottom of the list and that the person at the top would be sent first to the Police Training College. But it does not seem to be the intention of rule 13.7(1) and the proviso to rule 13.7(2) has only made further clarification. The proviso only says that if any Constable, whose name has been brought on the list, is not sent to the Police Training College in that year, he will be required to compete again with the new candidates, if he is still eligible for admission to the said list under the rules. Secondly, the proviso

does not in any way lead to the impression that the names of the petitioner-respondents were impliedly removed from list 'B' by way of punishment. Rule 13.8-A deals with the disqualification for admission to or retention in list A, B or C. Rule 13.8-A is reproduced as under:—

“13.8-A. (1) The infliction of any major punishment shall be a bar to admission to or retention in Lists A, B or C, provided that (a) for special reasons to be recorded by the Superintendent in each case, and subject to confirmation by the Deputy Inspector-General, this disqualification may be waived and (b) after six months' continuous good conduct in the case of censure or confinement to quarters or on expiry of the period of reduction in the case of reduction for a specified period, a constable may be re-admitted at the discretion of the Superintendent.

(2) Gazetted officers shall look out for and encourage their inspectors and sub-inspectors to bring to notice, constables who by reason of their general character and ability or of special acts, are suited for inclusion in lists A, B, or C, and shall, after satisfying themselves by necessary enquiries, make suitable recommendations to the Superintendent.”

(4) From a bare reading of this rule, it is clear and evident that it deals with different situation. Only those constables on whom major punishment is inflicted, would incur disqualification for admission or retention in the list, provided, of course, the disqualification can be waived by the Superintendent of Police in each case with the approval of the Deputy Inspector-General. This means that even during the year if any major punishment is inflicted on a constable, his name will not be entered in the list and if his name be already there on the list, then it cannot be retained. With utmost respect to the learned Single Judge, it cannot be held that the proviso to rule 13.7(2) is inconsistent with the provisions of rule 13.7(1) and 13.8-A, or violative of article 16 of the Constitution—rather it is a valid provision which cannot be struck down. Every constable is entitled to compete and be brought on the list 'B' if he

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fulfils the conditions as prescribed in rule 13.7(1) and (2). The proviso to rule 13.7(2) does not put hurdle in the way of any particular constable as all the constables are treated alike—whosoever passes the test and fulfils other conditions as laid down in the rules becomes eligible to be brought on the list, which is prepared in the month of January every year. This provision is made in the interest of efficiency in the Police Force so that the constables may remain alert and fit in every respect and do not in any way become lethargic once their names are brought on the list. The validity of rule 13.7 was also challenged earlier and it was held valid and *intra vires* the Constitution by this Court in *Ram Labhaya v. The State of Punjab* (1), and confirmed by the Letters Patent Bench in *State of Punjab v. Jai Kishan Khanna and others* (2).

(5) Now coming to the next contention of the learned counsel for the appellants regarding fixation of age limit in rule 13.7(2), I do not find any merit in it. I agree with the findings of the learned Singh Judge that rule 13.7(2) is unreasonable and *ultra vires* Article 16 of the Constitution. The age of superannuation of constables is 58 years in Punjab and it seems highly unreasonable and arbitrary that the constables after having attained 30 years of age, are debarred from consideration for further promotion for a period of 28 years. Hence this provision regarding age limit is arbitrary as no reason therefor has been indicated in the rules. Rather this fixation of age limit debarring the constables for further promotion, after they become 30 years of age, would lead to frustration and rusting and will result in inefficiency in the Police Force. In that event the constables who have crossed 30 years of age, would have no incentive to hard work and honesty because they know that their future career is blocked as they cannot be promoted even to the next rank of Head Constables, what to say of consideration for higher promotion. Thus rule 13.7(2) has no relation with the object to be achieved thereby and goes contrary to Article 16 of the Constitution. The only object to be achieved in Police Force is honesty, hard work and efficiency. I fail to understand how this object can be achieved by blocking the future career of the constables at the age of 30 years when they have still 28 years of service to go with no incentive. This bar or restriction on the age is unintelligible as

(1) 1972 S.L.R. 775.

(2) L.P.A. 437 of 1972 decided on 25th September, 1973.

no object will be achieved by framing these rules. The bar has been placed on a constable at such an early stage of his life that it has denied him the chance of any promotion during the last 28 years of his service career. This at any rate has no nexus with the object to be achieved thereby. The counsel for the appellants had for his contention relied on *A. Naronha v. State of Mysore* (3), which is clearly distinguishable. In that case the age of superannuation was 55 years and the rule prescribed that for promotion as Deputy Superintendent of Police, the Inspector concerned should not have completed the age of 52 years. That seems to be quite reasonable because if a person could not show any merit up to the age of 52 years, he cannot do so during the remaining three years. But in the case in hand, the prescription of the age of 30 years seems to be highly unjust. The maximum age limit of entry as constable is 24 years and if a person who joins as constable at the age of 24 years, is unsuccessful to get admission in list 'B' for another six years, he is condemned for future promotion for the rest of 28 years of his service career. It is really very harsh. Hence agreeing with the learned Single Judge, I hold that rule 13.7(2) so far as it prescribes age-limit at 30 years for the constables for entry into list 'B', is unreasonable and *ultra vires* Article 16 of the Constitution.

(6) The learned Judge while allowing the writ petition has directed the respondent-appellants to depute the petitioner-respondents for the Lower School Course at Police Training College, Phillaur, in the session starting in the year 1974 and the application of the respondent-appellants for staying the operation of order passed in the writ petition was declined by the Motion Bench while admitting this appeal. The petitioner-respondents must have by now completed the requisite course.

In view of the fact that Rule 13.7(2) has been struck down, this appeal is dismissed. In the circumstances of the case, there will be no order as to costs.

R. S. Narula, Chief Justice.—I agree.

(3) A.I.R. 1966 Mysore 267.

N.K.S.