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and the bills have finally been settled down between the parties. Respondent No. 1 did not claim any amount from the petitioner till 14th April, 1989 when by a strange method executed an assignment deed with respondent No. 2 who made use of this deed claiming that Rs. 16,31,156.91 was due to him from the petitioner and in this regard issued notices to the petitioner informing him that the matters have been referred to the arbitration of respondent No. 3 who in no way was the appointed Arbitrator in the matter by the parties.

(25) The Court below has dealt with all the aspects of the case and has found on evidence recorded on behalf of the parties that respondent No. 2 was in no way connected with the contract and therefore has rightly removed respondent No. 3 who was a non-entity in the matter as an arbitrator. The Court below has rightly set aside all the proceedings initiated by him after having declared these proceedings to be illegal and arbitrary against the provisions of the Act. He has rightly said that respondent No. 1 who was the party to the contract if at all was affected by the terms of the contracts could refer the dispute to the sole arbitration of the Chairman of the petitioner as contained in Ex. P.3. In no way any illegality or impropriety has been committed by the Sub Judge, Chandigarh in passing the impugned order. Therefore, all the nine revision petitions fail and are dismissed.

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J.S.T.

Before G. S. Singhvi & M. L. Singhal, JJ.

BRIJ LAL H. C.—Petitioner.

versus

THE STATE OF HARYANA AND OTHERS,—Respondents.

C.W.P. No. 2704 of 96.

5th August, 1996.

*Constitution of India, 1950—Arts. 226/227 Punjab Police Rules, 1934—Rls. 13.5, 13.8 & 13.18—Ad hoc promotions—Promotions made on account of outstanding performance of sportsmen—Promotion purely on ad hoc and fortuitous basis—Petitioner did not fulfil basic criteria—Reverted—Reversion order does not suffer from any illegality—Petitioner not eligible for promotion.*

Analysis of the above quoted rules show that a Constable has two channels of promotion. He can be promoted as Selection Grade Constable on fulfilling the conditions specified in Rule 13.5. He can also be promoted as Head Constable under Rule 13.8. For promotion to the post of Selection Grade Constable marks are required to be awarded under Rule 13.5(2) provided the candidate meets the standard of physical fitness as laid down in Rule 12.16(1); he can read and write simple Urdu sentences and English numerals and his character roll does not contain any entry carrying moral stigma. Names of those Constables who satisfy the conditions enumerated in Rule 13.5 are included in List A which is required to be maintained by each Superintendent of Police and the maximum of number of names which could be included in this list is 10 per cent of establishment of the Grade in the District concerned. A constable who is appointed as Selection Grade Constable under Rule 13.6 remains on probation for a period of three years as per Rule 13.5(7) and he is liable to be reverted without any enquiry in case of failure to maintain an exemplary standard of conduct and efficiency.

(Para 7)

*Further held*, that for promotion to the post of Head Constable under Rule 13.8 a Constable must have passed Lower School Course. List 'C' containing names of eligible Constables is required to be maintained in each district and the same is to be utilised for making promotions to the posts of Head Constables. On promotion as Head Constable a person is required to be placed on probation for a period of two years. The competent authority can revert such probationer Head Constable if his work and conduct is not found satisfactory during the period of probation. Second part of Rule 13.8 carves out an exception from the main rule which makes passing of the Lower School Course a condition precedent for promotion to the post of Head Constable. Under this exception, the competent authority can promote a selection grade Constable to the rank of Head Constable even without passing Lower School Course. However, this power is not absolute and unbridled. Rather it is subject to the following conditions :—

- (i) such promotion can be given only to the Selection Grade Constables which necessarily means that the candidate has already satisfied the criteria enumerated in Rule 13.5
- (ii) he is otherwise considered suitable for such promotion .
- (iii) the Deputy Inspector General of Police of the Range concerned approves such promotion; and
- (iv) such promotion shall not exceed 10 per cent of the total vacancies.

(Para 8)

*Further held*, that the rule making authority has conferred power upon the competent authorities to make 10 per cent promotions from amongst those who have not passed Lower School Course realising that some Constables who may have been found fit for promotion as Selection Grade Constables but they may not have been able to clear the Lower School Course. Therefore, keeping in view their suitability determined on the basis of record, the competent authority can give promotion upto 10 per cent of the total vacancies. It is, therefore, logical to hold that no Constable, who has not got Selection Grade, can be promoted as Head Constable under Second part of Rule 13.8(2).

(Para 9)

*Further held*, that it is also established from the record of the case that neither the Superintendent of Police, Railways nor the Deputy Inspector General of Police, Railways and Operations had examined and considered the cases of other senior persons for promotion to the post of Head Constable before the order Annexure P.4 was issued. It is, therefore, reasonable to hold that the petitioner's promotion was not under Rule 13.8(2) and he was given fortuitous promotion ignoring the claims of senior persons and on the basis of such promotion the petitioner cannot claim any vested right to be continued as Head Constable nor can he claim confirmation only on the ground that he held the post of Head Constable for a period of over two years.

(Para 18)

H. S. Mann, Advocate, *for the Petitioner.*

Ritu Bahri, AAG, Haryana, *for the Respondent.*

#### JUDGMENT

*G. S. Singhvi, J.*

(1) This petition has been filed to quash the order Annexure P.1 by which representation of the petitioner has been rejected and he has been reverted back to the rank of Constable.

(2) The petitioner joined service as Constable in Haryana Police on 2nd January, 1981. He was promoted as Head Constable on *ad hoc* basis by order Annexure P.4 dated 5th July, 1989 issued by the Deputy Inspector General of Police, Railways and Operations, Haryana. In the year 1992 the petitioner filed CWP No. 4765 of 1992 challenging his reversion from the post of Head Constable to that of Constable. This petition was decided alongwith CWP No. 459 of

1993 filed by one Shri Balbir Singh who was reverted from the post of Assistant Sub Inspector of Police by Division Bench of this Court on 8th December, 1993. The Division Bench noted that there was provision in the Punjab Police Rules, applicable to the State of Haryana, for making *ad hoc* promotion a number of persons were given out of turn promotions. The Division Bench observed that Government should make appropriate provision in Punjab Police Rules for providing promotion to outstanding sportsmen or who have shown excellence in the discharge of their duties and out of turn promotion should be ordered by the Director General of Police only and the other authorities should only make recommendation to the Director General of Police. At the same time the writ petitions were directed to be treated as appeals/revisions/memorials on behalf of the petitioners and a direction was given to the Director General of Police to dispose of the same after examining the merit of each individual case. The Court also ordered stay of reversion of the petitioner till the final decision of the Director General of Police. Thereafter,—*vide* impugned order Annexure P.1 decision of his representation by the Director General of Police has been conveyed to the petitioner, and he has been reverted to the post of Constable.

(3) The petitioner has questioned the order of reversion on the ground of arbitrariness, *mala fides* and non-application of mind. His contention is that the Director General of Police has ignored the law laid down by the Supreme Court in *Rishal Singh and others v. State of Haryana* (1), as well as the order passed by a learned single Judge on September 20, 1994 in CWP No. 11586 of 1993, *Hardev Singh v. State of Haryana and others* and, therefore, the impugned order should be quashed. It has also been pleaded that the petitioner was given promotion on the basis of his outstanding performance in the field of sports and there can be no justification to revert the petitioner after a period of over six years of his working as Head Constable. The respondents have justified the impugned reversion by pointing out that the promotion accorded to the petitioner was purely *ad hoc* and fortuitous and no right came to vest in the petitioner on the basis of such an order. Respondents have admitted that the petitioner has done well in the field of sports but according to them his achievements are confined in the Range Sports. Respondents have further stated that there is no provision for *ad hoc* promotion in the Police Rules and as the petitioner's promotion was purely fortuitous,

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(1) J.T. 1994 (2) S.C. 157.

no illegality was committed by the respondents in reverting him to the post of Constable after taking into consideration his service record and claim of senior persons.

(4) Learned counsel for the petitioner argued that in view of the absence of any provision in the Punjab Police Rules for *ad hoc* promotion to the post of Head Constable, petitioner's promotion as Head Constable ordered by the Deputy Inspector General of Police on 5th July, 1989 should be treated as a substantive promotion and the petitioner should be deemed to be a confirmed Head Constable on expiry of two years probation. Learned counsel argued that even though the order of promotion Annexure P.4 does not refer to Rule 13.8(2) of the Rules, in view of the decision of the Supreme Court in *Rishal Singh's case* (supra) the petitioner's promotion must be treated as one made against the sports quota. Learned counsel invited Court's attention to Annexure P.5 and Annexure P.6 which were placed on record on 3rd July, 1996 alongwith misc. application and submitted that as per the instructions issued by the Director General of Police 2 per cent posts are to be reserved for promotion for outstanding sportsmen/women. According to the learned counsel these instructions will be deemed to have been issued under Section 7 of the Police Act, 1861. Shri Mann also argued that in view of the decision of the apex Court and of this Court there can be no reason or justification not to give similar benefit to the petitioner. Learned Assistant Advocate General produced the record of the petitioner alongwith his service file and a seniority list of Constables of the District GRP as prepared by the Superintendent of Police, Railways, Haryana, Ambala Cantt and pointed out that the petitioner's name appears at Sr. No. 249 and he is not even an upgraded Constable. She pointed out that atleast 30 persons senior to the petitioner were still awaiting promotion to the post of Head Constable when he was given *ad hoc* and fortuitous promotion on 5th July, 1989. This, according to the learned Assistant Advocate General, was done without considering the case of any other person. She argued that on the basis of a purely fortuitous promotion accorded to the petitioner he did not acquire any right to hold the post of Head Constable, particularly when he has not passed the lower school course on the basis of which the petitioner could become entitled to be considered for promotion. Learned Assistant Advocate General also placed before us a photostat copy of the letter No. 9632 T-2 dated 11th November, 1982 written by the Director General of Police, Haryana to the Deputy Inspector General, Haryana Armed Police-cum-CSO, Madhuban. Alongwith this letter a copy of

Haryana Police Sports Constitution was sent to the concerned officer. From the rules of Haryana Police Sports Constitution the learned AAG pointed out that only a Sportsman selected to represent National team in different games is entitled to be given special consideration for promotion and promotion course. She further made a statement that no other instructions have been issued by the Government making reservation against the posts of Head Constables for meritorious sports persons.

(5) Chapter 13 of the Punjab Police Rules, as they are applicable to the State of Haryana contains provisions for promotion. Rule 13.1 of the Rules lays down that promotion from one rank to another and from one grade to another in the same rank shall be made by selection tempered by seniority and efficiency as well as honesty shall be the main factors governing selection. It is also enjoined that special qualifications like training course or practical experience shall be carefully considered in each case. Rule 13.1(3) envisages maintaining of Lists A, B, C, D, E and F for the purpose of regulating promotions amongst enrolled police officers. Lists A, B, C, D are required to be maintainable in each district and these are to be used for making promotions to the selection grade of Constables and to the ranks of Head Constables and Assistant Sub Inspectors. List E is required to be maintained in the office of the Deputy Inspector General of Police and this list is to be used for making promotion to the rank of Sub Inspector. List F is required to be maintained in the office of the Inspector General and is to be used for making promotion to the rank of Inspector. Rule 13.2 provides for grant of increments and withholding thereof. Rule 13.3 specifies various authorities competent to make promotions. Rule 13.4 speaks of officiating promotions. In terms of Rule 13.4(1) Deputy Inspector General of Railways and the Assistant Inspector General, Government Railway Police are empowered to make officiating promotions to the rank of Inspector. Such promotions to the rank of Sub Inspector and Assistant Sub Inspector can be made by the Superintendent of Police and Assistant Superintendent of Police, Government Railway Police in terms of Rule 13.4(2). All officiating promotions of upper subordinates are required to be published in police gazette as per Rule 13.4(3). Rule 13.5 deals with promotion to the selection grade of Constables. It lays down the conditions for promotion to the selection grade of Constables. Rule 13.5(2) prescribes the marks under various headings on the basis of which, evaluation of merit determined on the basis of marks awarded to each candidate, promotions are to be made to the selection grade of Constables. Rule 13.6 postulates contemplation preparation of List A at the level

of Superintendent of Police for the purpose of promotion to the selection grade of Constables. Rule 13.7 refers to List B which is required to be maintained by Superintendent of Police. This list contained the names of Constables selected for admission to the promotion course of Constables at the Police Training College. Rule 13.8(1) requires that a list shall be maintained in the Card Index Form of Constables who have passed the lower school course and who are considered eligible for promotion to Head Constables. Rule 13.8(2) provides for promotion to the post of Head Constable in accordance with the principles laid down in Rule 13.1(1) and (2). Second part of this sub-rule empowers the Deputy Inspector General of Police to promote selection grade Constables as Head Constables upto a maximum of 10 per cent of vacancies from amongst those who have not passed lower school course but are otherwise considered suitable for the purpose of promotion. Rule 13.8-A lays down this qualifications for appointment to or pension in Lists A, B or C. Rules 13.9 and 13.10 deal with Lists D and E. These rules and other sub-section of Chapter 13 except Rules 13.18, 13.19 and 13.20 are not relevant to this case.

(6) Rule 13.18 specifies the period of probation. Rule 13.19 contains special provision for promotion of a Constable, who has received President's Police and Fair Service Medal to the rank of Head Constable. Rule 13.20 envisages constitution of Departmental Promotion Committees to ensure proper compliance of the rules. For the purpose of ready reference we deem it proper to reproduce Rules 13.1, 13.2, 13.5, 13.6, 13.7(1), 13.8, 13.18, 13.19 and 13.20 of these Rules for better appreciation of the rival contentions :—

“13.1. (1) Promotion from one rank to another, and from one grade to another in the same rank, shall be made by selection tampered 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 constable and head constable.

- (3) For the purposes of regulating promotion 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 Inspectors-General as prescribed in sub-rule 13.10(1) and will regulate promotion 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 authorized. No actual selection shall be made without careful examination of character rolls.”

“13.2. *Power to grant increments.*—Increments of pay to all upper and lower subordinates shall be granted, when due, by Superintendents, provided that an increment may be withheld as a formal punishment in accordance with the rules contained in Chapter XVI. The withholding of increments shall be entered in the order book in the case of constables and head constables and in the case of inspectors, sergeants, sub-inspectors and assistant sub-inspectors published in the Police Gazette. In the case of members of the clerical cadre, increments shall be granted or withheld, by a formal order in each case, by the head of the office concerned. When an efficiency bar is placed at any stage or stages in a time-scale, it shall be passed only on the authority of a specific order by an officer competent to



withhold an increment in the time-scale concerned. In the case of sergeants and sub-inspectors the sanction of the Inspector-General and Deputy Inspector-General, respectively, is required."

"13.5. Promotion to the selection grade of constables :

- (1) No constable shall be promoted to the selection grade of constables unless he is (a) physically up to the required standard (sub-rule 12.16 (1)), (b) can read and write simple Urdu sentences and English numerals and (c) has a character roll clear of any entry carrying a moral stigma. Condition (a) can be relaxed by Superintendents of Police for good reasons to be recorded and conditions (b) and (c) can be relaxed by Deputy Inspector-General and the Assistant Inspector-General, Government Railway Police.
- (2) Men who possess the essential qualifications prescribed in sub-rule (1) shall be promoted as vacancies occur according to their order of marking on the following system :—
  - (a) Education—

F.A. or higher	..5 marks
Matriculation	..3 marks
Non-matriculation but above primary	..2 marks
  - (b) Courses passed—

(i) Lower School	..5 marks
(ii) Drill at Police Training School	..3 marks
(iii) Traffic (by an approved standard)	..2 marks
(iv) Finger Print	..2 marks
(v) 1st or 2nd in recruits' examination	..1 mark
(vi) St. John's Ambulance 1st Aid Course	..1 mark
(vii) Armourer's Course	..2 marks
  - (c) Professional ability—  
Upto a maximum of 12 marks.
  - (d) Character—  
Upto a maximum of 10 marks.
- (3) Full marks under (c) and (d) in sub-rule (2) shall not be given to a constable with less than ten years' service.

Marking under (c) shall be estimated by commendation certificates and other proofs of special ability in detective work, disguising, intelligence duty and the like.

Illustration—A, who has passed the First Arts Examination, is 1st in his recruits course, has passed traffic and finger print courses, has three years' service and has learnt the work of assistant police station clerk, might have 16 marks. B, a semi-illiterate constable of 24 years' service with 18 commendation certificates, a clear roll, and establish reliability in shadowing work, might have 22 marks gained under (c) and (d) only.

- (4) Notwithstanding the marking system described in sub-rule (2), men posted to onerous and responsible duty, such as instructors, permanent traffic staff, clerical appointments at police stations a headquarters, secret service and central investigating agency duty, may be given temporary promotion to the selection grade. Men promoted solely on these grounds shall be reverted to the time-scale at any time if they fail to give satisfaction on the duty for which they have been promoted or are removed from such duty for a period exceeding three months.
- (5) Constables of and above the Matriculation standard of education and having exceptional family claims may be promoted to the selection grade immediately on passing their recruits course with credit, notwithstanding the marking system described in sub-rule (2). Direct appointments to this grade are made in accordance with rule 12.10-A.
- (6) A sheet in Form 13.5(6) shall be attached to the character roll of every constable for maintaining the marking system prescribed in this rule.
- (7) Promotion to the selection grade shall be on probation for three years and constables so promoted may be reverted without formal departmental proceedings during or on the expiry of three years of their such promotion if they fail to maintain an exemplary standard of conduct and efficiency. Such reversions shall be freely made.

- (8) Removal from the selection grade after once being confirmed in it involves formal proceedings. In the case of a selection grade constable who, on being sentenced judicially to a punishment of fine or simply imprisonment, or both, or to rigorous imprisonment not exceeding one month, is not dismissed under Police Rule 16.2(2), the normal minimum departmental punishment shall be reduction to the time-scale. Similarly, in the case of a selection grade constable found guilty of inefficiency, whether in general or in respect of the special qualifications for which promotion has been given, the normal minimum punishment shall be reduction to the time-scale."

"13.6 List A. *Promotion to the selection grade of constables.* List A (in Form 13.6) shall be maintained by each Superintendent of Police, under his own personal supervision, of constables eligible under rule 13.5 for promotion to the selection grade of constables. The number of names in the list shall not exceed 10 per cent of the establishment of the grade in the district."

"13.7 (1) Selection grade constables considered suitable as candidates for the Lower School course at the Police Training School."

"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-rule 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 comparing 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.”

“13.18. All Police Officers promoted in the rank shall be on probation for two years, provided that the appointing authority may, by a special order in each case, permit periods of officiating service to count towards the period of probation. On the conclusion of the probationary period, the competent authority may either confirm the probationer or revert him or, if it so thinks fit, extend the period of probation by one year in the aggregate and on the conclusion, of the extended period of probation, pass such orders as it could have passed on the conclusion of the original period of probation. While on probation, officers may be reverted or their period of probation may be extended without departmental proceedings. Such reversion shall not be considered reduction in rank for the purposes of rule 16.4. This rule shall not apply to Constables and Sub-Inspectors, promoted to the selection grade, whose cases are governed by rules 13.5 and 13.14.”

“13.19. Special promotion to recipient of the President’s Police and Fire Services Medal and the Police Medal.

- (1) A constable receiving the award of the President’s Police and Fire Services Medal shall be promoted in the first substantive vacancy of head constable which occurs in the district in which he is serving subsequent to the award of the medal being gazetted.
- (2) A constable awarded the Police Medal shall, if not already in the selection grade, be promoted to that grade on probation as prescribed in rule 13.5(7).
- (3) In the said rules, after rule 13.19, the following rules shall be added, namely :—

In order to ensure that selection and promotion are made in accordance with the rules, Departmental Promotion Committees.”

(continue 3).

“13.20. Promotion Committees.

Promotion Committees shall be set up at various levels. Such Committees shall arrange to put all eligible persons through a written test and parade. Thereafter those persons who secure the qualifying marks will be interviewed by the said committee. The Committee will assess the merit of such persons on the basis of their service records as well as performance in the test. The syllabus for various tests, qualifying percentage of marks, the composition of Departmental Promotion Committee shall be prescribed by the Inspector-General of Police in the form of a Standing Order."

(7) Analysis of the above quoted rules show that a Constable has two channels of promotion. He can be promoted as Selection Grade Constable on fulfilling the conditions specified in Rule 13.5. He can also be promoted as Head Constable under Rule 13.8. For promotion to the post of Selection Grade Constable marks are required to be awarded under Rule 13.5(2) provided the candidate meets the standard of physical fitness as laid down in Rule 12.16(1); he can read and write simple Urdu sentences and English numerals and his character roll does not contain any entry carrying moral stigma. Names of those Constables who satisfy the conditions enumerated in Rule 13.5 are included in List A which is required to be maintained by each Superintendent of Police and the maximum of number of names which could be included in this list is 10 per cent of establishment of the Grade in the District concerned. A Constable who is appointed as Selection Grade Constable under Rule 13.6 remains on probation for a period of three years as per Rule 13.5(7) and he is liable to be reverted without any enquiry in case of failure to maintain an exemplary standard of conduct and efficiency.

(8) For promotion to the post of Head Constable under Rule 13.8 a Constable must have passed Lower School Course. List 'C' containing names of eligible Constables is required to be maintained in each district and the same is to be utilised for making promotions to the posts of Head Constables. On promotion as Head Constable a person is required to be placed on probation for a period of two years. The competent authority can revert such probationer Head Constable if his work and conduct is not found satisfactory during the period of probation. Second part of Rule 13.8 carves out an exception from the main rule which makes passing of the Lower School Course a condition precedent for promotion to the post of Head Constable. Under this exception, the competent authority can promote

a selection grade Constable to the rank of Head Constable even without passing Lower School Course. However, this power is not absolute and unbridled. Rather, it is subject to the following conditions :—

- (1) such promotion can be given only to the Selection Grade Constables which necessarily means that the candidate has already satisfied the criteria enumerated in Rule 13.5 ;
- (ii) he is otherwise considered suitable for such promotion ;
- (iii) the Deputy Inspector General of Police of the Range concerned approves such promotion ; and
- (iv) such promotion shall not exceed 10 per cent of the total vacancies.

(9) To us it appears that the rule making authority has conferred power upon the competent authorities to make 10 per cent promotions from amongst those who have not pass Lower School Course realising that some Constables who may have been found fit for promotion as Selection Grade Constables but they may not have been able to clear the Lower School Course. Therefore, keeping in view their suitability determined on the basis of record, the competent authority can give promotion upto 10 per cent of the total vacancies. It is, therefore, logical to hold that no Constable, who has not got Selection Grade, can be promoted as Head Constable under Second Part of Rule 13.8(2).

(10) Now it is to be seen whether the above mentioned conditions have been satisfied in the case of the petitioner. Record produced before the Court shows that the Superintendent of Police, Railways, Haryana, Ambala Cantt made recommendations for giving *ad hoc* promotion to the petitioner to the rank of Head Constable,— *vide* letter dated 17th June, 1989 addressed to the Deputy Inspector General of Police, Railways and Operations, Haryana. In that letter the Superintendent of Police made a reference to the performance of the petitioner in Inter- Range Police games. The Deputy Inspector General of Police issued Annexure P.4 dated 5th July, 1989 promoting the petitioner as Head Constable on *ad hoc* basis with a clear indication that it was a purely temporary and fortuitous promotion and on that basis the petitioner will not have any right to claim seniority etc. over his seniors and he was liable to be reverted without show cause notice etc,

(11) Neither the order, Annexure P.4, nor the averments made in the writ petition nor the record produced before us show that the petitioner had at any time been promoted as Selection Grade Constable after entry in the service. The list of Constables produced by the learned Assistant Advocate General contains the names of as many as 443 Constables. Name of the petitioner appears at Sr. No. 207. Upto serial No. 184 are the Constables who have been declared as upgraded Constables. Thus there is nothing before us in the form of pleadings or documents on the basis of which it can be inferred that the petitioner was promoted as Selection Grade Constable and, therefore, his promotion,—*vide* order dated 5th July, 1989 should be treated as one made under Rule 13.8(2). In our opinion, the petitioner, who had not been promoted as Selection Grade Constable on fulfilling the criteria under Rule 13.5, was not eligible even to be considered for promotion under Rule 13.8 against 10 per cent vacancies and in fact the Deputy Inspector General of Police, Railways and Operations did not order his promotion under Rule 13.8(2). As a logical consequence of this discussion, it must be held that *ad hoc* and fortuitous promotion given to the petitioner,—*vide* order dated 5th July, 1989 cannot be treated as a regular promotion under Rule 13.8(2) and the petitioner cannot be treated as a Head Constable on probation with effect from 5th July, 1989 and it is not possible to declare that the petitioner acquired the status of confirmed Head Constable on expiry of two years period.

(12) The issue needs to be examined from another angle. While recommending petitioner's case for promotion, the Superintendent of Police, Railways did not consider the case of any other Constable. He did not examine the cases of many Senior Constables for *ad hoc* promotion on the basis of good performance in the sports. On his part, the Deputy Inspector General of Police did not make any enquiry into the achievements of other senior persons. He simply approved the recommendations made by the Superintendent of Police and issued order dated 5th July, 1989. Thus it is evident that the petitioner was given *ad hoc* promotion without considering the claims of senior persons who may have similar achievements to their credit. In this background petitioner's promotion has rightly been described as *ad hoc* and fortuitous which could not confer any right upon him over senior persons. Thus plea of the petitioner that he should be treated as substantive Head Constable deserves to be rejected.

(13) We shall now deal with the argument of the learned counsel that the petitioner's promotion should be treated against the sports

quota and on that basis he should be treated as substantive Head Constable. Rule 13.8(2) does not make any reference to special quota for sports persons. Learned counsel wanted us to read Annexures P.5 and P.6 as executive instructions issued by the Government to fill in the gap in Rule 13.8(2). We are unable to agree with him that on the basis of these two documents the promotion of the petitioner can be treated as regular promotion against the sports quota. It is important to mention that Annexure P.5 is dated 18th August, 1992 and Annexure P.6 is dated 31st August, 1992. These two documents show that in the meeting held under the Chairmanship of the Director General of Police, Haryana, a decision was taken to provide for 2 per cent reservation in promotion for outstanding sportsmen/women. However, there is nothing in Annexures P.5 and P.6 to indicate that the decision taken in the meeting of police officers has been approved by the Administrative Department of the Government. It is, therefore, extremely doubtful whether such instructions can be treated as executive instructions issued by the Government and the same can be enforced while making promotions against the posts of Head Constables. That apart, even if we were to assume that Annexures P.5 and P.6 contain administrative decision of the Government, such decision could be made effective only in respect of promotions made after 18th August, 1992. Admittedly, the petitioner had been promoted more than three years prior to the issue of these instructions and, therefore, on the basis of Annexures P.5 and P.6, the petitioner's promotion cannot be treated to have been made against the 2 per cent posts reserved for sports persons.

(14) The decision of the Supreme Court in *Rishal Singh v. State of Haryana* (supra) as also the decision of the learned single Judge in *Hardev Singh v. State of Haryana* (supra) do not in any manner help the case of the petitioner. A careful reading of the judgment of the apex Court in *Rishal Singh's case* shows that the appellant had pleaded that his promotion was within 10 per cent quota prescribed under Rule 13.8(2) and his promotion was on regular basis even though it was described as temporary and on *ad hoc* basis. On behalf of the respondents, it was pleaded that the appellant was not below 35 years of age and, therefore, he was not entitled to reply on Rule 13.0(7) read with Rule 13.8(2). Their Lordships held that the appellant was considered in the sports quota and was found to be suitable in accordance with Rule 13.8(2) and, therefore, his promotion will have to be treated on regular basis and not on *ad hoc* basis. It appears to us that both the parties, before the Supreme Court, had proceeded on an assumption that the appellant, Rishal Singh, had already been given Selection Grade in terms of Rule 13.5 read with



Rule 13.6 and as a Selection Grade Constable his candidature was considered for promotion against 10 per cent quota. In *Hardev Singh's case*, V. K. Jhanji, J. quashed the order of reversion by relying on the judgment of the Supreme Court in *Rishal Singh's case*. Para 3 of that decision shows that in the written statement, the respondents had admitted that the petitioners were promoted as Head Constables under Rule 13.8 but at the same time it was pleaded that on the basis of *ad hoc* promotion the petitioners did not acquire the right to hold the higher post. V. K. Jhanji, J. accepted this plea of the respondents and upheld the claim of the petitioner on the basis of the judgment of the apex Court in *Rishal Singh's case* (supra). Similar view was taken by V. K. Jhanji, J. in *Jagat Singh v. State of Haryana* (2).

(15) To us it appears that neither before apex Court nor before Jhanji, J., the respondents had projected the case in correct perspective and had not brought to the notice of the apex Court and Jhanji, J. that the petitioners were ineligible to be promoted under Rule 13.8(2) because they had not been promoted as Selection Grade Constables under Rule 13.5.

(16) It is interesting to note that a similar issue arose before V. K. Jhanji, J. in CWP No. 592/93, *Nahar Singh v. State of Haryana*. By his order dated 6th November, 1995, Jhanji, J. rejected the writ petition and held that promotion of the petitioner cannot be treated to have been made against 10 per cent vacancies under Rule 13.8 and, therefore, the reversion of the petitioner who was merely an *ad hoc* Head Constable, did not suffer from any illegality. In his latest judgment, V. K. Jhanji, J. distinguished his earlier judgments in *Hardev Singh's case* (supra) and *Jagat Singh's case* (supra).

(17) In CWP No. 11747/95, *Satbir Singh v. State of Haryana and others*, decided on 2nd May, 1996 and CWP No. 18192/94, *H. C. Surinder Singh and others v. State of Haryana*, decided on 8th May, 1996 (both by a Division Bench) the decision of the Supreme Court in *Rishal Singh's case* (supra) and of the learned single Judge in *Hardev Singh's case* (supra) have been considered and distinguished.

(18) In the case of the petitioner, it has been proved from the record that the petitioner was never promoted as Selection Grade

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Constable under Rule 13.5 read with Rule 13.6 and he was not a Selection Grade Constable on 5th July, 1989, the date on which the Deputy Inspector General of Police issued order Annexure P.4 promoting him as Head Constable on *ad hoc* basis. It is also established from the record of the case that neither the Superintendent of Police, Railways nor the Deputy Inspector General of Police, Railways and Operations had examined and considered the cases of other senior persons for promotion to the post of Head Constable before the order Annexure P.4 was issued. It is, therefore, reasonable to hold that the petitioner's promotion was not under Rule 13.8(2) and he was given fortuitous promotion ignoring the claims of senior persons and on the basis of such promotion the petitioner cannot claim any vested right to be continued as Head Constable nor can he claim confirmation only on the ground that he held the post of Head Constable for a period of over two years.

(19) In view of the above discussion, we hold that the impugned order does not suffer from any illegality and the respondents cannot be charged with the allegations of having acted arbitrarily in reverting the petitioner to the post of Constable in order to make room for eligible senior persons. Consequently the writ petition is dismissed. Costs made easy.

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J.S.T.