

*Before Permod Kohli, J.*

**EHC VIRENDER SINGH,—Petitioner**

*versus*

**STATE OF HARYANA AND OTHERS,—Respondents**

**CWP No. 2914 of 2010 &  
other connected petitions**

11th August, 2010

*Constitution of India, 1950—Art. 226—Punjab Police Rules, 1934—RI. 13.7—Instructions dated 13th February, 2007 issued by State—Instructions prescribing minimum bench marks for selection to B-1 list under 35% quota —Rejection of claims for deputing to Lower School Course and for enlisting of eligible officers in List B-1 for promotion—Petitioners failing in 55% merit quota held to be entitled for consideration for being brought on List B-1 under 35% quota on principle of seniority-cum-merit—Constables who were less than 35 years of age as on day of their consideration, but not more than 40 years held to be entitled to be brought on List B-1 by deputing to Lower School Course—Inter se seniority of constables ordered to be determined on basis of their seniority in their respective districts in constabulary and not on basis of passing of Lower School Course except those who were ignored on account of pendency of any disciplinary proceedings or who suffered any other disqualification for deputation to Lower School Course.*

*Held, that:*

- (i) Such of the constables/petitioners who have failed in 55% merit quota are entitled to be considered for being brought on List B-1 under 35% quota on the principle of seniority-cum-merit, provided they have the requisite experience and are otherwise eligible under the rules ;
- (ii) such of the constables who were less than 35 years of age as on the day of their consideration, but not more than 40 years, they will be entitled to be brought on List B-1 by deputing them to Lower School Course ;

- (iii) the petitioners who acquired eligibility prior to the DGPs instructions dated 13th February, 2007 will be deputed for the course without considering the question of minimum bench marks as prescribed under the Government instructions and in their cases seniority and other eligibility criteria prescribed under the rules, will be enough for their deputation to the course:
- (iv) the petitioners who became eligible for deputation after the issuance of the instructions dated 13th February, 2007 and have achieved the minimum bench marks be deputed to the course notwithstanding their juniors have better bench marks :
- (v) *inter se* seniority of the constables will be determined on the basis of their seniority in their respective districts in the constabulary and not on the basis of passing of the Lower School Course in all such cases, who are ignored by the above directions. However, the *inter se* seniority of constables will not be governed by the above directions where senior was ignored on account of pendency of any disciplinary proceedings or who suffered any disqualification for deputation to Lower School Course :
- (vi) deputation of the petitioners shall be made on the basis of their seniority in their respective districts and against the available vacancies.

(Para 19)

S. K. Redhu, Vikram Singh, S.N. Yadav,

Dinesh Malik, Pritam Saini, Surender Lamba,

R. P. Singh, Advocates, *for the petitioners.*

R.S. Kundu, Addl. A.G., Haryana, *for the respondents.*

**PERMOD KOHLI, J.**

(1) On the basis of common and identical issues both on facts and law, all these petitions are being decided by this common order.

(2) The entire controversy relates to the interpretation of Rule 13.7 of the Punjab Police Rules, 1934, as applicable to the State of Haryana and amended, - *vide* Punjab Police (Haryana Amendment) Rules, 2001

(hereinafter referred to as "the Rules"). This rule relates to deputation for Lower School Course and for enlisting of the eligible officers in Ist B-1 for their promotion. The amended rule, subject matter of debate in the present writ petitions, is reproduced hereunder :-

- 1.3.7- Selection of candidates for admission to courses at the Police Training College---(1) Ist B (in Form 1.3.7) shall be maintained by each Superintendent of Police. It shall include the names of all constables selected for admission to the Lower School Course to be held at the Police Training College. Selection to the list shall be made in the month of January each year and shall be limited to the number of seats allotted to the district for the year. The number of seats in Lower School Course in a year shall be on the basis of existing vacancies and the vacancies likely to be created within one year in the respective unit. 55% of seats allotted to a unit in the Lower School Course shall be filled in on the basis of a competitive examination, 35% on the basis of seniority-cum-fitness and 10% on the basis of consistent outstanding performance in job/obtaining Gold or Silver Medal in All India Police Games/Duty Meet/National Games or exceptional display of bravery during the course of performance of official duty. Selection of persons against 55% seats in list/lower school, on the basis of merit shall be done by a Departmental Promotion Committee on the basis of :
1. Examination of services and
  2. A competitive test (hereinafter called "B-1 test") in :
    - (a) Prade ;
    - (b) Law and practical police work; and
  3. An Interview;
- 2.(i) All constables irrespective of their educational qualifications shall be eligible to appear for B-1 test, if they are under the age of 35 years and have completed 5 years of service on 1st day of January of the year in which selection is made. However, if a

constable belonging to reserved category who is recruited after attaining the age of 27 years as per Government instructions/orders then he shall be allowed to appear for minimum three consecutive chances after completion of five years of services even if he has crossed the age of 35 years up to a minimum of 10 years.

- (ii) All Constables irrespective of their educational qualifications shall be eligible to be brought on list B-I, seniority cum merit basis if they are under the age of 40 years and have completed 5 years of service on the first day of January of the year in which selection is made.”
- (3) The State of Haryana issued instructions dated 13th February 2007 prescribing the minimum merit to fulfill the criteria for seniority-cum-fitness relying upon the observations of this Court in the case of **Naresh Kumar versus State of Haryana and others** C.W.P. 7952 of 2004 decided on 5th November, 2004. Director General of Police, Haryana, issued these instructions prescribing minimum bench marks for selection to B-I list under 35% quota. The relevant extract of the instructions dated 13th February, 2007 (Annexure P-7) in CWP No. 6427 of 2009, is reproduced hereunder:—

“3. In view of the Hon’ble High Court judgment in Naresh Kumar’s case (*supra*), it has been decided to fix the bench marks for fitness under 35% seniority-cum-fitness quota. The assessment of service record should be made on the basis of education, training courses passed, commendation certificates and length of service etc. as given in PPR 13.7. All the candidates who obtain a minimum 31 marks or more would be deemed to be fit for selection of B1 seats against 35% quota on the basis of *inter se* seniority of the candidates and for all such candidates *inter se* seniority would be the sole criteria for deputing on their turn under 35% quota in view of the explicit order of High Court. Please take further necessary action accordingly.”

(4) The validity of these instructions has been upheld by this Court in **Hawa Singh versus State of Haryana and others** (CWP No. 1194 of 2005 ) decided on 14th May, 2008.

(5) There are three sets of writ petitions under consideration. The same are broadly categorised in the following manner :-

(a) the eligibility of the candidates who appeared in 55% merit promotion quota under Rule 13.7 (2) (i) to be considered for promotion under 35% on seniority -cum-merit basis under rule 13.7(2)(ii) even if they have failed under 55% quota :

(b) consideration of the candidates with less than 35 years of age as on 1st day of January of the year in which selection is made in 35% quota of seniority-cum-merit ;

(c) *inter se* seniority of the candidates on the basis of bench marks in terms of DGP's instructions dated 13th February, 2007.

(6) From the reading of Rule 13.7(1) it emerges as follows :

(a) that 55% of the seats allotted to a unit in the Lower School Course are meant to be filled in on the basis of competitive examination ;

(b) 35% of the seats on the basis of seniority-cum-fitness ; and

(c) 10% seats on the basis of consistent outstanding performance in jobs/sports etc.

(7) Selection against 55% quota is to be made by the Departmental Promotional Committee. All the constables irrespective of their educational qualification who are less than 35 years of age and have completed 5 years of service on 1st day of January of the year of selection are eligible to appear for B-1 test under merit seats of 55% quota.

(8) Similarly, all the constables irrespective of their educational qualification having completed five years of service and in the age of 40 years on the 1st day of January of the year of selection, are eligible to be brought on list B-1 on the basis of seniority-cum-merit against 35% quota.

(9) Sports persons under 10% quota are to be separately considered subject to eligibility prescribed in the above two categories.

(10) The controversy relating to the eligibility of the candidates who failed to secure the requisite merit in the competitive examination under 55% quota, to be again considered under 35% seniority-cum-merit quota, came to be considered by a Division Bench of this Court in Naresh Kumar's case (*supra*). This Division Bench judgment was challenged before the Hon'ble Supreme Court in Special Leave to Appeal (Civil) No. 10409 of 2005, which has been dismissed in limine on 10th May, 2005.

(11) A similar issue came up for consideration before this Court in the case of **Hawa Singh versus State of Haryana and others**, (CWP No. 1194 of 2005) decided on 14th May, 2008. After admission of the writ petition by the Hon'ble Division Bench, the matter was considered by a learned Single Judge of this Court for final disposal on 29th November, 2006. The learned Single Judge of this Court was of the opinion that certain provisions of Rule 13.7 of the rules, were not brought to the notice of the Division Bench and on that basis a reference was made for consideration of the writ petition and other connected matters by a Division Bench of this Court. The aforesaid writ petition came to be heard by a Division Bench of this Court. The Hon'ble Division Bench, ---*vide* its judgment dated 14th May, 2008, affirmed the ratio in Naresh Kumar's case (*supra*) with the following observations :--

"In view of the facts mentioned above, these writ petitions are allowed in the same terms as in Naresh Kumar's case (*supra*). The respondents are directed to depute the petitioner (s) to the first Lower School Course, which will commence after the pronouncement of judgment in this case. However, The petitioner shall be deemed to have qualified in the Lower School Course from the date when other constables have qualified, whose names were approved to undergo Lower School Course, --- *vide* select list Annexure P-1. It is made clear that if by getting retrospective date of passing the Lower School Course the petitioner became eligible for promotion, then he will get only deemed benefits without getting any actual financial benefits, in view of principle of "no work no pay", as laid down by their

Lordships of the Hon'ble Supreme Court in **Union of India and another versus Tarsem Lal and others** (2006) 10 Supreme Court Cases, 145.”

(12) Hon'ble the Division Bench further considered the validity of the instructions dated 13th February, 2007 and upheld its validity with the following observations :-

“So far as CWP No. 3609 of 2007 is concerned, in that writ petition, select list prepared to undergo Lower School Course, on the basis of instructions dated 13th February, 2007, as referred to above, has been challenged. As has been held earlier, above said instructions are perfectly justified and are in consonance with the directions issued by this Court in Naresh Kumar's case (supra).”

(13) The claims of some of the writ petitioners for deputing to Lower School Course have been rejected on the ground that they having failed in 55% merit quota are not entitled to be considered for being brought on List B-1 in 35% quota. The claims of some of the writ petitioners have been rejected for being brought in List B-1 under 35% quota on the ground that they were of less than 35 years of age as on 1st day of January of the year of selection. In some cases, the claims have been rejected for non achieving the minimum 31 bench marks in terms of the DGPs instructions dated 13th February, 2007. In Naresh Kumar's case (supra), the Hon'ble Division Bench ruled the eligibility of the constables for their consideration both in 55% and 35% quota. This judgment has attained finality. The SLP has also been dismissed by the Hon'ble Supreme Court. The ratio of the said judgment has been reiterated in Hawa Singh's cases (supra) as also in **Constable Dharmbir versus State of Haryana and others (1)** wherein the following observations have been made :-

“13. So there are three distinct categories with their own qualifications and requirements for eligibility for consideration. There is no bar to consideration of a constable in any category if he fulfills the eligibility criteria i.e. if he is eligible in all three categories he has a statutory right to consideration in all three categories. The

Rules do not categorize or require some minimum age for eligibility under any of the categories. What it specifies is the upper age limit for consideration under a particular category.”

(14) Despite these instructions, certain issues referred to hereinabove, have again cropped up. The controversy regarding the eligibility of candidates under 35 years of age for being brought on List B-1 for 35% quota, again came up for consideration by another Division Bench of this Court in Dharmbir’s case (*supra*) and **Balraj Singh and others versus State of Haryana and others (2)**. In Dharmbir’s case (*supra*), a Division Bench of this Court held as under :—

“17. .... A conjoint reading of both the sub-rules would show that only the upper age limit has been prescribed under the rules and no minimum age has been prescribed either under sub-rule 2(1) of sub-rule 2(ii), which means that if a constable fulfills the requirement of the upper age and the other qualifications prescribed under the respective category as per sub-rule 2, there is no bar to his consideration under each of them. Meaning thereby, a constable, who is eligible in one category under Rule 13.7 (2) (i) can also be considered in the other category under Rule 13.7 (2) (ii) of the Punjab Police Rules, as there is no bifurcation between the rules as far as the eligibility is concerned with regard to the minimum age as none is prescribed.

18. The minimum age if prescribed by way of executive instructions would go against the interest of the Constables, who are otherwise eligible under the statutory Rules. Rule 13.7 (2) (ii) confers a right which a Constable attains on the basis of his seniority in the service. As and when his turn comes based on the seniority a right to consideration devolves on him. This right on the basis of his seniority cannot be deprived on the basis of executive instructions. This would be in contravention to the statutory rules and, therefore, not sustainable.



22. What emerges from the above discussions is that a constable who has completed 5 years of service on the 1st day of January of the year in which the selection is made, is under the age of 35 years and is eligible for consideration and selection for including his name in List B-1 of selected constables for admission to Lower School Course under the 55% quota on the basis of merit as per Rule 13.7(2)(i) of the Punjab Police Rules, 1934 and having participated in the competitive test (B-1) and failed or was unable to get enlistment due to lower merit can also claim consideration and selection under the 35% quota on the basis of seniority-cum-merit as per Rule 13.7(2)(ii), if he is eligible under both the categories.”

(15) As noticed above, the constables who have attained minimum 31 bench marks under 35% quota have been ignored and their juniors were deputed to the course on the ground that they are more meritorious having better bench marks. This issue is, in fact, covered under Naresh Kumar's case (*supra*) and came to be clarified in **Balraj Singh's case** (*supra*) wherein it has been held that where-ever a junior has been deputed for Lower School Course ignoring the claim of the seniors merely on the basis of the higher bench marks, the senior be deputed for the course and he will be deemed to have passed the course from the date his junior has qualified. In such situation, senior will retain his seniority.

(16) There is another aspect of the matter. The DGPs instructions dated 13th February, 2007 are only prospective in nature. Prior to these instructions, no bench marks were prescribed under the statutory rules and, thus, all those constables who acquired eligibility prior to issuance of these instructions have been denied the deputation to the Lower School Course for non achieving the minimum bench marks. It is settled law that government instructions cannot overrule the statutory rules. Thus, these instructions cannot be pressed into service to deprive the constables of their right for deputation for not having achieved the minimum bench marks as prescribed under these instructions issued later. Thus, such of the constables who became eligible prior to issuance of these instructions and ignored for not achieving the minimum bench marks are to be deputed for Lower School Course and on successful completion of the course, they are to be treated senior than their juniors who were earlier deputed to the Lower School

Course. In other words, they will retain their seniority for being brought on List B-1 notwithstanding that they were deputed for the course later than their juniors or they did not achieve minimum bench marks.

(17) Similarly, such of the constables who are ignored on account of achieving less than the prescribed bench marks, then their juniors are also entitled to be deputed to the course and on completion of the same, will retain their seniority over their juniors.

(18) In some of the writ petitions, the constables have already completed the Lower School Course, but they have been denied the seniority over their juniors on the ground that the juniors were either having better bench marks or deputed for the course prior in time than the writ petitioners.

(19) In view of the above observations, these writ petitioners shall be deemed to be senior to their juniors deputed earlier on account of better bench marks or on any other ground of eligibility. To sum up, these petitions are disposed of with the following directions :—

- (i) Such of the constables/petitioners who have failed in 55% merit quota are entitled to be considered for being brought on List B-1 under 35% quota on the principle of seniority-cum-merit, provided they have the requisite experience and are otherwise eligible under the rules;
- (ii) such of the constables who were less than 35 years of age as on the day of their consideration, but not more than 40 years, they will be entitled to be brought on List B-1 by deputing them to Lower School Course;
- (iii) the petitioners who acquired eligibility prior to the DGPs instructions dated 13th February, 2007 will be deputed for the course without considering the question of minimum bench marks as prescribed under the government instructions and in their cases seniority and other eligibility criteria prescribed under the rules, will be enough for their deputation to the course;
- (iv) the petitioners who became eligible for deputation after the issuance of the instructions dated 13th February, 2007 and have achieved the minimum bench marks be deputed to the course notwithstanding their juniors have better bench marks;

- (v) *inter se* seniority of the constables will be determined on the basis of their seniority in their respective district in the constabulary and not on the basis of passing of the Lower School Course in all such cases, who are ignored by the above directions. However, the *inter se* seniority of constables will not be governed by the above directions where senior was ignored on account of pendency of any disciplinary proceedings or who suffered any other disqualification for deputation of Lower School Course;
- (iv) deputation of the petitioners shall be made on the basis of their seniority in their respective districts and against the available vacancies.

(20) Let the claim of the petitioners be considered in the light of the above directions and their deputation where ever required be made in accordance with the above directions.

(21) A copy of this order be placed on the record of each connected file.

---