

the proposition under consideration and these decisions are of no help whatever to the respondent-State.

(15) On facts, it may be noticed that the record is absolutely bereft in regard to the substances that go in the making of Patasas. No one has said that soap-stone is injurious to health or is a substance which is not edible in any form.

(16) In view of the above, we unhesitatingly held that the petitioner is not guilty of the offence under section 16(1) (a) (i) of the Act. We, therefore, allow his revision petition and quash his conviction and sentence.

S. S. Sandhawalia, C. J.—I agree.

N. K. S.

Before S. S. Sandhawalia C.J. and M. R. Sharma, J.

STATE OF PUNJAB and others,—Appellants.

versus

TIKKA SINGH CONSTABLE and others,—Respondents.

Letters Patent Appeal No. 717 of 1980.

April 21, 1981.

Punjab Police Rules 1934—Rules 13.1, 13.7, 13.8, 13.20 and 13.21—Lower School Course—Police Constables who are outstanding sportsmen—Whether eligible for such course without passing the examination as contemplated by Rule 13.20—Power to relax the rules—No specific order relaxing the rule—Such power—Whether could be deemed to have been exercised impliedly.

Held, that a combined reading of the Punjab Police Rules 1934 shows that promotion from one rank to another has to be made by selection tempered with seniority and 5 per cent of the promotions is to be made from amongst the members of the police force who achieve outstanding distinction in the field of sports at the all India level or at the international level provided they are otherwise eligible for promotion. In other words, condition regarding seniority

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shall not necessarily stand in the way of the members of the police force who achieve outstanding distinction in the field of sports. The important words in proviso to sub-rule (i) of rule 13.1 are "if they are otherwise eligible for promotion." Rule 13.7 lays down the procedure for the preparation of list B of constables eligible to receive training at the police training college. Rule 13.20 envisages the setting up of Departmental Promotion Committees which shall arrange to put all eligible persons through a written test and parade before selecting them. The Constables whose names are borne on List 'B' are then sent to the Lower School Course for receiving training. The procedure for making actual promotion is mentioned in rule 13.8(2) of the Rules which lays down that the date on which the name of a Foot Constable was brought on List 'C' was not material and the promotions were to be made ordinarily on the basis of merit in which the examinations have been passed. Proviso to rule 13.1(1) really becomes effective at this stage and an outstanding sportsman even though he is junior to his colleagues and has lower merit in the examination passed by him shall have to be promoted against the five per cent posts reserved for his category. In short, the intention of the rule making authority appears to be that every police constable who is to be promoted to the higher rank should have the necessary qualifications. As far as the sportsmen are concerned, even though they are junior, they would be promoted against five per cent vacancies reserved for their category provided of course they possess the basic qualifications. If the intention of the rule making authority was to grant outstanding sportsmen exemption from passing the test as envisaged in rule 13.20, it would have so provided by incorporating a suitable amendment in this rule as well as in rule 13.7. Thus, on the plain interpretation of the rules it is held that the Police Constables who are outstanding sportsmen are not eligible for being sent for the lower-school course without passing the examination as contemplated by rule 13.20.

(Paras 5 and 6).

Held, that whenever a competent authority wishes to relax the provisions of a particular rule in favour of a class of persons, it has to record an express order in that behalf. The rules once promulgated are meant to be obeyed meticulously and they cannot be bypassed on the ground that they stand impliedly relaxed. (Para 9).

Letters Patent Appeal under Clause X of Letters Patent against the Judgment of learned Single Judge Hon'ble Mr. Justice S. P. Goyal, dated 22nd July, 1980.

Mohinderjit Singh Sethi, Additional A.G., Punjab, for the Appellants.

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| Gurnam Singh, Advocate, for 1 & 2, | } | for the Respondents. |
| D. N. Rampal, Advocate, for No. 4. | } | |

JUDGMENT

M. R. Sharma, J.

(1) 'Whether the police Constables, who are outstanding sportsmen, are eligible for being sent for the Lower School Course without passing the examination as contemplated by rule 13.20 of the Punjab Police Rules, 1934, or not' is the short question involved in this appeal under Clause X of the Letters Patent.

(2) Respondents Nos. 3 and 4 were selected for this Course on the basis that they were outstanding sportsmen, even though they had not been selected by the Departmental Promotion Committee on the basis of a written test. In support of their action, the appellants relied upon Memorandum No. 8385-8401/TT-3, dated August 1, 1979, issued by the Inspector-General of Police, Punjab. The material portion of this circular reads as under :—

Reference this office Memo No. 822-51/TT-3, dated 24th January, 1978 containing instructions for giving reservation of five per cent seats to outstanding sportsmen in the Promotion Courses.

2. With a view to rationalise the procedure for giving incentive to the sportsmen with regard to the reservation of five per cent seats for them in Lower, Intermediate and Upper School Courses, the following guidelines are hereby given for selection/deputing them to undergo the promotion courses at PTC, Phillaur :—

- (i) As laid down in rule 13.1 of Punjab Police Rules, Vol. II, sportsmen who achieve distinctions at the national and international level are eligible to derive this benefit. As such, while selecting sportsmen for promotion courses, this provision of rules should be kept in view.
- (ii) The selection of sportsmen for promotion courses should be made at the PAP/Range/GRP level by the respective DIG/AIG/GRP, Punjab, as the case may be, who shall make this selection from within their respective units.

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- (iii) Five per cent seats for sportsmen should be utilized to such units, i.e. separately by DIG/PAP Range, DIGs and AIG/GRP, Punjab, and not over and above the total number of seats allotted to a unit. For instance, if 100 seats have been allotted to a Range for Lower School Courses for two session for a year, the DIG concerned shall select only five eligible sportsmen, who may have achieved distinctions at national or international level and the remaining 95 seats will be utilized by deputing other 95 B-1 qualified Constables, which number shall also include the seats of reservation quota meant for members of scheduled castes/backward classes. This is necessary to regulate the correct number of trainees to be deputed for training in Promotion Courses at PTC, Phillaur because the allotment of seats is done keeping in view the number of qualified men awaiting promotion, incidence of vacancies as also the capacity of seats at PTC, Phillaur.
- (iv) In case, however, eligible sportsmen, equivalent to the number of seats falling within the reservation quota are not available with any particular Range or GRP such number of seats shall be surrendered by the Range DIGs/AIG/GRP, Punjab, as the case may be to the DIG/PAP, Central Sports Officer, who shall consider the further allotment of these surrendered seats to other units, where requisite number of eligible sportsmen may be available."

(3) Constable Tikka Singh, respondent No. 1 challenged the action of the appellants by filing C.W. No. 1279 of 1980, which was allowed by a learned Single Judge of this Court on July 22, 1980. The learned Judge held that these executive instructions could not bypass the mandatory provisions of rule 13.7 and 13.20 of the Punjab Police Rules, 1934 (hereinafter called the Rules). Feeling aggrieved against the judgment rendered by the learned Single Judge in the aforementioned writ petition, the State of Punjab has come up in appeal before us.

(4) At the very outset, it becomes necessary to notice the relevant rules :—

“Rule 13.1 (1) Promotion from one rank to another.— Promotion from one rank to another, and from one grade to another in the same rank, shall, be made by selection tempered 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 :

Provided that five per cent, of such promotions may be made from amongst the members of the Police Force, who achieve outstanding distinction in sports field at All-India level or International Level, if they are otherwise eligible for promotion but for seniority.

(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 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 constables and head constable.

(3) For the purposes of regulating promotions 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 Inspector-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.

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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 authorised. No actual selection shall be made without careful examination of character rolls.

Rule 13.7: List B, Selection for admission to promotion course for Constables at the Police Training College.—(1) List 'B' 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, or
- (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 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 readmitted 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 to be communicated to the Superintendent of Police concerned.

Rule 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 scrutinised 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-rules 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.

Rule 13.20: Departmental Promotion Committee.—In order to ensure that selection and promotion are made in accordance with the rules, Departmental 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

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the basis of their service records as well as performance in the test. The syllabi for various tests, qualifying percentage of marks, the composition of Departmental Promotion Committees shall be prescribed by the Inspector-General of Police in the form of a Standing Order.

Rule 13.21 : Power of Relaxation.—Where the Inspector-General of Police is of 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.”

(5) A combined reading of these rules shows that promotion from one rank to another has to be made by selection tempered with seniority and 5 per cent of the promotions might be made from amongst the members of the police force who achieve outstanding distinction in the field of sports at the all-India level or at the international level provided they are otherwise eligible for promotion. In other words, condition regarding seniority shall not necessarily stand in the way of the members of the police force who achieve outstanding distinction in the field of sports. The important words in proviso to sub-rule (1) of rule 13.1 are, “if they are otherwise eligible for promotion.” Rule 13.7 lays down the procedure for the preparation of List B of Constables eligible to receive training at the Police Training College. Rule 13.20 envisages the setting up of Departmental Promotion Committees which shall arrange to put all eligible persons through a written test and parade before selecting them. The Constables whose names are borne on List ‘B’ are then sent to the Lower School Course for receiving training. The procedure for making actual promotions is mentioned in rule 13.8(2) of the Rules which lays down that the date on which the name of a Foot Constable was brought on List ‘C’ was not material and the promotions were to be made ordinarily on the basis of merit in which the examinations have been passed. The proviso to rule 13.1(1) really becomes effective at this stage and an outstanding sportsman even though he is junior to his colleagues and has lower merit in the examination passed by him shall have to be promoted against the five per cent posts reserved for his category.

(6) In short, the intention of the rule-making authority appears to be that every police constable who is to be promoted

to the higher rank should have the necessary qualifications. As far as the sportsmen are concerned even though they are junior, they would be promoted against the five per cent vacancies reserved for their category provided of course they possess the basic qualification. If the intention of the rule-making authority was to grant outstanding sportsmen exemption from passing the test as envisaged in rule 13.20, it would have so provided by incorporating a suitable amendment in this rule as well as in rule 13.7. Thus, on the plain interpretation of the rules the view taken by the learned Single Judge appears to be unexceptionable.

(7) Mr. Sethi, the learned Additional Advocate-General, Punjab, submitted that the qualification for promotion to the post of Head Constable cannot be acquired by a Constable in any other way but by admission to the Police Training College and it was open to the Inspector-General of Police to lay down by departmental instructions that a preferential treatment be shown to the outstanding sportsmen for being sent to this Course even though they had not acquired the requisite seniority and training. In support of this contention, the learned Additional Advocate-General relied upon *Sardul Singh, Head Constable v. Inspector General of Police, Punjab, and others* (1). In that case, the petitioner had passed the F.A. Examination before joining the Punjab Police Force as Foot Constable. He passed the Police Recruits Training Course in 1957 standing first in his class and was awarded a baton of honour and Class II Certificate with a cash reward of Rs. 20. He was deputed to undergo Lower School Course at the Police Training School, Phillaur, which he successfully completed by standing first in his class. His name was brought on list 'C' and he was promoted as officiating Head Constable. His work as Moharrir Head Constable was also commended and the then Deputy Inspector-General of Police recommended his name to be brought on List 'D'. Thereafter, he was promoted as Head Constable on probation and his name was recommended by the Superintendent of Police for the Intermediate School Course. The Deputy Inspector-General of Police, however, did not select him for that Course although 36 officiating Head Constables were selected from the same Range many of whom were junior to the petitioner. It was in this background that the Full Bench emphasised that it was the right of a Head Constable to be

(1) 1970 S.L.R. 505.

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considered for being sent to the Intermediate School Course on the basis of his seniority and merit. Some of the observations made by the Full Bench however, run counter to the submission made by the learned counsel. After quoting rule 13.7 of the Police Rules, the Full Bench observed as under :—

“In this rule, mention is made of selection grade Constables but we are told that the category of selection grade Constables have been abolished and there are only Constables who are brought on List ‘B’ for being sent to the Lower School Course. List ‘A’ is maintained under rule 13.6 by each Superintendent of Police from amongst the Constables eligible under rule 13.5 for promotion to a selection grade of Constables. The number of names in the list is not to exceed twenty per cent of the establishment of the grade in the district. Out of the Constables whose names are brought on List ‘A’, selection has to be made of those Constables who are considered suitable as candidates for the Lower School Course. The names of the Constables considered suitable for the Lower School Course are entered in List ‘B’ with the approval of the Deputy Inspector-General of the Range. It is thus clear from this provision that every Constable brought on List ‘A’ has no right to go for the Lower School Course. A method of selection has been provided for sending the Constables on List ‘A’ for that Course, i.e., the suitability of each Constable on List ‘A’ has to be seen by the Superintendent of Police of the District under whom he is working and has to be approved by the Deputy Inspector-General of the Range. In that case, the provision for selection has been made in the rule at stage of sending for Lower School Course. Those constables who successfully pass the Lower School Course and are considered eligible for promotion as Head Constables will be admitted to List ‘C’ under rule 13.8. It is thus evident that the second selection for being admitted to List ‘C’ starts after a Constable on List ‘B’ passes the Lower School Course. His admission to list ‘C’ will not be automatic thereafter but it will have to be considered whether he is fit for

promotion to the rank of Head Constable. For that purpose, the marking in sub-rule 13.5(2) and the notes of the Superintendent of Police or furnished by Gazetted Officers under whom the Constable has worked, on his qualifications and character are to be taken into consideration when admitting him to list 'C' and promoting him as Head Constable."

(8) These observations clearly indicate that the stage at which the name of a Police Constable is to be considered for promotion to the post of a Head Constable is reached after the said Constable has passed the Lower School Course. The Full Bench also held that the selection for Intermediate School Course does not form part of the process of promotion of a Head Constable to the rank of an Assistant Sub-Inspector of Police which process starts only from the stage when the names are considered for entry in list 'D' under rule 13.9 and that stage is reached only after a Head Constable has passed the Lower School Course and the Intermediate School Course. If this reasoning is to be followed, then it has to be held that selection for the Lower School Course does not form part of the process of promotion of a Constable to the rank of a Head Constable and this process begins only after the Constable has passed the Lower School Course examination. The proviso to rule 13.1 noticed earlier thus comes into play at that stage and outstanding sportsmen are entitled to get promotion against 5% of the posts when the stage for consideration of the promotion arises. They can be promoted if they are otherwise eligible and the important condition for eligibility is the passing of the Lower School Course. The observations made in Sardul Singh's case (*supra*) go against the submissions made by Mr. Sethi.

(9) Mr. Sethi then submitted that rule 13.21 empowered the Inspector-General of Police to relax the provisions of any of the Rules of Chapter XIII with regard to any class or category of persons and that the instructions referred to above be deemed to have been issued under this provision. A reading of the instructions, however shows that the Inspector-General of Police while issuing them was perhaps of the view that these instructions could be issued within the four corners of the existing Rules. Had he intended to relax the provisions of rule 13.7 he would have clearly indicated this fact in the instructions. As at present advised, we are of the view that whenever a competent

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authority wishes to relax the provisions of a particular rule in favour of a class of persons it has to record an express order in that behalf. The rules once promulgated are meant to be obeyed meticulously and they cannot be by-passed on the ground that they stand impliedly relaxed. In any event, the interpretation placed by the learned Judge on the relevant rules and endorsed by us does not debar the Inspector-General of Police to pass an order in terms of rule 13.21 to relax the provisions of any rules in Chapter XIII in favour of outstanding sportsmen.

(10) Since we have come to the conclusion that the view taken by the learned Judge in Chambers is in accordance with the relevant rules, we see no force in this appeal and dismiss the same.

S. S. Sandhawalia, C.J.—I agree.

N. K. S.

Before D. S. Tewatia, J.

GURSHARANJIT SINGH,—*Petitioner.*

versus

STATE OF PUNJAB,—*Respondent.*

Criminal Revision No. 220 of 1981.

April 21, 1981.

Prevention of Food Adulteration Act (XXXVII of 1954)—Sections 7, 16(1) (a) (i) and 17—Sale of adulterated by a salesman employed in a company—Superior officer under whom such salesman is working—Whether liable to be prosecuted—Sale—Whether could be said to be on behalf of such officer—Offence committed by a Company—Such Company—Whether necessary to be arrayed as an accused alongwith its functionaries.

Held, that a perusal of sections 7 and 16(1) (a) (i) of the Prevention of Food Adulteration Act, 1954 would show that not only the persons who directly effects the sale but even a person, on whose behalf he effects the sale, is also guilty of the offence if the person, who had actually effected the sale is held to have committed the offence in