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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2639/2002

MA No.2250/2002

New Delhi, dated this the 13th day of August, 2003

Hon'ble Shri Justice V.S.Aggarwal, Chairman
Hon'ble Shri S.K.Naik, Member(A)

1. Rajbeer Singh
Constable of Delhi Police
(PIS No.28930943)
In O/o DCP 5th Bn. DAP,
Kingsway Camp, Delhi.
2. Jawahar Lal
Constable of Delhi Police
(PIS No.28930938)
In O/o PM Cell Main Security Line,
Vinay Marg, New Delhi.
3. Shish Ram
Constable of Delhi Police
(PIS No.28930734)
In O/o DCP 5th Bn. DAP,
Kingsway Camp, Delhi.

...Applicants

(By Advocate: Shri Anil Singhal)

versus

1. Commissioner of Police,
Police Head Quarters,
IP Estate, New Delhi
2. Joint Commissioner of Police,
(Establishment) PHQ,
IP Estate, New Delhi
3. Lt. Governor,
Raj Niwas, Delhi.

... Respondents

(By Advocate: Shri Ajesh Luthra)

ORDER

Justice V.S.Aggarwal:-

M.A. No.2250/2002

MA No.2250/2002 for joining together in OA
No.2639/2002 is granted.



OA No.2639/2002

Applicants are Constables (Executive) in Delhi Police. They are above the age of 40 years. By virtue of the present application, they seek quashing of the impugned orders and also the Departmental Promotion Committee proceedings with a further direction to consider their names for admission to Promotion List "C" from 28.2.2000 or from 13.11.2001 and promote them to the rank of Head Constable from the date their immediate juniors were promoted.

2. Some of the relevant facts are that the applicants are due for promotion for the past many years. Their names were liable to be considered for admission to Promotion list "C" with effect from 28.2.2000 by the Departmental Promotion Committee held in the year 2000 when the names of the eligible Constables were considered. However, when the order was published, their names did not find place in the list of promotees to the rank of Head Constable. Thereafter their names were liable to be considered for promotion list "C" with effect from 13.11.2001 by the Departmental Promotion Committee held in the year 2001. The names of the juniors to the applicants were considered. However, when the order was published regarding admission of names to promotion list "C", the applicants came to know that their names were not considered though they ought to have been considered because they were above the age of 40

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years but below 45 years. They were informed that as the they had been confirmed later, persons who had been confirmed earlier were considered for promotion list "C". Applicants contend that these actions of the respondents are improper and illegal. Hence the present application.

3. In the reply filed, it has been asserted that as per Rule 14 of the Delhi Police (Promotion and Confirmation) Rules, 1980 (for short, "the Rules"), List "C" (Executive) shall be a list of unqualified Constables, who for reasons of their good service record, long service and good health are considered suitable. Constables who are unable to pass List "A" test and Lower School Course upto 40 years of age, if they are otherwise suitable, are promoted. A circular had been issued on 16.7.1999. The service particulars of all the overage Constables (Executive) who were confirmed in the rank of Constable and had crossed the age of 45 years as on 31.10.1998 were called. The Lieutenant Governor had given one time relaxation to increase the existing age limit from 40 years to 45 years. Since the applicants were below the age of 45 years, their names could not be considered. As regards the year 2001, the service particulars in respect of all the overage Constables (Executive) who were confirmed in the rank of Constable (Executive) and over 40 years were called. The names of 1336 Constables (Executive) were brought on the promotion list and promoted to the rank of Head Constable. The names of the applicants were considered, but they were

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not brought on Promotion List "C" due to non-availability of vacancies for List "C" (Executive). As per the respondents, none of the persons junior to the applicants had been promoted.

4. During the course of submissions on behalf of the State, the order issued by the Lieutenant Governor of the National Capital Territory of Delhi dated 16.7.1999 had been produced. The same reads:-

"Whereas on account of not holding of any promotion list 'A' (Executive) test during the last five years certain Constables (Executive) of Delhi Police have crossed the age limit of 40 years prescribed in this behalf in the rules 12 and 14 of the Delhi Police (Promotion & Confirmation) Rules, 1980 as amended.

And whereas the Lt. Governor of the National Capital Territory of Delhi is of the opinion that it is necessary and expedient so to do.

Now, therefore, in pursuance of the provisions of rule 23 of the Delhi Police (Promotion and Confirmation) Rules, 1980 as amended, the Lt. Governor of the National Capital Territory of Delhi is pleased to grant one time relaxation to increase the existing age limit from 40 years to 45 years for purpose of rules 12 and 14 of the said rules in relaxation to drawing of promotion list 'A' (Executive) and list 'C' (Executive) respectively for making promotion to the rank of Head Constables in the Delhi Police.

BY ORDER AND IN THE NAME OF THE LT. GOVERNOR
OF THE NATIONAL CAPITAL TERRITORY OF DELHI."

(S.C. Sareen)
ADDITIONAL SECRETARY (HOME)

Dated the : 16/7/99"

It is on the strength of the same that it was contended that because the applicants were below the age of 45

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years and keeping in view the relaxation granted, they should be considered for List "C" (Executive) in terms of Rule 14 of the Rules.

5. The learned counsel for the applicant assails the same alleging it to be discriminatory and contended that while giving relaxation, the rights of the applicants could not be withdrawn and qualifications could not be added.

6. We have carefully considered the said submission. The representation of the applicant in this regard was rejected and the operative part of the same reads:-

" On perusal of the relevant records it has been found that in order to draw the promotion list 'C'.), the service particulars of all the overage constables (Exe) who were confirmed in the rank of constable and had crossed the age of 45 years as on 31.10.98 were called vide PHQ's circular No.19611-70/P. Br. (PHQ) (AC-III), dated 16.7.99 in view of Govt. of NCT's Delhi order No.F-13/22/98 (Home)/P/Estt. 3566, dated 16.7.99 vide which the Lt. Governor of NCT Delhi has granted one time relaxation to increase the existing age limit from 40 years to 45 years for purpose of rule 12 and 14 of said Rules in relation to drawing of promotion list 'A' (Exe.) and list 'C' (Exe.) respectively for making promotion to the rank of Head Constable in Delhi Police. The name of the applicants were also considered alongwith others by the DPC held in the year 2000. Since the applicants were below the age of 45 years as on 31.10.98, their names could not be considered by DPC held on 2.2.2000 & 16.2.2000. However, the said DPC has approved the name of 187 Constables (Exe.) vide PHQ's notification No.5913-70/P.Br. (PHQ)/AC-III), dated 1.3.2000 and promoted to the rank of HC (Exe.) vide PHQ's order No.5972-6030/P.Br.(PHQ)/AC-III) dated 1.3.2000."

In other words, it is in pursuance of the abovesaid order

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of the Lieutenant Governor that the age limit was raised from 40 years to 45 years and because the applicants were below the age of 45 years, they were not considered.

6. The Rules have been framed in exercise of the powers conferred by sub-section (1) to Section 147 of the Delhi Police Act, 1978. Under Rule 5 of the Rules promotions from one rank to another and from lower grade to the higher grade in the same rank shall be made by selection tempered by seniority. It clarifies that efficiency and honesty would be the main factors governing selection. Similarly under Rule 6, promotion can be earned in the cadre unless otherwise provided by the Rules by each member of subordinate rank in accordance with the Rules applicable to the cadre.

7. Rule 12 deals with Promotion List "A" pertaining to confirmed Constables (Executive) who are upto the age of 40 years and can take the test. The maximum chances provided are 10. The said Rule is in the following words:-

"12. Promotion List 'A' - (i) (a) Promotion list 'A' (Executive) shall be a list of confirmed constables (Executive) considered fit for being sent to lower School Course. Confirmed Constables having a minimum of 5 years service shall be eligible for consideration. The list shall be framed on the recommendations of the departmental promotion committee which shall adopt the evaluation system based on (1) Service record (2) Seniority (3) Annual Confidential Reports (4) Acquaintance in Professional test which shall cover following subjects:

(i) Physical Training and Parade,

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- (ii) Elementary law and Police practical work,
- (iii) General Knowledge,
- (iv) Professional work done.

A constable up to 40 years of age shall be eligible to take tests and only ten chances will be allowed. The names of selected constables shall be brought on list 'A' in order of their seniority keeping in view the number of vacancies in the rank of Head Constables likely to be available in the following one year.

The selected constables will be sent for lower School Course subject to their medical fitness by the Civil Surgeon.

(b) Constables with a minimum of 2 years of service shall be eligible to undergo Drill Instructors Course. On satisfactory completion of the course with 1st Class proficiency certificate, their names shall be brought on promotion list 'A' and sent for training in the next Lower School Course alongwith others, irrespective of their seniority. It is subject to the medical fitness by the Civil Surgeon."

In addition to that, an exception has been carved. Even those unqualified Constables who could not pass the test, as referred to above, upto 40 years of age and if they have good service record, good health and long service and are considered suitable, they can be promoted as Head Constables. Rules 14 of the Rules is in the following words:-

"14 List 'C' - (Executive) shall be a list of unqualified Constables who for reasons of their good service record, long service and good health, are considered suitable for promotion to the rank of Head Constable. Constables, who are unable to pass list 'A' test and lower School Course upto 40 years of age, if otherwise found suitable, shall be admitted to this list by the Departmental Promotion committee. The Departmental Promotion Committee shall select Constables for this list on the basis of seniority-cum-suitability, based on Service Record. The ratio of promotion of unqualified/overage men on list 'C' (Executive) vis-a-vis qualified (Lower School Course) constables shall be 1:2. To achieve this every

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3rd vacancy occurring in the rank of Head Constable shall be filled-up from list 'C'. However, in case of there being no name of list 'C', all vacancies of Head Constables shall be filled-up from list 'B'."

Rule 23 of the Rules provides that when the Administrator is of the opinion that it is necessary or expedient so to do, he may relax any of the provisions of the Rules with respect to any class, category of persons or posts or in any individual case.

8. So far as the plea that relaxation cannot be granted by virtue of which qualifications are added is concerned, we have least hesitation in accepting the same in its broad principles. The Supreme Court in the case of State of Haryana, Etc. Etc. v. Shamsher Jang Bahadur, Etc. Etc., (1972) 2 SCC 188 was considering this controversy that if instructions are issued which undoubtedly affect the promotion of the concerned officials and added to the conditions of service and qualifications already prescribed by Article 309 of the Constitution, the Government could not alter the existing conditions of service by administrative instructions.

9. Can in the present case be it termed that by virtue of the said relaxation, the conditions of service have been altered and qualifications added?

10. If Rule 14 was read in isolation with the order of the Lieutenant Governor perhaps the argument must prevail, but in the present case, reading of the

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order of the Lieutenant Governor clearly shows that Rules 12 and 14 of the Rules which we have already reproduced above have to be read together to come to a rightful conclusion. Relaxation is an expression necessarily of art in the context in which it has been used in Rule 23 of the Rules. It would be meaning to condone the rigour of the Rules or any particular rule with respect to a class, category of persons or in any individual case. It can be done for the time being or as one time relaxation as has been done in the present case

11. Under Rule 12 of the Rules as already pointed above, 10 chances are given to the Constables upto 40 years of age who are confirmed and having 5 years service to pass the relevant test. After 40 years, if a person has not been able to pass the relevant test, Rule 14 comes into play and if the Constables as already referred to above, satisfy other conditions and had not been able to pass List "A" test, they can be considered for promotion as Head Constables if otherwise found suitable.

12. So far as the applicants are concerned, by virtue of the order of the Lieutenant Governor which is now being impugned because they were below 45 years and above 40 years they could not be considered for List "C" under Rule 14 but a corresponding benefit accrued to them under Rule 12 because they got a chance to take the eligibility test to be promoted to List "A". Thus the

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impugned order cannot be termed to be discriminatory because a corresponding benefit had accrued by virtue of relaxation of Rules 12 and 14 of the Rules.

13. This is for the added reason that during the course of submissions, we were told that the applicants even tried their luck by taking the test for promotion to List "A" under Rule 12 but could not succeed. Once it is so, a person cannot be allowed to turn around and take up the plea of illegalities in the back-drop of the facts enumerated above. We have no hesitation thus in holding that neither the impugned order dated 16.7.1999 is discriminatory nor it is liable to be quashed.

14. Confronted with that position, the learned counsel for the applicants contended that the decision in the year 2001 taken that only confirmed Constables upto a particular age should be considered also is illegal. We find that this is only of academic interest. We are not expressing ourselves on this controversy for the reason that our attention has not been drawn to any such order whereby a person junior to the applicants has been promoted ignoring their claim. In fact, no such junior even has been arrayed as a party and in that back-drop, the said argument must be rejected.



15. For these reasons, the application being without merit must fail and is dismissed. No costs.

S.K. Naik
(S.K. Naik)
Member (A)

V.S. Aggarwal
(V.S. Aggarwal)
Chairman

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