

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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O.A.No.2618/2001

Hon'ble Shri V.K.Majotra, Member(A)
Hon'ble Shri Shanker Raju, Member(J)

Tuesday, this the 7th day of May, 2002

Head Constable Sudhan Chand
1089-PCR
s/o Sh. Sukhi Ram
r/o H.No.C-52, Main Gopal Nagar
Najafgarh, New Delhi. ... Applicant

(By Advocate: Ms. Jasvinder Kaur)

Vs.

Additional Commissioner of Police (Estt.)
Police Head Quarter
I.P.Estate
New Delhi. ... Respondent

(By Advocate: Ms. Jasmine Ahmed)

O R D E R

By Shanker Raju, M(J):

Applicant impugns respondents' Memorandum dated 16.5.2001 (Annexure-I), wherein he has been denied deputation to training in Intermediate School Course on account of his being handicapped.

2. Applicant was enrolled as Constable in Delhi Police on 10.10.1974. While in service, due to an accident in October, 1997 left arm of the applicant was amputated.

3. Applicant was recommended for induction to promotion list of 'A' in the year 1984-85 and was examined for the training where he was declared fit as a handicap and was sent for physical training to DAP IV-Bn., which included parade. Applicant was recalled from the training and being aggrieved preferred OA 1716/87 wherein as an interim measure, respondents have been directed to get the training completed.

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4. By an order dated 10.2.1989, OA was allowed to the extent of directing the respondents to promote the applicant as Head Constable with all consequential benefits including further promotions.

5. Applicant was included in promotion list D(I) meant for the post of Assistant Sub-Inspector wherein, his name figured at Sl. No.261 in the list dated 18.7.1999.

6. Name of the applicant has not been approved for being forwarded to further depute him to Intermediate School Course. Applicant made a representation which was turned down. Applicant filed CP 438/2001 in OA No.1716/87. By an order dated 7.9.2001, CP was dismissed as time barred with liberty to the applicant to agitate his grievance through appropriate proceedings, giving rise to the present OA.

7. Learned counsel for applicant, Ms. Jasvinder Kaur, has stated that applicant had without any exemption from physical training and parade even as a handicap, completed the Lower School Training Course. As that training was much more harsh, arduous and difficult in comparison to the Intermediate School Training Course, the respondents' action to deny him to undergo training is irracionale, arbitrary, biased and in violation of Articles 14 and 16 of the Constitution of India. It is contended that whereas the applicant was declared fit by the medical authorities as physically handicap which entitles him

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to be deputed to the training course, as earlier also on same fitness he had successfully undergone the Lower School Training Course. As such the respondents are estopped from disputing the physical endurance of the applicant to the aforesaid training course and his capability of completing the training course successfully, without even subjecting him to the training. It is also stated that he has altered his position by getting listed in promotion list ~~himself~~ⁱⁿ D(I).

8. Ms. Kaur further contended that while disposing of the previous OA (supra), Tribunal has allowed the benefit of further promotion to the applicant which interalia included his further promotion as ASI. Lastly, it is contended that Government's action is also contrary in view of the Persons with Disabilities (Equal Opportunities, etc.) Act, 1995. It is contended, in this background, that the applicant be allowed to be deputed to training course and accorded promotion if he successfully completes the training course without any exemption from physical training or parade.

9. On the other hand, learned counsel for respondents, took exception to the contentions of the applicant and by referring to Rule 5 of the Delhi Police (Promotion and Confirmation) Rules, 1980 contended that the promotion from one rank to another depends upon the seniority, efficiency and honesty and the DPC is free to make their own norms and objectives to assess the suitability of the candidates. It is only after successful completion of the Intermediate

Training Course, the officers are brought in promotion list D(II) and are further promoted subject to availability of vacancies. Name of the applicant was considered and admitted to promotion list D(I) on 12.5.1999 and on being subjected to medical examination at Civil Hospital before being deputed to training, the Deputy Medical Superintendent vide his letter dated 9.8.1999 has declared the applicant 'Fit' as Physically Handicapped and as in Police Department, physical fitness is an essence. As the applicant is not capable of performing the physical activities, is rightly not deputed for training along with his batch mates. However, it is not disputed that applicant has successfully completed the Lower School Training Course and was promoted as Head Constable w.e.f. 27.2.1986. Applicant was denied deputation to Training Course mainly because he is not capable of doing the physical activity connected with the professional courses in full.

10. We have carefully considered the rival contentions of the parties and perused the material on record. In our considered view the decision of the respondents depriving the applicant of deputation to training course is not legally sustainable. If one has regard to earlier decision of the Tribunal, we find that the applicant had undergone earlier training without being exempted from physical training and parade. Despite his disability which has not altered till day, and his completion of the training successfully, directions have been issued to the respondents to promote him as Head Constable and further he was made entitled to all consequential

benefits, which interalia included his further promotion. This fact is not disputed by the respondents.

11. As regards his name being brought in promotion list D(I) under Rule 15(1) of the Delhi Police (Promotion and Confirmation) Rules, 1980, establishes that he is eligible in all respects for being considered for promotion to the next higher rank of ASI, subject to successful completion of the training course and after being brought in promotion list D(II) for actual promotion subject to availability of vacancies.

12. The training imparted to a Head Constable before his promotion under Rule 12 of the Rules ibid incorporates harsh, more arduous physical training. Once the applicant has cleared all the obstacles, and successfully completed the training course, the action of the respondents on the basis of his being declared "Fit" by the medical authority as physically handicapped to deprive him of his deputation to the Intermediate Training Course cannot be countenanced. Applicant was observed as physically handicapped even at the time of his earlier training and despite this he was deputed to the training course but recalled before completion. The training imparted to ASI to Head Constable for their promotion as ASI is less arduous than the one which was in Lower School Training Course. If the applicant had successfully completed the same earlier, respondents are estopped from taking a contrary view even without being subjecting the applicant to the Training Course. It

appears that the respondents with a pre-determined mind denied the applicant deputation to training course. This is irrational and unjustified. More so, once the earlier decision has bestowed the applicant with further promotions, he cannot be deprived of the same.

13. If one has regard to the provisions of Persons with Disabilities (Equal Opportunities, etc.) Act, 1995, it prohibits discrimination to a handicapped person.

14. In the result and having regard to the fore-going discussion, we allow this OA and set-aside the impugned orders dated 16.5.2001. Respondents are directed to depute the applicant for training in Intermediate School Training and further his name may be brought in list D(II) subject to his successful completion of the training course without any exemption from physical training or parade. In that event, the applicant shall also be entitled to all the consequential benefits. The aforesaid exercise of deputing the applicant to the Training Course shall be completed within a period of three months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member(J)

V.K. Majotra
(V.K. Majotra)
Member(A)

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