

11
CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.935/1999

New Delhi, this 15th November, 1999

Hon'ble Shri Justice V. Rajagopala Reddy, VC(J)
Hon'ble Shri S.P. Biswas, Member(A)

Constable Ambi Kumar (No.347/DRP)

Q.No.9-B, Police Station

Vivek Vihar, Delhi-95

... Applicant

(By Shri Shankar Raju, Advocate)

versus

Union of India, through

1. Secretary

Ministry of Home Affairs

North Block, New Delhi

2. Commissioner of Police

Delhi Police, Police Hqrs.

New Delhi

3. Addl. Commissioner of Police

Delhi Police, Police Hqrs.

New Delhi

... Respondents

(By Shri Vijay Pandita, Advocate)

ORDER

Hon'ble Shri S.P. Biswas

Applicant, a Constable under Delhi Police, seeks to challenge the following orders:

- (i) Order dated 26.3.99 whereby notification has been issued with reference to circular dated 18.9.98 which respondents have proposed to hold test for promotion list "A" in that maximum age for application has been enhanced from 40 to 45 years for the Constable for the purpose of further promotion to the rank of Head Constable;
- (ii) Rule 12 of Delhi Police (Promotion & Confirmation) Rules, 1980 (hereinafter called RULES, 1980) prescribing the eligibility test i.e., promotion list "A" test which entitles a Constable to undergo lower school training course prior to promotion to the rank of Head Constable; and
- (iii) Standing Order No.91 dated 7.12.89 (as amended) by which procedure and guidelines have been laid down for promotion list "A".

2. Shri Shankar Raju, counsel for the applicant argued strenuously to assail the aforesaid three orders on fairly a large number of grounds. We, however, intend to highlight only those relevant ones. It is submitted that actions of the respondents in enhancing the eligibility age of constables to appear in the promotion list "A" test from 40 to 45 years is inviolation of Rule 13 of RULES, 1980 as well as standing order No.91 framed therein. Unless the basic rule is amended and relevant provision is incorporated in it, the department has no right to prescribe the same provisionally. Power to make amendments lies with the Administrator and can only be put into operation after the said amendments have been ratified by the House of Parliament. In the absence of an appropriate gazette notification, no provision in the rule could take effect under section 148 of Delhi Police Act.

3. That apart, Rule 12 of RULES, 1980 and standing order No.91 which prescribes detailed procedures for promotion list "A" test are constitutionally invalid and ultra vires. The counsel would contend that if it is presumed that this test is taken only for the purpose of testing the capabilities of a constable then the training which he had gone through immediately after recruitment will be of no use. In the practical training schedule, a constable is rigorously and comprehensively taught about the law, general knowledge, practical work etc. and thereafter on being encadred in Delhi Police, every year a gazetted officer tests all these eligibilities. All this is amply proved from the ACRS of the individual constable. As such, if the department is testing a constable every year, then why

he is required to be tested again for the purpose of his rightful claim of promotion. Promotion list "A" test makes a constable eligible only for lower school training course and thereafter on successful passing out the course again DPC considers the constable for further promotion to the rank of Head Constable. As such, it means there are two processes of DPC for promotion of a constable and this is absolutely baseless. The policy is also discriminatory since a constable who is upto the age of 40 is subjected to all sorts of tests whereas a constable with above 40 years of age is not required to face such series of tests. This arbitrary process of selection amongst similarly placed persons is discriminatory.

4. The counsel would further argue that by holding promotion list "A" test, lower rank of Delhi Police stands arbitrarily and irrationally discriminated in violation of Articles 14 and 16 of the Constitution. The Constitution of India mandates equal treatment for equally placed persons, whereas for promotion to different ranks after Constable no eligible test is taken and promotions are ordered on the basis of merit-cum-seniority. The same criteria should have been followed in the case of Constables who have identical responsibilities irrespective of their ages.

5. It is again contended that the 5th Pay Commission has recommended to the Government that there should be atleast three promotional avenues in the career of a government servant. But in the conspectus of rule 12 and promotion list "A" test, it is difficult for a constable to get three promotions during the service

tenure of a Constable under Delhi Police. This is because if a constable fails to pass the test, then he/she has to be considered for promotion at the age of 50 for promotion list C-2 for the rank of Head Constable and thereafter it is impossible to get further two promotions within the span of 10 years.

6. Respondents have controverted the claims. It has been argued that the application is not maintainable in terms of section 20 of AT Act, 1985. Before filing this OA, applicant should have submitted a proper representation to the competent authority against holding the test for promotion list "A".

7. RULES, 1980 were notified and published in the gazette in December, 1980. Standing Order No.91 framed by the Commissioner of Police/Delhi, under powers conferred under section 19 of the Delhi Police Act was issued on 7.12.89. But the applicant has chosen to challenge it after a period of more than 18 years and that too without giving any reasons for this delay. Counsel for the respondents submitted that the applicant herein applied for appearing in the test which clearly proves that he duly agreed with the provisions contained in the existing RULES, 1980 as well as the standing order. The entire gamut of RULES, 1980 were framed keeping in view the detailed recommendations of Delhi Police Commission headed by HOn'ble Justice G.D.Khosla in 1968. The Commission had recommended that when a constable becomes eligible for promotion, his promotion to the rank of Head Constable should depend on merit alone irrespective of seniority. The Commission had also suggested that merit should be judged by (i) record

of service, (ii) written test, (iii) educational qualification, (iv) knowledge of constitutional law and (v) field of practical test. It was based on the recommendations of Khosla Commission that the present RULES, 1980 were given a final shape.

8. Applicant remained under suspension from August, 1996 to October, 1997. He was dealt with departmentally for a "misconduct" in that while posted at PS/Nand Nagari alongwith SI Videsh Kumar, applicant let off a thief who was handed over to him by the complainant. Applicant's name was brought on "secret list" of persons of doubtful integrity though after his exoneration in the DE, the same was removed on 6.8.97.

9. Heard the learned counsel for both parties and perused the records placed before us. We find that the applicant had earlier sought for interim relief to the extent that the respondents may be restrained from holding promotion list "A" test subject to the outcome of the OA. For reasons recorded in paras 3 and 4 of our interim order dated 14.5.99, the said prayer was rejected. Applicant thereafter filed MA 1123/95 on 26.5.99 praying, besides those in the OA, for the following additional relief as well:

"To set aside the impugned order at Annexure A-1 and declare the action of the respondent illegal by which the overaged constables upto the age of 45 years have been allowed to appear in promotion list "A" test without seeking amendment in the rules"

10. We shall now examine the merits of the pleas taken by the applicant in terms of law.

2 We find that the applicant had participated in the


test held on 28.4.99. It is noticed that he had earlier also appeared in a similar test in 1992 and did not challenge the rules at that time or soon thereafter. Nor had he made any representation against the present circular dated 26.3.99. On the other hand, he has now in 1999 chosen to challenge the vires of Rules framed in 1980 as well as the standing order of 1987 issued in 1989. Applicant is aged 38 years and we find no reason why he should oppose the circular on behalf of those who have attained the age of 40 or above. Having participated twice in the test and failed for consideration to promotion as Head Constable, it does not lie in the mouth of the applicant to seek amended relief and that too without exhausting the remedies available to him under the relevant rules. We also find that the applicant's challenge to the procedures laid down for the purpose of promotion to list "A" is in violation of law laid down by the apex court in the cases of Om Prakash Vs. Akhilesh Kumar AIR 1986 SC 1043 and Madan Lal & Ors. V. State of Jammu & Kashmir & Ors. JT 1995 SC 291. In the latter case, their Lordships have held as hereunder:

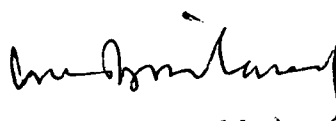
"9. Before dealing with this contention we must keep in view the salient fact that the petitioner as well as the contesting successful candidates being respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Upto this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate

takes calculated chance and appears at the interview, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the selection committee was not properly constituted. In the case of Om Prakash it has been clearly laid down by a Bench of three learned judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner".

11. We also find that RULES, 1980 were notified vide notification No.F.10/52/80 dated 29.12.80. Copies of the same were also sent to the concerned authorities for placing before the House of Parliament as well as Metropolitan Council of Delhi at that time. The contention that there is discrimination for holding the test between officials similarly placed is not sustainable. In case constables upto 45 years of age do not come out successful in list "A" test, they are considered for promotion in list "C-2" as per seniority. Recommendation of the DPC is taken for the purpose of providing additional opportunity to such constables who become more than 40 years of age and this is in conformity with the policy direction of the Government of India notified from time to time. We find there is no element of discrimination as alleged.

10. In the background of the details as aforesaid as well as the position of law, the OA deserves to be dismissed and we do so accordingly. There shall be no order as to costs.


(S.P. Biswas)
Member(A)


(V.Rajagopala Reddy)
Vice-Chairman(J)

/gtv/