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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A.NO.1281/95

Hon'ble Shri A.V.Haridasan, Vice-Chairman(J)
Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this 26th day of February, 1996

Rajpal
s/o Shri Feru Singh
Village Garhi
Noabad
District Muzaffar Nagar(UP)
at present in New Delhi. ... Applicant

(By Shri Shyam Babu, Advocate)

Versus

1. Commissioner of Police
Delhi Police Headquarters
I.P.Estate
New Delhi - 110 002.

2. Deputy Commissioner of Police
3rd Bn., DAP,
New Police Lines
Kingsway Camp
D E L H I. ... Respondents

(By Shri Rajinder Pandita, Advocate)

O R D E R (Oral)

Hon'ble Shri A.V.Haridasan, Vice-Chairman(J)

This is the second round of litigation between Raj Pal, the applicant and the Commissioner of Police, Delhi. The applicant was initially selected for appointment to the post of Constable in Delhi Police by letter dated 28.9.1992, addressed to him by the Deputy Commissioner of Police. Later on vide order dated 16.4.1993, the applicant was informed that his candidature for the post of Constable in Delhi Police was cancelled. His appeal against the above order did not evoke any response, therefore, he filed OA No.30/94 with a prayer to quash the impugned order dated 16.4.1993, by which his candidature ~~was~~ ^{and} cancelled, with all consequential benefits. It was contended by the respondents in that case that as the applicant had wrongly claimed to be one belonging to Scheduled Tribe, though his height only 169.8 CMs., he was

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After granting relaxation as available to the Scheduled Tribe candidate included in the category of Scheduled Tribe candidate and selected for appointment. Later finding that the applicant actually belonged to a Back-ward Class and not to Scheduled Tribe, the candidature of the applicant was cancelled. After hearing the rival contention of the parties, the Bench held that the applicant was not responsible for the mistake committed by the respondents as he had never claimed that he belonged to Scheduled Tribe. The application was disposed with a direction to the respondents to treat the Original Application as a representation by the applicant, and to dispose of his claim after getting his height remeasured. Persuant to that direction, the respondents issued the impugned order in this case i.e. Annexure A (page 19) by which he was infomred that his representation has been rejected as it was found that his height was properly measured and found to be 169.8 CMs. Aggrieved by this order, the applicant has filed this application praying to quash the impugned order and for a direction to respondents to direct All India Institute of Medical Sciences to measure the height of the applicant and to appoint him to the post of Constable in Delhi Police, if he is found to have the required height or in the alternative to direct the Lt. Governor, Delhi to grant necessary relaxation in accordance with the Rule 30 of Delhi Police (Appointment & Recruitment) Rules, 1980 with regard to the height of the applicant with all consequential benefits.

2. The application is ^{Resisted} ~~resorted~~ by the respondents who have filed a detailed reply. When the application came up on 11.12.1995, the Bench noticing that the applicant's height was not again measured pursuant to the directions contained in the order in OA No.30/94, directed the respondents to have the height of the applicant remeasured by a Medical Board

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consisting of two Senior Doctors and to produce the report before Bench. Today when the application came up for hearing, the learned counsel for the respondents have produced the report of the Medical Superintendent which states that the Medical Board consisting of two senior doctors, on ~~ur to be~~ measurement of the height of the applicant found 170 CMs. There is no dispute that the height required for a person to be eligible for recruitment as Constable in the Delhi Police belonging to a General category i.e. 170 CMs.

3. Now, that the applicant is found to possess the requisite height, we have to consider the relief, if any, he is entitled to. The effect of the order of quashing of the cancellation of candidature of the applicant by order of this Tribunal in OA No.30/94 is that the candidature of the applicant stands revised. The applicant has now been found to ~~be~~ have the height of 170 CMs which qualifies him for appointment in accordance with the physical standards required. It is also not in dispute between the parties that the applicant does not belong to Scheduled Tribe. Therefore, if the applicant has made a grading in the selection process to be included in the panel of general category for the post of Constable in Delhi Police, then the respondents cannot resist his claim. Learned counsel for the respondents produced the entire file in regard to the recruitment selection/appointment to the post of Constable, Delhi Police during 1991-92 for the perusal of this Bench. We have seen that the last person appointed from the General Category had obtained 45 marks (total) and that there are several persons under him and above the applicant who had obtained total 43 marks. We are satisfied that no person belonging to the general category, who has got 43 total marks and below has ~~Particular in relevant Selection~~ been appointed to the Delhi Police. Hence, we find that

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though the candidature of the applicant has been revived and though the applicant has the requisite height he did not make the grading on merit to be appointed as a general category and ^{therefore} that he is not entitled to claim appointment.

4. Shri Shyam Babu, counsel for the applicant argued that even if the applicant did not make the grading as a general category candidate, the respondents cannot raise this contention in this application because by principles of constructive res judicata the respondents are barred from raising this issue now, as the same was not raised in the previous OA. He also argued that the applicant has got reliable information that after exhausting the vacancies, there were further vacancies and persons lower down in the list have been appointed and that therefore, the applicant also is entitled to be appointed.

5. In the OA No.30/94, this Tribunal concerned primarily with the question whether the respondents were right in cancelling the candidature of the applicant for the reason that he erroneously produced the certificate of Scheduled Tribe or not. It was found that the applicant did not claim to be a person belonging to the Scheduled Tribe and therefore, on that ground, the order passed by the respondents, cancelling the candidature was set-aside. ~~It was not material~~ whether the applicant had made the grade as a general candidate or not was not an issue which was relevant in that case. Hence the Principles of Constructive res-judicata are not attracted.

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6. Coming to the further argument of the learned counsel that reliable information has been received by the applicant that there were further vacancies and that persons lower down in the panel have been appointed from the waiting list is not borne out by the record. The file relating to selection to the post of Constable in Delhi Police in the year 1992 is before us. We find that no such appointment has been made by the respondents appointing any person with lesser marks than the applicant.

7. In the result, on careful scrutiny of the entire pleadings/documents on record as well as the file produced by the learned counsel for the respondents for the perusal of the Bench and after a detailed hearing of the counsel, we are convinced that the applicant is not entitled to get a direction to respondents to appoint him to the post of Constable in Delhi Police as he did not make the grading as a general category candidate. In the result, the application is dismissed leaving the parties to bear their costs.

R.K. Ahuja
(R.K. AHUJA)

MEMBER(A)

/RAO/

A.V. Haridasan
(A.V. HARIDASAN)
VICE - CHAIRMAN(J)