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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-1228/96

New Delhi this the 14th day of March, 1997.

Hon'ble Dr. Jose P. Verghese, Vice-Chairman(J)
Hon'ble Sh. S.P. Biswas, Member(A)

Sh. Neeraj Chaudhry,
S/o Sh. Dharampal Singh,
R/o V.P.O. Ramala,
P.S. Ramala, Distt. Meerut. Applicant

(through Ms. Jasvinder Kaur, advocate)

versus

1. Commissioner of Police,
Police Headquarter,
ITO, New Delhi.
2. Deputy Commissioner of Police,
II Bn. DAP Delhi,
Police H.Q., New Delhi.
3. Deputy Commissioner of Police,
III Bn. DAP Delhi Police H.Q.
ITO, New Delhi. Respondents

(through Sh. Raj Singh, advocate)

ORDER(ORAL)

delivered by Hon'ble Dr. Jose P. Verghese, V.C.(J)

This O.A. raises only a short question whether the Commissioner of Police is entitled to alter or vary the recruitment rules statutorily prescribed by an executive order having no force of law, reflected by a letter addressed to DCP.

The aggrieved constable in this case hails from state of U.P. and according to the recruitment policy of the respondents, Delhi being a metropolitan city, recruitment of Delhi Police personnel is done from various States at prescribed intervals. The applicant was recruited from State of U.P. as per the regulation for recruitment and was selected prima facie finding that he was eligible in

accordance with the statutory Recruitment Rules but the respondents subsequently is said to have done a closer scrutiny of his papers and he was found that he has passed the Secondary School Examination during 1991 from the Central Board of Secondary Education, Delhi and Intermediate Examination during 1995 from Meerut (UP). This according to the respondents is a violation of eligibility condition issued to concerned D.C.P. incharge of the recruitment team. Thus, by an order dated 9.2.1996, the candidature of the applicant for the post of Constable (Executive) in Delhi Police was cancelled. The applicant filed a representation which was also rejected by an order dated 25.4.96. Thereafter this O.A. was filed. After notice to the respondents, this case is coming up for final disposal today.

The learned counsel for the applicant says that the recruitment rules for the post of Constable (Executive) is given in Rule 6 of Delhi Police (Appointment & Recruitment) Rules, 1980. Rule 9 pertains to recruitment of Constables. Clause (d) of sub-rule V prescribes the educational qualification as Matric/Higher Secondary, 10th or 10 plus 2. This is relaxable upto 9th pass only for certain categories which is not applicable to the applicant. The contention of the learned counsel for the applicant is that the applicant is eligible in accordance with the recruitment rules and he fulfills all the eligibility conditions under the prescribed statutory recruitment rules. The impugned order, therefore, seems to have been issued on the basis of an executive instruction

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said to have been issued by the Commissioner of Police to the D.C.P. incharge of the recruitment team. Such an executive instruction not having the force of law, issued for the internal consumption cannot alter the provisions of the recruitment rules statutorily prescribed. The Hon'ble Supreme Court in a number of cases have held that amendment or alteration to the recruitment rules statutorily issued can only be done by resorting to the same method and such an amendment will have to be published in the same manner as the recruitment rules are published. The executive instructions could be issued where-ever there is any lacuna or deficiency while implementing the recruitment rules but in no circumstances it can add or vary the statutory recruitment rules. It is also not shown that these administrative instructions have the force of law. Rather, the admitted position is that these instructions are issued under no statutory authority, but in exercise of general administrative power. This position in law has been affirmed by Hon'ble Supreme Court in the case of Fernandez Vs. State of Mysore (AIR 1967 SC 1753).

The learned counsel for the respondents submitted that the letter issued by the Commissioner of Police to the D.C.P., required the D.C.P. to varify three aspects while conducting the recruitment. Firstly, that the candidate should belong to the State where the recruitment is being made. Secondly, that the candidate should have acquired the minimum educational qualifications from that very State. Thirdly, he should have valid employment exchange

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certificate at the time of recruitment. According to the learned counsel for the applicant, the applicant fulfills the 1st and 3rd conditions and not the second. The contention of the learned counsel for the respondents is that the minimum qualification prescribed being matric/higher secondary or 10th or 10 plus 2 and the applicant is matric from Delhi and 10 plus 2 from Meerut, the minimum qualification according to him only is 10th standard. We are unable to agree with the contention of the learned counsel for the respondents. Assuming the instructions are issued to add up conditions to obtain the correct candidates while recruitment, pedantic manner of interpreting the recruitment rules especially the educational qualification is certainly uncalled for. The minimum educational qualification prescribed can be either 10th or 10 plus 2. The applicant has 10 plus 2 qualification from Meerut (UP) and as such the applicant seems to have complied with all the three conditions prescribed therein.

While dictating the order, the learned counsel for the respondents brought to our notice that the applicant has acquired 10 plus 2 qualification after he was selected. We have perused the reply to find out whether there is such an averment made therein and we find that such averment has not been made in it. But in any event we saw at page 22 that viva voce was to take place in the month of November, 1995 and the applicant had produced a certificate issued from the prescribed authorities that he has passed 10 plus 2 while he was present for viva voce.

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The said certificate given at page 12 is issued in August, 1995 wherein the exam was held in May, 1995. It is not to be doubted that the selection to the post takes place not only by the written exam but also by viva voce. Therefore, the contention that he did not acquire the qualification of 10 plus 2 before selection is not tenable at all.

This Tribunal in OA-927/96 had dealt with a similar situation. In the said case, the respondents seems to have produced a letter issued by the Commissioner of Police on 16.8.95 which was contended to be in the nature of standing order issued under sub-rule (vi) of Rule 9 which lays down as follows:-

"The Commissioner of Police shall frame standing orders prescribing application forms and detailed procedure to be followed for conducting physical efficiency, physical measurement, written tests and viva voce for regulating the above mentioned recruitment."

It was stated in the said decision that this provision does not empower the Commissioner to prescribe additional qualifications or make any deviation from the qualifications prescribed as per the rules. It only permits the Commissioner to frame standing orders for the purpose of regulating the procedure to be followed while recruiting constables from outside State. The letter of the Commissioner of Police dated 16.8.95 relied upon by the respondents in the said case justifying the impugned order prescribing that the candidate should have passed the qualifying examination, namely, the 10th standard exam

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from the respective State itself is, therefore, held to be unauthorised, incompetent and having no legal consequences. We fully agree with the findings of the Tribunal in the said case and we hold that the impugned order has no legs to stand especially because the recruitment to constables in Delhi being a metropolitan city is intended to attract candidates from all over the country. In accordance with the provisions contained in Rule 9 of the said rules, the respondents cannot add conditions to the recruitment rules statutorily made which would have an adverse effect of restricting the fundamental rights of every citizen for movement to any part of the country. In some cases, the candidates do move from one part of the country to another for acquiring of educational qualifications and such movement shall not be considered to be adding to the domicile of the person and since such movements are for temporary purpose without having any intention to stay permanently and acquire new domicile. In view of the matter, we allow this application and set aside the impugned order and direct the respondents to pass appropriate orders of selection of the applicant to the post of Constable in Delhi Police alongwith his colleagues without effecting his seniority in any manner from the date his colleagues have been recruited to Delhi Police. He will be entitled to all consequential benefits and needless to say that he is also entitled to all the benefits except arrears of salary which the similarly placed colleagues had already obtained from the respondents. This order shall be complied with within a period of four weeks of the receipt of the

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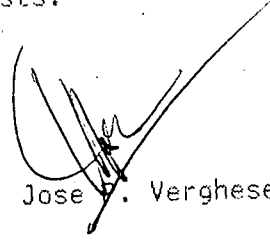
order. The respondents' counsel says that the applicant may not be able to go for training with the existing batch but they are willing to consider to send him with the next batch for training. They may do so after completing all the formalities but it is clarified that but for the training for all other benefits except arrears of salary he shall be considered alongwith his colleagues who have been recruited at U.P.

The O.A. is disposed of on the above lines but without any order as to costs.



(S.P. Biswas)

Member(A)



(Dr. Jose P. Verghese)

Vice-Chairman(J)

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