

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.927/97

New Delhi this the 15th day of September, 1999.

HON'BLE MR. JUSTICE V.RAJAGOPALA REDDY, VICE-CHARIMAN(J)
HON'BLE MRS. SHANTA SHAstry, MEMBER (A)

S.I. (Ex) Pankaj Kumar,
No.D-3097,
Delhi Police presently
posted to
F.R.R.O. Delhi.

...Applicant

(By Advocate Shri M.G. Kapoor)

-Versus-

1. Union of India through
the Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.
2. Lt. Governor of Delhi (Administrator),
Raj Niwas Marg,
Delhi.
3. Commissioner of Police,
Delhi Police Headquarters,
Indraprastha Marg,
New Delhi.
4. Dy. Commissioner of Police
HQ(I), Police Headquarters,
Indraprastha Marg,
New Delhi.Respondents

(By Advocate Mrs. Avnish Ahlawat)

O R D E R

By Reddy, J.

The applicant seeks a declaration that he should be deemed to have been selected as Sub Inspector (Ex), in the Delhi Police, in 1986 and to accord him seniority accordingly.

2. The applicant applied for the post of Sub Inspector (Ex) in the Delhi Police in the year 1985. Though he was qualified in the written test, he was not qualified in the Physical Endurance Test as he was found short in his physical measurements. Hence,

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he was not called for the personality test. He again appeared in 1986 and once again found short in height by 1 cm. But before he was put through the physical measurement tests the applicant applied to the Lieutenant Governor of Delhi for relaxation in height. By an order dated 30.5.86 the Lieutenant Governor rejected the applicant's request but on review relaxation was granted, by an order dated 3.10.86. The applicant submits that since he was not called for the personality test, he moved the Tribunal in OA-1309/87 and the Tribunal by an interim order directed the Staff Selection Commission (for short, SSC) to interview the applicant along with other candidates of 1987 batch in October, 1987. The SSC, however, did not interview the applicant along with other candidates. He was later interviewed as lone candidate but he could not make the grade. The OA was disposed of by an order dated 3.4.89, and as per the direction issued by the Tribunal the applicant was considered for selection along with other candidates in 1989 batch and was appointed as Sub Inspector (Ex) in 1989. The impugned seniority list was published on 25.10.96, showing his name in 1989 batch. The representation filed against the impugned seniority list alleging that the applicant was entitled to have been appointed in 1986 and not alongwith 1989 batch, was rejected. Hence the OA.

2. It is contended by the learned counsel for the applicant that the disqualification of height having been removed in 1986, well before the appointments of the selected candidates in 1986 batch

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were made, the applicant ought to have been held as fully qualified and successful in 1986 batch and given the seniority alongwith 1986 batch candidates. He, therefore, contended that the impugned seniority list is vitiated.

3. But, it is the case of the respondents that by the time the applicant was referred to the SSC for conducting interview upon the relaxation in height, the entire process of recruitment was over, in May, 1986 itself and the results were also declared. Hence he was interviewed on 4.12.87 but he could not make the grade. Subsequently, in view of the final order passed by the Hon'ble Tribunal in the above OA on 3.4.89 the applicant was permitted to appear in the examination held in 1989, his name was recommended alongwith other candidates of 1989 batch and was appointed on 9.7.90. The inter-se-seniority was fixed as per relevant rules along with the batch of 1989 successful candidates, at its proper place.

4. The learned counsel for the respondents, raises an objection as to the maintainability of the OA on the ground of limitation. It is pointed out that if the applicant has got any grievance against his appointment in 1990, he should have questioned that in 1990 itself and not in 1997.

5. We will now first examine the objection as to limitation. The applicant appeared for the examination in 1986 and later in 1987 but he was ~~not~~ not selected in either of the examinations. In the

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first attempt he was not selected on the ground of shortage of age whereas in the second attempt he could not make the grade. The applicant was allowed to the examination alongwith 1989 batch candidates in deference to the directions given by the Tribunal in the OA filed by him, by order dated 3.4.89. The applicant, therefore, appeared in the examination held in 1989 and eventually he was appointed on 9.7.90. If the grievance of the applicant is that his seniority should be fixed w.e.f. 1986 alongwith the batch of candidates, he should have questioned the order dated 9.7.90 appointing him w.e.f. the said date. The OA is filed questioning the fixation of the seniority in the seniority list dated 20.9.96 and the order dated 13.12.96, rejecting his representation against the wrong fixation of his seniority. The respondents passed the adverse order in 1990 itself, the seniority list was only prepared in accordance with the rules basing upon the appointment of the applicant in 1990. Seniority list cannot be considered as giving a fresh cause of action, independent to the date of his appointment. Hence the OA is hit by the provisions of Section 21 of the Administrative Tribunals Act, 1985 and is liable to be dismissed on this ground alone.

6. Now considering the case on its merits:

As noticed in the pleadings and the facts discussed in the foregoing paragraphs, the applicant found unsuccessful in his attempt in the examination held in 1986 on the ground of shortage of height, he obtained relaxation of the height, by order dated

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3.10.86. It is his grievance that the SSC has not permitted him to sit in the examination alongwith the candidates of 1986 batch. It is the case of the respondents that by that date the interviews and selections were over, hence, the applicant was directed to appear alongwith the canidates of 1987 batch. The learned counsel for the applicant makes a very serious grievance that the respondents are guilty of laches and lethargy in communicating the order of the Lieutenant Governor granting relaxation, by which the applicant was prevented from being selected alongwith the candidates of 1986 batch. It should be remembered that the applicant urged all these points before the Tribunal and he also sought a relief to consider his case for appointment w.e.f. 1986 batch of candidates. This grievance, therefore, cannot now be considered once again in this OA.

7. The only question that remains to be seen, in this OA, is whether the applicant was entitled to be appointed in 1986, as per the direction given by the Bench in its order dated 3.4.89 in OA-1309/87. The applicant filed the earlier OA seeking a direction to the SSC to consider him for selection to the post of Sub Inspector (Ex) for the year 1986. He also sought other reliefs. By virtue of an interim order passed by the Tribunal the applicant was allowed to be interviewed in 1987 batch but, he could not make the grade. The OA was ultimately disposed of on 3.4.89, directing the respondents to allow the applicant to appear in the examination along with other candidates at the next

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recruitment. The Tribunal while considering the contention of the applicant in the OA that he would be age barred to appear in the next examination, taking a compassionate view of the facts and circumstances of the case, a further direction was issued to the respondents to waive the age relaxation. Accordingly, the applicant was allowed to appear in the next examination, i.e., 1989 recruitment and he was appointed along with 1989 batch of candidates. His relief for considering him for selection w.e.f. 1986 was rejected. The applicant, but for the directions issued by the Tribunal would be age barred to sit even in the 1989 examination. Having thus got the benefit under the judgement the applicant is not emboldened to file this OA for seeking benefit of his appointment w.e.f. 1986. We are of the view that in no circumstances, the applicant is entitled for the benefit of seniority w.e.f. 1986. It is not in dispute that he was not selected in the 1986 examination nor in the 1987 recruitment and but for the judgement of the Tribunal in the earlier OA he would not have been even permitted to sit in the examination even in 1989, as he was overaged. He must be thankful for getting appointment at least in 1989.

8. In the circumstances, we find, absolutely, no merit in the OA. Accordingly, the OA is liable to be dismissed both on the ground of limitation as well as on merits.

9. The O.A. is dismissed, in the circumstances with costs of Rs.1,000/-.

Shanta
(Smt. Shanta Shastray)
Member (A)

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

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