

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2073/89 1989
T.A. No.

DATE OF DECISION 11.1.1990.

Shri Ishwar Singh Applicant (s)

Shri Shyam Bahu Advocate for the Applicant (s)

Delhi Admn. & Others Respondent (s)

Shri M. M. Sudan Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P. K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D. K. Chakravorty, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

(delivered by Hon'ble Shri P. K. Kartha, Vice-Chairman)

The question whether a Constable of the Delhi Police, who suffered a leg injury in the course of discharge of his official duty and ~~one~~ ^{an} of his legs had to be amputated, deserves to be considered for further promotional posts in the Delhi Police, is ~~an~~ issue in this application filed under Section 19 of the Administrative Tribunals Act, 1985.

2. The facts of the case are not disputed. The applicant joined the Delhi Police as a Constable in 1972. In 1979, he was selected on merit to be brought on Promotion List-A. He was selected to undergo a Lower School Course for the purpose of promotion as

Head Constable. He was directed to appear before the Police Surgeon, Old Police Lines, Delhi, for medical examination on 21.3.1979. He, however, met with an accident on the night of 20.3.1979 and due to this, he remained under treatment and ultimately his left leg was amputated. He joined duty after medical fitness on 7.3.1980. Thereafter, on 19.3.1980, he made a representation to the Commissioner of Police, Delhi for absorption in the Ministerial Cadre in Delhi Police on compassionate grounds since he had met with an accident while he was on Police duty. While rejecting this representation, the Commissioner of Police stated that his services may be utilised on some clerical job.

3. As the applicant did not undergo the Lower School Course of Promotion List 'B', he was not promoted as Head Constable while some of his colleagues who had undergone the said Course, were promoted as Head Constables w.e.f. 7.7.1980. He again made a representation to the Commissioner of Police on 21.7.1980 requesting for promoting him to the rank of Head Constable (Executive) on compassionate grounds w.e.f. 7.7.1980, the date from which his batchmates got promotion. This also was rejected by the Commissioner of Police. In his order dated 15.12.1980, the Commissioner of Police added that if the applicant wanted to be absorbed in the Clerical Cadre, he must have passed higher secondary examination. The applicant was only a matriculate.

4. The further representations made by the applicant to the Commissioner of Police and the Lt. Governor, Delhi, in 1981 did not yield any favourable response from them.

Q

5. The applicant submitted a detailed representation to the Commissioner of Police on 31.5.1983. Thereafter, by order dated 30.6.1984, the Commissioner of Police allowed the applicant to undergo the Lower School Course and exempted him from P.T and parade during the Course. He was to be deputed for Lower School Course along with the next batch (vide Annexure 'J' at page 47 of the paper-book). Following this, he was selected for the Lower School Course in the session commencing from 16.6.1985 and he had completed part of the Course when he received an order dated 21.8.1985 by which he was directed to be withdrawn from the Course. By that time, a new Commissioner of Police of Delhi had taken over.

6. The order of the Commissioner of Police dated 21.8.1985 which dealt with the cases of the applicant as well as Constable Sudhan Chand, reads as follows:-

"Sub:- Request for exemption from outdoor training case of constable Sudhan Chand No. 11652 DAP undergoing training in the Lower School Course at recruit training centre 4th Bn. DAP Delhi.

Please refer to your memo 6013/Estt/4th DAP dated 5.7.85 on the subject cited above.

2. The Commissioner of Police, Delhi has ordered that exemption from outdoor training cannot be granted to Constable Sudhan Chand No. 11652 DAP. He has also ordered that the exemption already granted to Ct. Ishwar Singh 1463/C Vide this Hdqrs. Memo. No. 9814/SIP/PHQ/D/III, dated 15.6.84 from P.T. and parade during the lower school course may also be withdrawn.

3. Both the Constables may be sent back to their parent unit, under intimation to this Hdqrs. immediately."

7. Thereafter, the applicant again made a representation to the Commissioner of Police in which he brought to the notice of the superior officers that one S.I.,

Raghbir Singh, who was also a handicapped person, had been granted exemption from P. T. and parade and was allowed to go for Upper School Course. Rejecting the said representation, the respondents informed the applicant vide their order dated 2.1.86 that S.I. Raghbir Singh was declared medically fit by the Police Surgeon and no exemption was granted to him, and that he did the outdoor training with the other trainees successfully. In view of this, the case of the applicant and that of Sudhan Chand could not be decided on par with that of Raghbir Singh.

8. Constable Sudhan Chand filed OA-1716/87 in this Tribunal praying that the impugned order dated 21.8.1985 recalling him from the Lower School Course be quashed, that he should be deputed to the said Course to complete the same for bringing his name on Promotion List 'B' for promotion as Head Constable, and that he should be treated as promoted Head Constable along with his colleagues with whom he was undergoing training. By an interim order dated 7.12.1987, the Tribunal allowed Constable Sudhan Chand to be admitted to the Lower School Course subject to the outcome of the application. He completed the Lower School Course pursuant to the interim order passed by the Tribunal. The left arm of Constable Sudhan Chand had been cut off while he was working as a thrasher in his village. He only performed those items at the Lower School Course which he was capable of doing. During his training, he was assessed only in those items which he could perform, being a handicapped person. He was declared successful in the Course on the basis of those items.

Q

....5...,

9. The Tribunal, vide its judgement dated 10.2.89, quashed the impugned order dated 21.8.1985 and directed the respondents to consider Constable Sudhan Chand, who had passed the requisite training course, for promotion by bringing his name on Promotion List for promotion as Head Constable from the same date as his colleagues who had passed the same training course were brought on Promotion List 'B'. It was further directed that he would also be entitled to all consequential benefits, including pay and allowances, further confirmation, seniority, etc.

10. After the aforesaid decision, the applicant ~~again~~^{as} made a representation to the respondents on 17.3.1989. He was selected for training in Lower School Course commencing from 1.9.1989 and was directed to report for medical check-up on 11.8.1989. The Police Surgeon, Civil Hospital, Rajpur Road, Delhi, declared him unfit for physical training as his left leg had been amputated and he was using artificial limb. The applicant again made representations to the Commissioner of Police on ~~16.8.1989~~^{17.8.1989} for exemption from P.T. and parade during the Lower School Course. These representations were rejected by the respondents by order dated 12.10.1989.

11. The applicant has sought the following reliefs:-

- (i) to quash the impugned order dated 12.10.89;
- (ii) to declare that he is deemed to have completed the Lower School Course in pursuance of Order dated 30.6.1984 and that he is entitled to be promoted as

On

Head Constable (Executive) w.e.f. 7.7.80, the date from which his juniors/colleagues were so promoted, with all consequential benefits;

(iii) Alternatively, to direct the respondents to promote him as Head Constable (Executive) w.e.f. the date when Constable Sudhan Chand was so promoted as Head Constable (Executive) or, in any case, from the date when his other colleagues/juniors are so promoted after he completes the Lower School Course and grant consequential reliefs, including the seniority, promotion, confirmation and otherwise; and

(iv) alternatively, to direct the respondents to absorb him in the Clerical Cadre of Delhi Police and promote him as Head Constable in that cadre with retrospective effect granting him all consequential reliefs/ benefits.

12. The respondents have filed a counter-affidavit in which they have raised the following contentions:-

(i) The permission given to the applicant in 1984 to undergo the training in Lower School Course after exempting him from P.T. and parade, was subsequently cancelled on administrative grounds because the nature of duties in the Executive Cadre (higher rank) is quite different and hard compared to that of a Constable. In case he is promoted to the rank of Head Constable (Executive) after successful completion of

On

Lower School Course, he is supposed to be put on law and order duties, controlling of mobs, attending courts, traffic regulation and visiting different places during the course of investigation of cases which require muscular power and standing/moving capacity. With the disability of an amputated leg, he will not be capable to do executive duties.

(ii) The applicant was not declared medically fit to undergo the Lower School Course. Exemption from physical training was not given to him on the ground that handicapped persons going up the rank by way of relaxation is not proper in the benefit of the department. The case of Constable Sudhan Chand stands on a different footing. In his case, his left arm had been accidentally cut off and he was capable to do most of the jobs and items/ responsibilities as his right hand could be put to proper use. The applicant was unable to undergo the toughest physical training as well as to perform the field duties in view of his amputated left leg.

(iii) As he is only a matriculate, he cannot be absorbed/given promotion in the Ministerial Cadre.

13. We have perused the records of the case carefully and considered the rival contentions. By order dated 25.10.1989, the Tribunal directed the respondents to

On

....8...,

file an affidavit indicating the reasons as to why a Constable with the disability of an amputated leg cannot be deputed for Lower School Course. They were also directed to indicate whether any person belonging to the Executive Cadre having disability as that of the applicant, has ever been deputed for the said Course. They were also to indicate the duration of the training course intended for the Executive Cadre as well as the Ministerial Cadre. Accordingly, the respondents have filed an affidavit in this behalf stating that no Constable with such disability can be deputed to undergo the training in Lower School Course because only those Constables who are declared medically fit and can imbibe the toughest physical training, are deputed to the Course. A scrutiny of the training records revealed that no person on Executive Cadre with similar disability has ever been sent to undergo the said Course. In the reply affidavit filed by the applicant, reference has been made to the case of Suresh Chandra whose leg had also been amputated and who was given appointment to the post of Head Constable (Ministerial) on 23.1.1987. He had also been deputed for training after giving him exemption from P.T. and parade and tests. The applicant has contended that there is no difference between the nature of outdoor training imparted to the personnel of Executive and Ministerial Cadres of the Delhi Police. Persons belonging to the Ministerial Cadre also performed duties of the Executive side occasionally, e.g., on Republic Day, Independence Day, 2nd October, Elections and other emergencies. Those belonging to the Executive Cadre also performed duties

On

P.P.

of Ministerial nature such as ~~Dead~~ Writers, Naib Court, Malkhana Moharar, Record Moharar, in Police Station, Reader of S.H.O., A.C.P., D.C.P., etc. There may be difference of duration of the training with regard to the Executive and Ministerial Cadres of Delhi Police but there is no difference at all in the nature of outdoor training which is imparted to both the Cadres of Delhi Police. If Constable Sudhan Chand and Constable Suresh Chandra could be allowed to undergo Lower Training Course, there is no reason why the applicant also should not be given the same treatment. Not deputing the applicant for the said training is, therefore, discriminatory and violative of Articles 14 and 16 of the Constitution.

14. In the rejoinder affidavit, the applicant has stated that the duration of training for Executive Cadre is six months and during this period, they have to complete 392 periods, whereas the duration of training for Ministerial Cadre is four months and they have to perform 320 periods. The items performed by both Cadres in the Lower School Course are also similar. The only difference is regarding the number of periods.

15. During the hearing, we enquired from the Counsel of both the parties as to the number of handicapped persons working in the Delhi Police in the various ranks. It appears that there are about 6,000 Head Constables of which only a small number belong to the category of handicapped persons. Such handicapped persons are working on the Executive side as well as the Ministerial side.

16. The applicant met with an accident while he was on Police duty and his left leg had to be amputated.

The Delhi Police, being a disciplined Force and the Executive Cadre thereof entrusted with diverse duties requiring perfect physical condition, we are of the opinion that the applicant does not deserve to be appointed as a Head Constable (Executive) on compassionate grounds. The respondents have distinguished the case of Constable Sudan Chand from that of the applicant as, in their judgement, he could perform responsibilities on the Executive Side notwithstanding his physical disability. At the same time, it will not be fair and just to hold that the applicant will have no chance for promotion for ever because of his physical disability. The disability arose while he was performing official duties and, consequently, it is for the respondents to consider his case and fit him in an appropriate cadre, by relaxing the rules, if necessary.

17. It is in this light that we find force in the alternative relief sought by him in this application. The only reason for not absorbing him as Head Constable on the Ministerial side is that he is only a matriculate and the rules require passing of Higher Secondary examination.

18. In the facts and circumstances of the case, we are of the view that this is a fit case in which the competent authority should consider appointing the applicant as Head Constable on the Ministerial side by relaxing the rules. Such a relaxation could be in respect of the class or category of disabled Constables and not restricted to the case of the applicant.

On

19. In the light of the foregoing, the application is disposed of with the following orders and directions:-

- (i) The respondents are directed to consider the suitability of the applicant for absorption in the Ministerial Cadre as Head Constable by relaxing the rules relating to educational qualifications as well as the standard of physical fitness prescribed under the rules.
- (ii) In case the applicant is found suitable for absorption as in (i) above, he should ~~be appointed as~~ to ~~be promoted as~~ Head Constable or ~~an equivalent~~ post w.e.f. the date when his other colleagues/juniors were promoted as Head Constables (Executive). He would also be entitled to consequential benefits, including arrears of pay and allowances.
- (iii) The physical disability of the applicant should not also stand in the way of the further promotions of the applicant on the Ministerial side and an entry to this effect shall be made in the service record of the applicant.
- (iv) The respondents are directed to comply with the above directions within a period of three months from the date of communication of this order.
- (v) The parties will bear their own costs.

D. K. Chakravorty
(D. K. Chakravorty)
Administrative Member
11-1-1970

Partha
11/11/90
(P. K. Kartha)
Vice-Chairman (Judl.)