

76

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

O.A.581/88

Date of decision: 20/1/93

Charan Singh & others

.. Applicants.

Versus

Delhi Administration

& others

.. Respondents.

Sh.Shyam Babu

.. Counsel for the applicant

Ms.Gita Luthra

.. Counsel for the
respondents

CORAM:

The Hon'ble Sh.Justice Ram Pal Singh, Vice Chairman(J)

The Hon'ble Sh.I.P.Gupta, Member(A).

J U D G E M E N T

(Delivered by Hon'ble Sh.I.P.Gupta, Member(A))

In this application, filed under Section 19 of the Administrative Tribunals Act, 1985 the applicants have requested for quashing of an order dated 14.3.88 where one of the applicants was told that his request for fixing his seniority from the date of enlistment in Delhi Police has been considered and rejected. The six applicants in this case were absorbed as MT Helpers (Constables) in MT Cadre of Delhi Police w.e.f. 26.8.87 (Annexure 'U'). The applicants have further prayed that they are entitled to be absorbed as MT Helpers (Constables) from the date of their enlistment

...2.

in Delhi Police or in any case from June 1978 onwards when the vacancies of MT Helpers (Constables) were filled. Still further the applicants have requested for fixing their appropriate seniority in the cadre of MT Helpers and allowing them promotions from the dates when their juniors were so promoted.

2. The learned counsel for the applicant drew our attention to a letter dated 2.7.87 written by the Dy.Commissioner of Police, Delhi to the Joint Secretary, Delhi Administration (Annexure 'S'). All the six applicants are the subject matter of this letter. The Dy.Commissioner said that the applicants have submitted their representations that they might be adjusted as Constables (MT Helpers) for which they were enlisted so that they could get their seniority in their own cadre. This letter also says that the applicants were enlisted in Delhi Police as Constables (Executive) w.e.f. the dates noted against their name, which are ranging between 76 and 78, to work as MT Helpers in the interest of Government work. It was admitted in this letter that there were no vacancies of Constables (MT Helpers) at that time. It has also been admitted in that letter that the applicants have been working in the Central Workshop of Delhi as MT Helpers. Helpers are equivalent posts in so far as pay scales are concerned.

3. The learned counsel for the applicant further drew our attention to the recruitment rules for the post of MT Helpers (Annexure 'A'). He said that the recruitment rules provide for filling the posts of MT Helpers by transfer failing which by direct recruitment. Therefore, it is obvious that the method of transfer has first to be exhausted before the other method of direct recruitment is resorted to. Later the respondents filed an amended RR where the word 'Transfer' was replaced by 'Promotion'.

4. The learned counsel for the respondents strenuously argued that the case is hit by limitation. She said that according to the applicants themselves, the vacancies fell from June, 1978 to August, 1978 and if the case of the applicants is that they should first have been taken against available vacancies, the cause of action arose in 1978 and now by an application of 1988 they cannot raise their grievances, which, if any at all, pertain to the period, ten years old. While we see the force of the argument of the learned counsel for the respondents, we also find that in this case the applicants had all along been working in the MT Workshop. In pay scales they were not affected either by working as Constables in the Workshop or MT Helpers. It was in August, 1987 that they were regularised with immediate effect. Their cause of grievance is against this order of regularisation, which according

to them should have been from an earlier date. We further find that there is a letter of rejection in respect of one of the applicants in regard to counting of date of regularisation from an earlier date. In this view of the matter, we are of the opinion that the case, notwithstanding the objections of the 1d. counsel for the respondents, cannot be thrown aside on the grounds of limitation.

5. We now proceed to examine the case on merits. The applicants were appointed as Constables (Tradesmen) in the initial stage between 1976 and 1978. There was no post of Constable Tradesmen at that point of time. It is clear from the records that the intention was to keep them in the MT Workshop and in fact right from the date of induction in service the applicants were asked to work in the MT Workshop. As mentioned before, they have also been regularised as MT Helpers in MT Cadre itself. Further certain qualifying tests for Constable (Executive) were not insisted upon in respect of the applicants and they were exempted from such tests. Obviously it further leads us to the inference that the object all along has been to use them in the MT Workshop. It may be re-emphasised here that it is not a case of lower functionary being used for a particular job, which is in a higher scale. A Constable and a MT Helper are in ~~higher scale~~ scale and these applicants, who were taken as Trademan Constable, which posts were non-existent, had been working as MT Helpers.

38

6. It is also clear from the recruitment rules, as mentioned before that the method of transfer or promotion (as in the amended rule) should first have been resorted to. It is not disputed that some direct recruitments were made in June, 1978 for the post of MT Helpers. The applicants who, undisputedly have been fulfilling the qualifications of the recruitment rules in regard to the post of MT Helpers were not considered before filling the posts by direct recruitment. It is nobody's case that the applicants were not suitable. The letter of the Dy. Commissioner issued as late as 1987, stated that the applicants fulfilled all the job requirements except that they had crossed the age limit to show that the applicants were suitable. They were within age at the time of recruitment. They fulfilled the requirements of R.Rs. for the post of MT Helper. Their recruitment was not dehors the rules except for the fact that there were no vacancies then in the posts of MT Helpers and they were taken as Constables (Tradesman) in the post of Constable (Executive), which is equivalent to the post of MT Helper and were made to work as MT Helper.

7. Therefore, the respondents are directed to consider them for regularisation as MT Helper from the date or dates the vacancies were available. Such consideration for regularisation should be from dates which could not be later than dates of such vacancies

as were filled by D.Rs.

8. With the aforesaid direction and order the cases^{is} are disposed of with no orders as to costs.

I.P.Gupta
(I.P.GUPTA) 20/1/93
MEMBER (A)

Ram Pal Singh
(RAM PAL SINGH)
VICE CHAIRMAN (J)