

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No. 640 of 1986.

Decided on 22-8-1990.

Onkar Singh and 93 others

.....Applicants.

Vs.

1. Shri Ved Marwah, Commissioner of Police, Delhi.
2. Shri R.K. Sharma, Addl. Commissioner of Police, (C.I.D.), Delhi.
3. Shri Asad Farooqi, DCP VII BN. DAP, Delhi.
4. Shri Qamar Ahmed, DCP III BN. DAP, Delhi.
5. Smt. Kiran Bedi, DCP HQ(I), Delhi.
6. Smt. Kamaljit Deol, DCP (Crime against Women Cell), Delhi.
7. Lt. Governor of Delhi.
8. Union of India, through the Secretary to the Govt. of India, Ministry of Home Affairs, New Delhi.

.....Respondents.

For the Applicants - Mr. G.D. Gupta, Advocate.

For the Respondents - Mrs. Avnish Ahlawat, Advocate.

M.M. MATHUR:

This Application under Section 19 of the Administrative Tribunals Act has been filed by 94 Applicants praying that they may be appointed to the posts of Constables in the Delhi Police as a result of the selection conducted by the Respondents in August, 1985.

2. The relevant facts of the case as narrated by the Applicants are briefly as follows:

In August, 1985 a team of Delhi Police officials headed by Respondent No. 3 visited Shahjahanpur Farrukhabad and Kanpur to carry out recruitment of Constables for the Delhi Police. Applicant Nos. 1 to 48

alongwith several others appeared in the selection test at Shahjahanpur on 7th and 8th August, 1985. Similarly Applicant Nos. 49 to 87 appeared in the selection test at Farrukhabad from 9th to 11th August, 1985 and Applicant Nos. 88 to 94 appeared in the selection test held at Kanpur from 12th to 14th August, 1985. According to the Applicants, after filling up the prescribed application forms, they were physically measured in height and chest and having been found upto the mark were allowed to take the physical endurance test as well as the written examination. The result of these tests were announced on the spot and all the Applicants were declared successful. Thereafter they were interviewed by a Board consisting of Respondent No. 3 and two other Delhi Police officials. Finally a list of the successful candidates including the Applicants was declared and they were verbally informed that their selection was subject to their being found medically fit through a medical examination conducted by Govt. Doctor. Accordingly all the Applicants got themselves medically examined and were declared fit. Finally, the Applicants were required to execute an Agreement of service in the presence of two independent witnesses which was ^{to be} duly attested by a Magistrate Class-I. The Applicants have pleaded that they were verbally informed by the members of the Recruiting Team that the appointment/call letters would be sent by post to the successful candidates after getting their antecedents verified by the local Police of the candidates' respective residential localities. The Applicants were given to understand

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that the process of verification etc. might take about 4 weeks time and thereafter all the successful candidates would be called for training in Delhi and that they would be deemed to join Delhi Police for all intents and purposes with effect from the dates they report for training. The Applicants have further stated that they were asked to surrender their educational and other certificates in original to the Recruiting Team and they were told that these documents would be returned to them when they report for training. Accordingly, all the Applicants duly surrendered their original certificates etc. after ^{the} executing/agreements of service.

3. The Applicants waited for the receipt of their appointment/call letters for about 5 weeks but no communication was received from the Delhi Police. Some of the Applicants, therefore, visited the office of Respondent No. 3 in order to find out the reasons for the delay but they were informed that the process of verification of antecedents would still take some time. The Applicants have stated that during next 3 months i.e. September to November, 1985 several of them personally went to the Delhi Police Headquarters to meet the officers at various levels in order to find out the final outcome of their selection but did not receive any satisfactory reply from any quarter. However, they informally learnt that the finalization of the selection from these 3 districts of U.P. had been held up due to some complaints against the Recruiting Team for which an enquiry had been ordered. In March, 1986, the Applicants came to know that more than 150

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candidates selected from U.P. were being called for training but none of the Applicants received appointment/call letters. Finally, in June, 1986 the Applicants received identical cyclostyled letters dated 12.6.1986 (Annexure-I) informing that they could not be finally selected for the post of Constable in Delhi Police. Thereupon almost all the Applicants rushed to Delhi and approached the offices of the Respondents where they were told that only those candidates from U.P. who had secured 40% or more marks in the aggregate had been called for training.

4. The case of the Applicants is that since they had already been selected for recruitment as Constables in the Delhi Police as a result of the special recruitment held in August, 1985, they did not appear for any other recruitment which were subsequently held at various places in U.P. after August, 1985. Moreover, they had already surrendered all their original certificates and testimonials to the Recruiting Team of Delhi Police and the same were not returned to the Applicants until the receipt by them of the impugned order dated 12.6.1986 (Annexure-I). In the meantime most of the Applicants have become overage for Govt. service which has deprived them of further opportunities of earning their livelihood. They have further pleaded that after completing the recruitment in U.P., another Recruiting Team of Delhi Police had gone to Bangalore and Kerala and from these places even candidates who had secured 25% marks in the aggregate had been selected and called for training. In view of this the

Applicants have pleaded that the impugned order dated 12.6.1986 rejecting the selection of the Applicants was illegal, arbitrary, discriminatory and in gross violation of Articles 14 and 16 of the Constitution.

5. In the counter affidavit filed by the Respondents, it has been stated that in order to recruit Constables for Delhi Police a Recruiting Team headed by Shri Asad Farooqi, DCP (Respondent No. 3) was sent to Shahjahanpur, Farrukhabad and Kanpur districts in U.P. in August, 1985. After conducting the selection tests the Team provisionally prepared a list of 368 candidates. However, before the process of verification of their character and antecedents by the local Police could be completed, the department received a number of anonymous and pseudonymous complaints alleging that the Recruiting Team had resulted in extortion of money from the candidates. In view of these complaints the Commissioner of Police, Delhi (Respondent No. 1) ordered an enquiry to be conducted by Shri R.K. Sharma, Addl. Commissioner of Police (Respondent No. 2) into the allegations against the Recruiting Team. On receipt of the enquiry report, Respondent No. 1 decided that candidates securing 40% marks in general category and 35% marks in S.C./S.T. category may be considered for recruitment by a fresh Screening Committee. Accordingly, a fresh screening and reserved was conducted and 174 candidates of general/category who had secured 40% and 35% marks respectively, were

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called to be present on 9.12.1985 for physical measurement and interview. Out of these 174 candidates, 7 were rejected on the ground of short height and chest and one other was rejected as he was not found to be domicile of U.P. The remaining candidates who had secured less than 40% marks were not considered suitable for fresh screening according to the norms prescribed by Respondent No. 1. The Respondents have refuted the claim of the Applicants that they were finally selected by the Recruitment Team. They have pleaded that no final selection was made by the Recruitment Team and no list of any kind was announced or displayed at the recruitment centre and, therefore, the question of verbally informing them of their selection subject to their being medically found fit did not arise. In the written statement the Respondents denied that the Applicants were asked to execute the service agreement as contended by them. However, in a subsequent affidavit filed on 26.10.89, they have stated that on further scrutiny the Service agreements submitted by 90 of the Applicants were found to be tied to the other records of the recruitment, although they were not demanded from the Applicants. The Respondents' case is that the Recruitment Team only prepared a provisional list of candidates after locally conducting the physical and written tests and that the final selection list of the successful candidates was to be prepared only after verification of their character and antecedents by their respective local Police. The question of signing the service agreement would have arisen only if the candidates were called for training.

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The Respondents have taken the plea merely because blank forms of the draft agreement were got signed by the Applicants in a routine fashion alongwith other documents does not in any way prove that their selection had been finally approved by the appointing authority. The Respondents have, however, admitted that the whole process of recruitment had to be re-opened for the reason that there were a number of complaints received by the Commissioner of Police against the Recruitment Team. As a result of the enquiry, some of the specific complaints against the Recruitment Team were found to be true. Consequently, a fresh screening of all the candidates recommended from U.P. was ordered and ^{it} was decided that only candidates of general category securing 40% or above marks and candidates of S.C./S.T. categories securing 35% and above marks were to be called for fresh screening. The remaining candidates who had secured less than 40% marks in the aggregate were not considered suitable even for fresh screening and, therefore, they were informed of their non selection vide the impugned orders. Regarding the recruitment of candidates from Kerala and Karnataka with less than 40% marks, the Respondents have simply stated that there were no complaints from any source with regard to the recruitments from these states and the recruitments already made could not now be cancelled. It has been stated that after the Commissioner of Police had made the necessary amendment in the Standing Order adding specific provision that persons who had secured less than 40% marks in general category and 35% marks in S.C./S.T. category cannot be selected

under the circumstances. Accordingly final selection of the Applicants had to be regulated in accordance with the amended Standing Order and, therefore, no appointment letters could be issued to the Applicants who had admittedly secured less than the minimum prescribed marks under the Standing Order.

6. During arguments, Shri G.D. Gupta, learned counsel for the Applicants built up his case mainly on two grounds. Firstly, that the Commissioner of Police had no right or power to decided that only candidates securing 40% marks in the general category and 35% in S.C./S.T. category should be considered for appointment. He submitted that at the time of recruitment no minimum percentage of marks was laid down for selection of Constables in the Delhi Police and the appointments were ^{to be} made on the basis of the merit list prepared by the Recruitment Team. The same criteria ^{were} applied to the recruitment of Constables in Delhi as well as in other States outside Delhi. The learned counsel argued that even if an amendment had been made in the relevant Standing Order, it could be made effective only after the date of amendment and could not be applied to the recruitment already made in U.P. before ^{the} amendment came into effect. Secondly, the Respondents have not denied that Constables selected from Kerala and Karnataka during the same period have been appointed even though many of them had secured less than 40% marks. The learned counsel vehemently contended that this amounted to discrimination against the candidates selected from U.P. merely on the ground that the Respondents had received some anonymous or

pseudonymous complaints which were ultimately found to be unsubstantiated. The third point highlighted by the learned counsel was that all the Applicants had gone through various stages of recruitment, namely, the physical examination, the written test and the interview and after having been found successful in these tests, they were also made to go through the medical examination in which they were found fit. He asserted that the Applicants, having been found fit in all respects, were asked to execute an agreement of service and get it duly authenticated by a First Class Magistrate. All these documents were duly collected by the Recruitment Team before they left for Delhi and the Respondents had not denied the existence of these documents. Alongwith the above documents, the educational and other original certificates of all the Applicants were also taken away by the Recruitment Team. The learned counsel vehemently argued that in the face of these circumstances, the Applicants were perfectly justified in presuming that they had been finally selected for appointment to the posts of Constables in the Delhi Police. In fact such an assurance was verbally given to them by the Recruitment Team before they left for Delhi and the Applicants were informed that they would receive their appointment/call letters as soon as final verification of antecedents was completed. The learned counsel, therefore, strongly contested the plea taken by the Respondents that the Recruitment Team had only prepared a provisional list and that no indication of final selection had been given to the Applicants. In support of his argument

the learned counsel for the Applicants relied upon the judgment of the Supreme Court in the case of ¹ S. Govindaraju Vs. Karnataka S.R.T.C. and Another in which it was held that once a candidate is selected and his name is included in the select list for appointment in accordance with the regulations, he gets a right to be considered for appointment as and when vacancy arises. The learned counsel further pleaded that since their original certificates of educational qualifications etc. were in the possession of the Respondents, the Applicants were unable to apply for any recruitment. In the summing up, the learned counsel pleaded that denial of appointment to the Applicants after almost one year of the completion of the recruitment process has resulted in denial of opportunity for future employment as during this period many of them have become overage. In support of this contention the learned counsel cited the judgment/in the case of ² Ishwar Singh Khatri and others V. Union of India and others in which it was observed that, "considerations of public interest and equity would therefore ordain that the interest of those already selected and who, if not appointed on the basis of their present selection, will have no alternative avenue of public employment, must prevail over the interests of an unidentified and nebulous segment of society."

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1. (1986) 3 S.C.C. 273.
 2. (1987) 4 A.T.C. 932.

7. The learned counsel for the Respondents, Mrs. Avnish Ahlawat, strongly contested the arguments of the Applicants primarily on the ground that the recruitment tests conducted by the Recruitment Team did not constitute final selection of the Applicants and as such they did not acquire any right to be appointed to the posts of Constables in the Delhi Police. The learned counsel contended that in accordance with the procedure prescribed in Standing Order No. 212, the Recruitment Team was only authorised to prepare a provisional list of the candidates recommended for selection on the basis of the various tests conducted during the local visits. Under the Rules, the appointments were to be made in order of merit to fill up available vacancies after the selection is finally approved by the Commissioner of Police (for short the 'CP'). In support of her arguments, she relied upon several judgments of the Supreme Court and the High Courts in which it has been consistently held that mere selection does not give any right of appointment and that the Govt. has right to decide the eligibility or suitability of the candidate till the formal appointment letter is actually issued. Some of the important judgments cited by her are as follows:-

- i) The State of Haryana Vs. Subash Chander Marwaha and ors., 1973(2) SLR 137.
- ii) Shri Varan Singh Vs. Union of India and ors., 1974(1) SLR 710.
- iii) Mani Subrat Jain and others Vs. State of Haryana and others, (1977) 1 SCC 486.
- iv) Daljit Singh Minhas and others Vs. The State of Punjab and others, 1978(1) SLR 32.

- v) The State of Punjab and others Vs. Saroj Devi and others, 1981(1) SLR 49.
- vi) Davinder Singh and others Vs. The State of Punjab and others, 1982(2) SLR 249.
- vii) H.R. Tindwani Vs. Manager, Reserve Bank of India, Ahmedabad, 1985(1) SLR 719.
- viii) State of Kerala V. A. Lakshmikutty and others AIR 1987 SC 331.
- ix) Union of India and another Vs. Gurkirpal Singh 1990(1) SLR 302.

8. Relying upon the above judgments, the learned counsel for the Respondents vehemently argued that the pre appointment formalities like written examinations, interviews or medical examinations etc. do not confer any right of appointment and the question of suitability of a candidate can be kept open by the appointing authority till the last stage. She also contended that it is open to the Govt. to fix higher standard for selection than the minimum standard prescribed in the eligibility conditions and merely because a candidate has been included in a merit list does not confer any right on him to be finally appointed to any post even if vacancies are available. The learned counsel argued that under the Delhi Police Rules, the D.C.P. is the competent authority to fix the criteria for final selection. In the present case after considering the performance of the candidates and the report of the Enquiry Officer on the complaints received against the Recruitment Team, the D.C.P. decided that out of 368 candidates provisionally selected by the Recruitment Team, only those who had secured more than 40% marks in the aggregate (35% in the case of reserved category) should be called for fresh screening. In justification

of this decision the learned counsel produced the relevant departmental files containing the notings and orders dated 27.10.85 leading to this decision. As regards the controversy relating to the signing of the service agreement by the Applicants, the learned counsel submitted that as a routine practice a complete set of blank forms including the forms of medical examination and service agreement was given to all the candidates provisionally selected by the Recruitment Team. However, the service agreement was required to be completed only after a candidate is finally selected and called for training. While admitting that in the present case the agreement forms had already been signed by the Applicants alongwith other forms, she contended that the form of agreement only signed by the candidates does not constitute a legally enforceable document as it is not complete until it is signed by the competent authority on behalf of the President of India. She further argued that no appointments could be made without verification of character and antecedents which had not been done in the case of the Applicants and consequently they can not claim any right of appointment.

9. With regard to the contention of the Karnataka Applicants, that candidates from / and Kerala even with less than 40% marks had been selected and appointed during the same period, the learned counsel argued that the selection of these candidates had already been approved and the appointment letters had been issued before the new criterion of 40% minimum marks was introduced by the amendment to the Standing Order No. 212 w.e.f. 31.3.1986. She contended that the C.P.



was fully competent to prescribe any standars for the selection of Constables at any stage.

10. We have carefully gone through the pleadings in the case and have given our earnest consideration to the elaborate arguments advanced by the learned counsel for both the parties. We have also perused the enquiry report and the relevant departmental files produced by Respondents.

11. There are basically two legal issues which arise for adjudication in the present case. Firstly, whether the Applicants can claim any legal right of appointment to the posts of Constables in the Delhi Police on the basis of the selection held by the Recruitment Team in August, 1985 and secondly whether denial of appointment to the Applicants on the basis of the amended recruitment criteria introduced after their selection amounts to discrimination and violates the provisions of article 16(1) of the Constitution.

12. The essential facts of the case are not in dispute. It is admitted that the names of the Applicants were included in the list of 368 candidates selected by the Recruitment Team after conducting the physical measurement tests, written examination and interviews as prescribed in the Standing Order No. 212 relating to recruitment of Constables in Delhi Police. All these candidates, including the Applicants, were also asked to undergo medical examination and sign the service agreement forms. It is also on record that the original educational and other certificates of the Applicants were retained by the Recruitment Team and were returned to them only

10 months later alongwith impugned letter dated 12.6.1986. While the Respondents have not disputed these facts they have taken the stand that the list prepared by the Recruitment Team was only a provisional list of candidates found suitable for appointment and the final selection was yet to be made by the C.P. They have strongly asserted that the completion of various stages of recruitment does^{not}/confer any legal right of appointment on the Applicants. In support of this contention they have cited a catena of judgments of the Supreme Court and various High Courts. The legal position that emerges from these judgments has been summed up in a recent judgment of the Punjab and Haryana High Court in the case of Union of India and another Vs. Gurkirpal Singh (supra):-

"The equality which is guaranteed under the Constitution is the opportunity to make an application for a post and to be considered for it on merits. The right does not extend to being actually appointed. The process of selection and selection for the purpose of recruitment against anticipated vacancies does not create a right to be appointed to the post which can be enforced by a mandamus. No one can ask for a mandamus without a legal right."

13. In view of the unambiguous and overwhelming judicial pronouncements, the prayer of the Applicants for a direction to appoint them as Constables on the basis of the recruitment held in August, 1985 is not legally sustainable. However, there is considerable forceⁱⁿ/the second argument of the Applicants that they



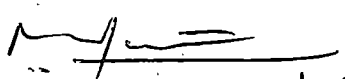
can not be denied consideration for appointment on the basis of an amendment to the eligibility criteria introduced in March, 1986 after the recruitment procedure in respect of the Applicants had been completed in August, 85. It has been admitted by the Respondents that Standing Order No. 212 as it stood in August, 1985 did not prescribe any minimum percentage of aggregate qualifying marks for selection and appointment to the posts of Constables in Delhi Police. It is also evident from the records of the department that the decision to introduce the minimum of 40% aggregate marks was taken on the basis of the enquiry held into the allegations of malpractices against the members of the Recruitment Team. A perusal of the enquiry report and the relevant departmental file reveals that the complaints received were against the members of the Recruitment Team and not directly against any of the Applicants. However, even the complaints against the Recruitment Team remained largely unsubstantiated. Moreover, although a decision was taken on the file on 27.10.85 to order fresh screening of only those candidates from U.P. who had secured 40% or above marks, formal amendment to Standing Order No. 212 was issued only on 31.3.1986. No such fresh screening was, however, ordered for candidates selected from ^{Karnataka} and Kerala who had received less than 40% marks. The pertinent question which, therefore, arises is whether the revised criteria introduced w.e.f. 31.3.86 could be applied only to candidates from U.P. even though the amendment was equally


applicable to recruitments of Constables made for Delhi Police in all the States. It has been strongly urged on behalf of the Applicants that this is illegal and discriminatory as candidates from ^{Karnataka} and Kerala with less than 40% marks recruited during the same period were appointed as Constables on the basis of the recruitment tests held before the amendment. They have also forcefully pleaded that since their original certificates were retained by the Recruitment Team they were unable to apply for any other employment during the following period of 10 months which has resulted in many of them becoming overage and thereby rendering them ineligible for future employment under the Govt. We find substantial merit in the above argument advanced on behalf of the Applicants. It is by now well recognized that the basic concept of equality in matters of employment enjoins that all citizens in the matter of service under the State shall be treated alike under like circumstances and conditions. The primary aim is to prevent any person or class of persons from being singled out as a special subject for purposeful or invidious discrimination or hostile treatment. On these basic principles of equality, the Application deserves to succeed.

14. After carefully considering the facts and circumstances of the case as discussed above, we are of the view that the amendment to the Standing Order No. 212 introduced w.e.f. 31.3.1986 could not be made applicable to the Applicants and the action of the Respondents in applying the revised criteria only to the

candidates selected from U.P. and not to those selected from other States, amounted to discrimination and was violative of Article 16(1) of the Constitution. Accordingly, we direct the Respondents to reconsider the Applicants for appointment to the posts of Constables in the Delhi Police on the basis of the standards of eligibility as applicable to the recruitment of Constables in August, 1985. In case any of the Applicants has become overage, the Respondents shall grant them suitable age relaxation while reconsidering their cases.

15. The Respondents shall comply with the above directions within three months from the receipt of a copy of this judgment. In the circumstances, however, the parties will bear their own costs.

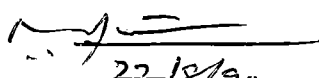

(M.M. Mathur) 22/8/90
Administrative Member


(B.S. Sekhon)
Vice Chairman

'MSR'

17-8-90

Pronounced by me in open court today.


22/8/90