

9

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A. No. 1716/87

Date of decision 10-02-1989.

Shri Sudhan Chand

.....Petitioner

Vs.

Union of India & Others

.....Respondents

For the petitioner

.....Shri Sital A.K. Dar,
Counsel

For the respondents

.....Shri M.M. Sudan,
Counsel

CORAM:

THE HON'BLE MR. B.N. JAYASIMHA, VICE CHAIRMAN(A)

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*

(The judgment of the Bench delivered by Hon'ble Mr. P.K. Kartha, Vice-Chairman)

The applicant, who is working as a Constable in the Delhi Police, filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying that the impugned order dated 21.3.1985 recalling him from the middle of the Lower School Training Course be quashed, that he should be deputed for the said training 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. He has also prayed for

a

granting him all consequential benefits.

2. The application was admitted on 27.11.1987 and an interim order was passed by another Bench of this Tribunal on 7.12.1987 directing that the applicant may be provisionally admitted to the ensuing Lower School Training Course subject to the outcome of this application.

3. The facts of the case in brief are as follows. The applicant who is a matriculate was appointed as a Constable (Executive) in 1974 and was subsequently confirmed in that post. While on casual leave in 1977, his left arm was accidentally cut off when he was working at his residence on a thresher. Thereafter, he made an application for his absorption in clerical cadre on compassionate grounds. This was not agreed to on the ground that the rules did not permit for the same. However, he was informed that there are so many office duties in districts/units against which executive staff is working and if the Superintendent of Police concerned feels that the Constable cannot perform his field duty, his services might be utilised for clerical duty in the office.

4. The applicant has alleged that Sub-Inspector Raghubir Singh who was also handicapped of his right hand had been promoted as Sub-Inspector after undergoing the necessary Training Course meant for such promotion. It has been alleged that giving permission to Shri Raghubir Singh to undergo the Training Course while his disability

9

was more than 50 per cent and not giving the same treatment to the applicant whose disability is much less, amounts to gross discrimination.

5. The applicant and Constable Rajbir Singh, who had also been injured, had requested for exemption from taking the PT and Parade tests while undergoing training in the Lower School Course in 1985 and their superiors (DCPs) had recommended their names for exemption from the above tests. By an order dated 12-3-1985, the Deputy Commissioner of Police informed both of them that according to the Commissioner of Police, Delhi, even if the left arm of the applicant is cut off, he can do some items of drill/PT and he had desired that both of them be put through tests which they were capable of doing and their marks be allotted only for such items. They were directed to report for duty for these tests (Annexure-B). The applicant on merit was brought on Promotion List 'A' at Sl.No.171 in order of merit out of 304 candidates/Constables who participated in the said competitive test for bringing their names on Promotion List 'A' (Annexure-C). The applicant was further selected on merit for Lower School Course in the session commencing with effect from 16-5-1985 at PTS, Jharoda Kalan, having been placed at Sl. No.179 out of 304 Constables (Annexure-D).

6. The applicant has averred that he was encouraged to make an application for exemption from P.T. and Parade tests at the direction of Shri A.K. Seth, D.C.P., when he visited the training camp and found him participating in the said test while Constable Ishwar Singh, who was similarly

Q

handicapped and who had been exempted from such tests by the previous Commissioner of Police, was not participating in them. The impugned order dated 21-8-1985 was passed by the Commissioner of Police who succeeded the previous Commissioner. The withdrawal of the exemption given to Shri Ishwar Singh and the recall of the applicant while undergoing the training by the present Police Commissioner, has been impugned in the present application.

7. The respondents have filed a counter-affidavit wherein they have not denied the factual averments made in the application as regards the applicant. They have, however, pleaded that as a matter of policy, it was decided that candidates who could not take part in outdoor training, may be withdrawn from the Lower School Training Course.

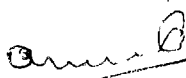
8. Pursuant to the interim order passed by this Tribunal on 7.12.1987, the applicant was allowed to complete the Lower School Training Course. He successfully passed the said course securing merit as 122 out of 301 trainees who were declared successful.

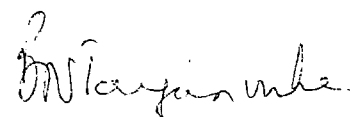
9. We have carefully gone through the records and have heard the learned counsel for both the parties. The contention of the applicant that there are several handicapped employees in the Delhi Police has not been controverted by the respondent. In our opinion, such handicapped persons should also be considered for training and promotion for which they are able to qualify themselves, in accordance with the rules. Allowing some handicapped employees to undergo the training courses for promotion and denying the same treatment to persons similarly

Oh

situated amounts to arbitrariness and discrimination within the meaning of articles 14 and 16 of the Constitution. The policy of the respondents should be applied uniformly to all belonging to the same class or category. According to the mandate in articles 14 and 16, the respondents should accord the same treatment to the applicant as they accorded to other handicapped employees like Shri Raghbir Singh in the matter of undergoing and passing training courses for the purpose of promotion.

10. In the facts and circumstances of the case, the impugned order dated 21-8-1985 is quashed. We order and direct that the respondents should consider the applicant who has passed the requisite training course for promotion by bringing his name on the promotion List 'B' for promotion as Head Constable from the same date his colleagues, who had passed the same training course were brought on promotion List 'B'. The applicant will also be entitled to all consequential benefits including pay and allowances, further promotion, confirmation, seniority etc. The respondents shall comply with the above directions within a period of one month from the date of communication of this order. There will be no order as to costs.


(P.K. KARTHA)
VICE CHAIRMAN(J)


(B.N. JAYASIMHA)
VICE CHAIRMAN(A)