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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No. 186/90.

10-6-94
Date of decision.

HON'BLE SHRI S.R. ADIGE, MEMBER (A)

HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER (J)

Shri Sant Ram,
Constable No. 342/ FERRO-Lines,
R/o Safdar Jang Airport, New Delhi.
S/o Bhagwan Singh
R/o Village & P.O. Tikri Kalan,
Delhi. Applicant.

Mrs.
(By Advocate/Meara Chibber)

versus:

1. Commissioner of Police,
Police Head Quarters,
I.P. Estate,
New Delhi.
2. Deputy Commissioner of Police/Hd.Qrs.(1),
Police Headquarters, I.P. Estate,
New Delhi.
3. The Foreigners Regional Registration
Officer,
I.P. Estate,
New Delhi. Respondents.

(By Advocate Shri B.R. Prashar)


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[Hon'ble Smt. Lakshmi Swaminathan, Member (Judicial)] 7

The applicant being aggrieved by the rejection
of his request for consideration to the post of Head
Constable vide order dated 7.11.1989 has filed this
application under Section 19 of the Administrative
Tribunals Act, 1985.

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2. The brief facts of the case, which are not disputed, are that the applicant joined as a Constable in Delhi Police in 1962. He was brought on Promotion List A-1 with effect from 30.12.1968 which was meant for promotion to the rank of Constable Selection Grade. He was promoted as officiating Selection Grade Constable w.e.f. 1.5.1969.

3. We have heard both the learned counsel. According to the Respondents, only those Constables who had earned promotion List B-1 were eligible for Lower School Course. Since the applicant had not earned List B-1, he was not eligible for training in Lower School Course and for promotion to the post of Head Constable. With the promulgation of the Delhi Police (Confirmation and Promotion) Rules, 1980, the old promotion Lists A-1 and B-1 have been categorised as promotion List 'A' and only those Constables who are below 40 years of age and earned promotion List 'A' are eligible for training in lower school course and promotion to the post of Head Constable. The Respondents have stated in the impugned order that since the applicant had "neither earned old promotion list 'B-1' nor new promotion list 'A',  the question to send him in lower school course and to promote him as Head Constable does not arise. They have denied that

the judgment of the Delhi High Court in the case of Laxmi Narain v. UOI and Others [C.W.No. 282 of 1978] decided on 29.1.1979 on which the applicant relies, has relevance to the facts of this case.

4. A preliminary objection has been taken by the learned counsel for the Respondents that the application is time barred. In view of the fact that the Respondents have themselves chosen to give a detailed reply on 7.11.1989 to the applicant's representation dated 4.9.1989 in which he had drawn the attention of the Respondents to the decision of the aforesaid judgment of Delhi High Court in Laxmi Narain's case and this application has been filed on 29.1.1990, we reject the Respondents' plea of limitation. Besides, in the light of the observations made below on the merits of the case, we do not think that it will be justified to allow such a technical plea of limitation on behalf of the Respondents.

5. Coming to the merits of the case, it is seen from the reply filed by the Respondents that they have not given any ground to show how the case of Constable Laxmi Narain before the Delhi High Court was not relevant in the instant case. The learned counsel for the Respondents merely drew our attention to the facts that the applicant is a non-matriculate constable

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whereas Constable Laxmi Narain is apparently matriculate.
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The was enrolled in the Delhi Police as a constable in
1960 and was brought on the promotion list 'A' in 1968
and subsequently promoted as selection grade constable
in 1969. Upto this point, the facts in the two cases
are similar. In 1977 constable Laxmi Narain was promoted
as officiating head constable on 'purely temporary and
ad hoc basis'. When an order was passed on April 26,
1977, reverting Shri Laxmi Narain along with certain
others to their substantive grade constable, he had filed
a writ petition under article 226 and 227 of the Constitu-
tion before the Delhi High Court. After dealing with the
facts of the case and the relevant provisions of the
rules applicable to the petitioner before and after the
amendment of the Punjab Police Rules by a notification
of November 19, 1977, the Delhi High Court observed that
the claim of the petitioner for being considered for
promotion to post of Head Constable was dispelled by
the Respondents on the ground that the petitioner did
not qualify for that either in terms of rule 13.6 or
13.7 of the rules. The court held that rule 13.5 of the
Punjab Police Rules, 1934 (for short referred to as the
"Rules") deals with promotion to the selection grade
constable. Rule 13.6 provides for maintenance of list 'A'

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constables eligible under Rule 13.5 for promotion to the selection grade constable. Rule 13.7 provides that list 'B' shall also be maintained for selection of candidates for admission to course at the Police Training School consisting of two parts, namely (1) selection grade constables considered suitable as candidates for the lower school course; and (2) Constables (selection or time-scale) considered suitable for drill and other special courses at the Police Training School. Rule 13.8 provides for the maintenance of List 'C' for promotion to Head Constables of all Constables who have passed the Lower School Course and are considered eligible for promotion to the rank of Head Constable.

6. With the introduction of revised payscale in 1973, the rank of selection grade constable was abolished by Government in 1975 and the revised scales envisaged only two categories namely Constable Grade 'B' and Constable Grade 'A', the former comprising Matriculates and above or those having 15 years of continuous good service and the latter comprising non-matriculates and below 15 years of service. By the amendment, carried out by notification dated September 1977, the words 'selection grade' after the word 'constable' were deleted. The High Court has referred in detail the manner in which

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Lists 'A', 'B' & 'C' are drawn up from the panel of Constables. Rule 13.6 refers to List 'B' which is the panel of constables who have qualified in lower school course and considered eligible to the post of Head Constable. It will be relevant to mention Rule 13.7 which refers to list 'C'. This list is a panel of non-matriculantes and also overaged constables who have not been able to qualify list 'A' test. Constables having 20 years of satisfactory service and who are above 40 years of age shall be brought on this list strictly in order of seniority which shall be determined from the date of confirmation in the rank of constable. Rule 13.8 provides that promotions to Head Constables shall be made from Lists 'B' & 'C' in the ratio of 2:1.

7. After referring to the Standing Order No. 91 issued in March 1973 to give effect to the amendments of Punjab Police Rules, The High Court observed that the abolition of selection grade constable and the consequent amendments of the rules, no doubt, lead to an anomaly. The court held that the petitioner who had been a confirmed selection grade constable, had been brought on List 'A' had been given officiating promotion as Head Constable, and yet, as a result of the amendment, he would be at par with time scale constables and would have to compete with them in the test envisaged by the

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extent " promotion to the post of Head Constable is a distinct possibility under the two sets of rules, even where, lower school course has not been passed

....." The court accepted the contention of the petitioner that notwithstanding the amended rule 13.7 and 13.8, the petitioner would continue to be entitled to be considered for promotion as Head Constable, provided he satisfies the requirement of unamended rule even if he had not put in 20 years of service and has not crossed the age of 40 years.

8. Following from this decision, the reasons given by the respondents in the impugned letter dated 7.11.89 for rejection of the applicant's case for consideration for promotion are liable to be rejected. This decision has become final and binding and is applicable to persons as the petitioner before the High Court. similarly placed. The Respondents ought to have, therefore, considered the applicant's claim for promotion in the light of the extant rules and decision of the High Court which they have failed to do, thereby compelling the applicant to file this O.A. which should have been avoided. The applicant has a right to be considered for promotion as Head Constable within the quota limit of 2:1 as provided in rule 13.8, provided he is qualified under rule 13.7 even if he is overage constable and not

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earned promotion, list 'A' or sent for training in lower school course, which grounds have been taken by the Respondents for rejection of his case.

9. In the result, the application succeeds and is disposed of with the following order :-

ORDER

- (1) The Respondents are directed to consider the applicant for promotions to the post of Head Constable and above, in terms of the relevant rules as it stood before the amendment, in the ratio incorporated in rule 13.6 as amended, within a period of 3 months from the date of receipt of a copy of this order.
- (2) If so promoted, the applicant shall also be entitled to all consequential benefits, including pay and seniority.

There will be no order as to costs.

Lakshmi Swaminathan
(Lakshmi Swaminathan)
Member (J)

S.R. Adige
(S.R. Adige)
Member (A)