

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

(9)

O.A. No. 566/90
T.A. No.

199

DATE OF DECISION 10.10.1991Shri Prabhu Dayal & Another PetitionerShri B.S. Charya Advocate for the Petitioner(s)

Versus

Commissioner of Police & Another RespondentMrs. Avnish Ahlawat Advocate for the Respondent(s)**CORAM**

The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr. B.N. DHOUNDIYAL, 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. Whether it needs to be circulated to other Benches of the Tribunal? *No*

JUDGMENT

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

The question for consideration is whether the respondents can insist upon the applicants to undertake Heavy Motor Vehicle driving test for confirmation against the post of Assistant Sub-Inspector of Police and, on failure, whether they could revert them to the lower post of Head Constable.

2. There is no dispute regarding the facts of the case. Both applicants joined the Delhi Police as Constables in 1953 and 1960 respectively. After qualifying in the motor-cycle driving test, they were posted as Motor-Cycle Despatch riders in the grade of Constable. In 1980, applicant No.1 was against subjected to undergo Motor-Cycle driving test for promotion to the post of

e

Head Constable. Applicant No.s also passed the same test. Both of them were promoted as Head Constables in 1982 and 1986 respectively and were confirmed in that post. Again, after undergoing the same test, they were promoted as ASIs w.e.f. 1.1.1984 and since then they are continuously functioning as such.

3. By order dated 20.3.1990, the respondents have asked the applicants to undergo Heavy Motor Vehicle Driving test. For over three decades, the applicants have been working as Motor Cycle Despatch Riders. Applicant No.1 is due to retire from service in about 3 years time. According to them, ~~this~~ condition being put on them at this stage is arbitrary and discriminatory. They have stated that on earlier occasions, there have been such incumbents who were deputed as Motor Cycle Despatch Riders and they were given promotion to the higher post and were never subjected to qualify heavy motor driving test. Those persons are:

ASI Jai Prakash

ASI Rewa Ram

ASI Ved Raj & Others

There are quite a few who originally worked as motor cycle despatch riders and got promotion as ASI and retired as such.

4. The respondents have to justify the passing of the Heavy Motor Vehicle Driving Test in view of the decisions of the Supreme Court in Randhir Singh Vs. Union of India (1982 (2) SCR 298) and Maharaj Singh Vs. Union of India,

(11)

W.P. No.1432 of 1987 decided on 3.8.1988. In Randhir Singh's case, the Supreme Court had made the following order:-

"We, therefore, allow the writ petition and direct the respondents to fix the scale of pay of the petitioner and the drivers - constables of the Delhi Police Force at least on a par with that of the drivers of the Railway Protection Force. The scale of pay shall be effective from 1st January, 1973, the date from which the recommendations of the Pay Commission were given effect".

5. In Maharaj Singh's case, the Supreme Court passed the following order:-

"It is, however, clarified that in case benefit is to be admissible to the petitioner and others similarly situated, they will have to pass the same test which Railway Protection Force Drivers had to pass when they were given the benefit of Grades I and II w.e.f. 1st January, 1984. We would accordingly hold that the petitioner and the similarly situated constable Drivers in the Delhi Police Force are entitled to the benefit from 1st January, 1984, subject to their passing the test and on being found qualified".

6. We have gone through the records of the case carefully and have heard the learned counsel for both parties. The posts of M.T. Drivers and Despatch Riders have been bracketed in the Punjab Police Rule 12.3(c) and the corresponding rule made under the Delhi Police (Appointment and Recruitment Amendment) Rules, 1980 which were notified on 31.7.1986. They are in the same scale of pay. They should, inter alia, be matriculate or equivalent, possess knowledge of maintenance of vehicles, should be able to drive heavy vehicle with confidence and possess current

"driving licence for Heavy/Light vehicles". Thus, according to the recruitment rules, the requirement in the case of a Despatch Rider (Constable) is that he should possess current driving licence for light vehicle.

7. There is also another aspect of the matter. The respondents have promoted some persons as Assistant Sub Inspectors though they have not passed the Heavy Motor Vehicle Driving Test, as mentioned by the applicant. (vide page 6 of the paper book). There were about 30 Motor Cycle Despatch Riders out of which 25 have retired. Only 5 persons are now in service, including the two applicants before us. The applicants have put in more than 30 years of service and it will cause undue hardship to them if they were also asked to undergo the Heavy Motor Vehicle Driving Test at this stage.

8. In the light of the above, we quash the impugned order dated 20.3.1990 asking the applicants to undergo the Heavy Motor Vehicle Driving Test, as they have already undergone the Motor Cycle Driving Test at the time of their promotion as ASIs w.e.f. 1.1.1984. The respondents are also directed to confirm them in the post of ASIs and ~~xxxx~~ they shall not be reverted to the post of Head Constables on the ground that they have not undergone the Heavy Motor Vehicle Driving Test. There will be no order as to costs.

B.N. Dhoundiyal
(B.N. DHOUNDIYAL) 19/10/91
MEMBER (A)

P.K. Kartha
10/10/91
(P.K. KARTHA)
VICE CHAIRMAN (J)