

(12)

Central Administrative Tribunal
Principal Bench

OA.1631/91

New Delhi, the 16th July, 1996.

Hon'ble Smt. Lakshmi Swaminathan, Member(J)
Hon'ble Shri R.K. Ahooja, Member(A)

Jitender Kumar
Chamber No.144,
Lawers Chambers,
Patiala House
New Delhi. ...
(Adv. Sh. George Parackan)

Applicant

vs

1. Chief Secretary,
Govt. of NCT
Old Secretariat,
Delhi.

2. Commissioner of Police,
Police Headquarters
I.P. Estate,
New Delhi.

Respondents

(Advocate: Sh. Girish Kathpalia)

ORDER (Oral)

Hon'ble Smt. Lakshmi Swaminathan, Member(J)

The petitioner was working as Constable in Delhi Police since 14.1.1977. He states that he has performed his services excellently and has received several commendations certificates. His grievance is that he has not been considered for promotion for the next higher post as Head Constable.

He submits that on 12.12.87 while he was on duty he chased and arrested a dreaded accused person who was armed with knife, as a result of which he fell down and suffered multiple fractures to his leg. For his act of bravery, the applicant was granted a commendation role¹³ and a cash reward of Rs.1000/-.

2. Shri G. Paracken, Id. counsel for the applicant submits that merely giving cash reward of Rs.1000/- is not sufficient for applicant's act of devotion to duty. He submits that because of the injury sustained in his leg, applicant has not been able to clear the physical endurance test for the next promotion post. He relies on the letter issued by ACP Headquarters dt. 12.12.89 in which he has recommended that the applicant's request for exemption from physical test may be considered sympathetically and he should be declared successful in the test. The Id. counsel relies on the judgement of the Supreme Court in N.K. Chandra vs. State of Haryana (1994 (4) SCC 460) where it has held that Article 21 of the Constitution protects the right to livelihood as an integral facet of the right to life. The Court held that when an employee is afflicted with an unfortunate disease due to which he is unable to perform the duties of the post he was holding, the employer must make every endeavour to adjust him in a post in which the employees would be suitable to discharge the duties.

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3. On the other hand, Shri Girish Kathpalia, ld. counsel for the respondents submits that there is no provision in the rules to exempt the constable from physical test for being placed in the promotion list 'A', for the promotion to the post of Head Constable. Since ^{the} applicant has not fulfilled the conditions for promotion he continues to work in the lower post of constable and the respondents have submitted that the application may, therefore, be dismissed. However, ld. counsel has drawn our attention to Rule 19(ii) of Delhi Police (Promotion and Confirmation) Rules, 1980. He submits that if the applicant makes a representation, he could be considered for promotion on ad-hoc basis but can be regularised only according to the rules.

4. We have considered the submissions by both the learned counsel, pleadings and record.

5. The Supreme Court in the case of LIC of India vs. Mrs Asha Ramchandra Ambedkar and Another (JT 1994 (2) SC 183) ~~where it was~~ held :

" The Courts are to administer law as they find it, however, inconvenient it may be."

• In this case it was further held:

" The Courts should endeavour to find out whether a particular case in which sympathetic considerations are to be weighed falls within the scope of law. Disregardful of law, however, hard the case may be, it should never be done"

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6. The applicant has failed to show any rule under which he can be considered for promotion as Head Constable without undergoing the physical test. What the applicant is seeking^{is}/that because of, no doubt, his exemplary service to the respondents, the Tribunal should direct the respondents to promote him on sympathetic considerations and not insist upon the rules which require him to pass the physical test. While sympathy may be one thing, the law cannot be ignored, as observed by the Supreme Court in LIC vs Mrs Asha Ramchandra Ambedkar and Another (JT 1994 (2) SC 183). The judgement of the Supreme Court in the case of N.K. Chandra vs. State of Haryana (supra) relied upon by the applicant does not help him as the question of livelihood is not at stake in the present case. Admittedly, the applicant is not out of job but continues as a Constable in the Delhi Police.

7. Therefore, having regard to the facts and rule position, we have no alternative but to dismiss this application. However, before we part with this case, we would like to observe that in case the applicant makes a representation to respondent No.2 within one month from the date of receipt of a copy of this order, the same may be considered for ad-hoc promotion in accordance with the relevant

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rules by passing a speaking order thereon
within two months preferably.

8. Accordingly, OA is dismissed as above.

No order as to costs.

R. K. Ahooja

(R.K. Ahooja)
Member(A)

Lakshmi Swaminathan

(Mrs Lakshmi Swaminathan)
Member (J)

SCS