IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No.OA Nos. 2140, 2385, 1193, Date of decision:10.09.92.
1389, 1700, 1769, 1813, 1829, 1860,
1892, 1908, 1917, 1932, 1943, 1958,
1988, 2000, 2058, 2125, 2135, 2174,
2247, 2250, 2268, 2386, 2459
and 2464/1991.

(1) OA No.2140/1991

Shri Lalit Kumar ...Applicant

Vs.

Commissioner of Police & Others ..Respondents

(2) OA No.2385/1991

Shri Jasbir Singh ...Applicant

Vs.

Union of India & Others ..Respondents

(3) OA No.1193/1991

Shri Satish Kumar ...Applicant

Vs.

Commissioner of Police & Others ..Respondents

(4) OA No.1389/1991

Shri Rajesh Kumar ...Applicant

Vs.

Union of India & Another ..Respondents

(5) OA No.1700/1991

Shri Sanjay Kumar ...Applicant

Vs.

Commissioner of Police & Another ..Respondents

(6) OA No.1769/1991

Shri Jaivir Singh ...Applicant

Vs.

Commissioner of Police & Another ..Respondents

(7) OA No.1813/1991

Shri Naresh & Others ...Applicants

Vs.

Commissioner of Police & Another ..Respondents

(8) OA No.1829/1991

Shri Vijay Singh ...Applicant

Vs.

Commissioner of Police & Another ..Respondents

(9) OA No.1860/1991

Shri Ashok Kumar ...Applicant

Vs.

Commissioner of Police & Another ..Respondents

(10) OA No.1892/1991

Shri Ombir Singh ..Applicant

Vs.

Commissioner of Police & Another ..Respondents

(11) OA No.1908/1991

Shri Randhir Singh ...Applicant

Vs.

Union of India & Others ..Respondents

(12) OA No.1917/1991

Shri Parvesh Kumar ...Applicant

Vs.

Commissioner of Police & Another ..Respondents

(13) OA No.1932/1991

Shri Hanish Suri ...Applicant

Vs.

Commissioner Police & Another ..Respondents

(14) OA No.1943/1991

Shri Sushil Kumar Tyagi ...Applicant

Vs.

Commissioner of Police & Another ..Respondents

(15) OA No.1958/1991

Shri Sarvajeet Singh ...Applicant

Vs.

Commissioner of Police & Another ..Respondents

(16) OA No.1988/1991

Shri Baljeet Singh ...Applicant

Vs.

Lt. Governor, Delhi & Others ..Respondents

(17) OA No.2000/1991

Shri Naveen Kumar ..Applicant

Vs.

Commissioner of Police & Another ..Respondents

(18) OA No.2058/1991

Shri Sushil Kumar ...Applicant

Vs.

Commissioner of Police & Another ..Respondents

(19) OA No.2125/1991

Shri Sanjay Kumar ...Applicant

Vs.

Commissioner of Police & Others ..Respondents

(20) OA No.2135/1991

Shri Raj Kumar ...Applicant

Vs.

Commissioner of Police & Others ..Respondents

(21) OA No.2174/1991

Shri Nand Kishore ...Applicant

Vs.

Commissioner of Police & Another ..Respondents

(22) OA No.2247/1991

Shri Padam Raj ...Applicant

Vs.

Union of India & Others ..Respondents

(23) OA NO.2250/1991

Shri Ram Pal Singh ...Applicant

Vs.

Commissioner of Police & Others ..Respondents

(24) OA No.2268/1991

Shri Sher Singh ...Applicant

Vs.

Commissioner of Police & Others ..Respondents

(25) OA No.2386/1991

Shri Satyavir Singh ...Applicant

Vs.

Commissioner of Police & Others ..Respondents

(26) OA No.2459/1991

Shri Bhupender Datt ...Applicant

Vs.

Commissioner of Police & Others ..Respondents

(27) OA No.2464/1991

Shri Yogender Singh ...Applicant

Vs.

Commissioner of Police & Others ..Respondents

For the Applicants ..Shri N. Safaya, Mrs. Avnish Ahlawat, Mrs. Meera Chhibber, Shri Shankar Raju & Shri A.S. Grewal, Counsel

For the Respondents ..S/Shri O.N. Trishal, B.R. Prashar, M.C. Garg, D.N. Goverdhan, Ms. Ketki Goswami, proxy counsel for Mrs. Geeta Luthra, Ms. Ashoka Kashyap, Gajraj Singh Counsel

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 Judgment? Yes

2. To be referred to the Reporters or not? Yes

JUDGMENT

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

The question arising for consideration in this batch of applications is whether it would be fair and just to deny the relaxation envisaged in Rule 9(vii) of the Delhi Police (Appointment and Recruitment) Rules, 1980 (the Recruitment Rules for short) and appointment to a candidate as Constable in Delhi Police on the sole ground of the unsatisfactory service record of his father who is serving or has served the Delhi Police. This issue is first of its kind and has to be decided on first principles.

2. Recruitment of Constables in Delhi Police is done according to the procedure laid down under Rule 9 of the Recruitment Rules. The physical, educational, age and other standards for recruitment, have been laid down in the said Rule. There is provision for relaxation in the matter of age, educational qualifications and measurement of height

and chest. Provision has also been made for reservation of vacancies in favour of Scheduled Castes, Scheduled Tribes, Ex-servicemen etc. as per the orders issued by Government from time to time.

3. Under Rule 9(vi) of the Recruitment Rules, the Commissioner of Police, shall frame standing orders prescribing application forms and detailed procedure to be followed for conducting physical efficiency, physical measurements, written tests and viva voce for regulating the recruitment. Standing Order No.212/1989 has accordingly been issued by him.

4. Rule 9(vii) of the Recruitment Rules provides that the Additional Commissioner of Police can grant relaxation to the sons/daughters of either serving, retired or deceased police personnel and category 'D' employees of Delhi Police who do not fulfil the general conditions of physical standard, age and educational qualification - Relaxation of maximum of 5 centimeters in height and chest measurement, one standard in educational qualification and maximum age limit upto 25 years. Any candidate of this category can take the test with prior approval of the Deputy Commissioner of Police concerned. Proper sanction for relaxation shall be obtained from Additional Commissioner in case of these candidates who qualify in the test and come within the selection range. Their names will be included in the panel of qualifying candidates subject to requisite relaxation being granted by Additional Commissioner of Police.

5. According to the revised Standing Order No.212/1989 issued by the Commissioner of Police, "In the case of sons/ daughters of either serving, retired or deceased Police

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Personnel/Class IV employees of Delhi Police, who do not fulfil the general conditions of physical standard, age and educational qualfications, a relaxation of maximum of 5 Cms. in height and chest measurement, one standard in educational qualification and in higher age upto 25 years, can be given by the Additional Commissioner of Police, Delhi, provided their names are registered with the Employment Exchange. Any candidate of this category can be admitted provisionally in the recruitment test, with the prior approval of the DPC concerned, in case the candidate comes within the prescribed relaxation. Sanction for relaxation shall be obtained from Additional CP, Delhi, only in case of those candidates who qualify in the test and come within the selection percentage limit on this, but the Additional C.P., Delhi, will exercise this discretion henceforth with care. The relaxation will hereafter be extended to the sons/daughters of only those policemen whose service record are clean and good. This relaxation will be given as a reward.(Emphasis added)

6. Thus, Rule 9 of the Recruitment Rules prescribes two kinds of relaxation in respect of the physical, educational, age and other standards for recruitment to the rank of Constables - one relating to the general category and other relating to the sons/daughters of either serving, retired or deceased Police personnel/Class IV employees of Delhi Police who do not fulfil the general conditions of physical standard, age and educational qualifications. However, availing of relaxation in the latter category is hedged in

by certain conditions, the validity of which has been called in question in the present proceedings. Basically, the attack is on the stipulation in Standing Order No.212/1989 that "The relaxation will hereafter be extended to the sons/ daughters of only those policemen whose service record are clean and good." Such a condition had not been laid down prior to the amendment to the Standing Order in 1989.

7. We have gone through the records of the case carefully and have heard the learned counsel of both parties at length. Before the enactment of the Delhi Police Act, 1978, the Punjab Police Rules, 1934 (P.P. Rules for short) were applicable to the Delhi Police. The P.P. Rules were made under the Police Act, 1861. Rule 12.14(3) of the P.P. Rules provided that "sons and near relatives of persons who have done good service in the Punjab Police or in the Army shall subject to the consideration imposed by Rule 12.12 have preference over the other candidates for police employment". This has been replaced by Rule 9(vii) of the Recruitment Rules made under the Delhi Police Act, 1978 which has repealed the Police Act, 1961 in its application to the Union Territory of Delhi.

8. It will be noticed that Rule 12.14 (3) of the P.P. Rules contemplated giving of preferential treatment to the sons and near relatives of persons "who have done good service in the Punjab Police or in the Army" in regard to their recruitment as Constables. There was no such provision in the above corresponding Rule 9(vii) of the Recruitment Rules which enabled the Additional Commissioner of Police to grant such relaxation to the sons/daughters of either serving, retired or deceased police personnel and category 'D' employees of

Delhi Police who do not fulfil the general conditions of physical standard, age and educational qualification. Such a provision was made for the first time by the revised Standing Order issued by the Commissioner of Police in 1989 and it was stipulated that "the relaxation will hereafter be extended to the sons/daughters of only those policemen "whose service records are clean and good".

9. The learned counsel for the applicants have argued that the revised Standing Order issued by the Commissioner of Police in 1989 is illegal as it goes beyond the power of Commissioner of Police and is inconsistent with the provisions of Rule 9(vii) of the Recruitment Rules. They have also contended that on the basis of the prior approval given by the Deputy Commissioner of Police for taking the test, they have come out successful and their names have been brought on the panel of selected candidates. On the basis of the interim orders passed by the Tribunal, they were deputed for recruitment training which they have successfully completed and they are presently working as Constables in Delhi Police awaiting formal orders of appointment. Their candidature has not been cancelled. They have not, however, been given relaxation on the ground that the service records of their fathers were not clean and good.

10. The learned counsel for the respondents have contended that the provisions of the revised Standing Orders are supplementary in nature and are not inconsistent with the provisions of Rule 9(vii) of the Recruitment Rules. According to them, the mere fact that the applicants took the test with the prior approval of the Deputy Commissioner of Police or that the names of the applicants figure in panel of selected candidates does not confer on them any fundamental or legal right to the grant of relaxation and appointment as Constables in the Delhi Police and that relaxation has been rightly denied to the applicants due to the unsatisfactory service records of their fathers.

11. The learned counsel of both parties relied upon a catena of cases in support of their rival contentions and we have duly considered them*. In our opinion, the granting of relaxation in favour of the sons/daughters of serving, retired or deceased Police Personnel/Class IV employees of Delhi Police is in the nature of a concession. It is given as a reward in recognition of the good service done by the father in the Delhi Police. To this extent, the provisions of Rule Rule 9(vii) read with the original Standing Order made pursuant there-to are understandable as a sound policy for recruitment to the Delhi Police.

12. The revised Standing Order of 1989 states that the relaxation will hereafter be extended to the sons/daughters of only those policemen whose service records are "clean and good". Here lies the rub.

13. There is no averment in the counter-affidavits filed by the respondents that the stipulation regarding "clean" and "good" record has been added to the Standing Order in the light of past experience. Neither reason nor logic would support any assumption that the omissions and commissions of the father would naturally be handed down to their children. We are not aware of any principle in jurisprudence or criminology to the effect that the progeny would normally partake of the same characteristics or traits as that of his or her father. In actual life, we come across good sons and daughters whose fathers do not bear good character and conduct and vice versa. The interpretation adopted by the respondents of the revised Standing Order of 1989 is not,

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* Case law relied upon by the applicants:-

AIR 1968 SC 718; AIR 1986 SC 806; AIR 1979 SC 621; 1986(3) SCC 273; AIR 1990 SC 1076; 1987(1) ATR 502; ATJ 173; 1989(3) SLJ 334; 1992(2) SLJ(CAT) 373; 1991(1) SLJ(CAT) 211.

* CAse law relied upon by the respondents:-

AIR 1967 SC 1910; 1975(1) SLR 605; 1987(2) SLR 279; 1987(1) SLR 379.

therefore, correct.

14. Several recruitments of Constables in Delhi Police had hitherto been made and there had been no insistence of "clean and good" record of the father of the candidates concerned as a precondition to giving of relaxation to candidates who were otherwise deserving appointment. We have been informed that many such persons are working in the Delhi Police who had been recruited as Constables after they had been granted such relaxation. It will be an invidious discrimination to adopt a different yardstick in the case of the applicants before us. Furthermore, the concept of "clean and good" record is imprecise and gives wide discretion in the matter of appointment. A few examples will bear out the injustice involved in this regard. The father of Shri Lalit Kumar (Applicant in OA 2140/1991) is having two major punishments while the father of Shri Yogesh Kumar (Roll No.7673) is having only one major punishment and on that ground, shri Yogesh Kumar has been given relaxation while Shri Lalit Kumar has been denied relaxation. Can the number of punishments imposed on the father be a rational criterion in the context of "clean and good" record? Shri Sanjay Kumar (Applicant in OA 1700/1991) has alleged that 20 candidates were given relaxation though some punishment or other had been imposed on their fathers. He has cited the cases of Shri Yogesh Kumar (Roll No.7673), Shri Rajesh (Roll No.7215) and Shri Krishan Kumar. In their counter-affidavit, the respondents have only stated that in the case of the father of Shri Yogesh Kumar, no departmental enquiry is pending but they have not controverted the other allegations made by the applicant.

15. In the case of some applicants, though some punishment or other had been imposed on their fathers in the initial stages of their careers, they had been promoted on subsequent dates. Thus, for instance, the father of Shri Naresh (Applicant No.1 in OA 1813/1991) was awarded censures in 1981 and 1985 but he was promoted as Head Constable in 1987. The father of Shri Jagbir Singh (Applicant No.2 in OA 1813/1991) was awarded the penalty of forfeiture of 3 years service in 1962 and a censure in 1983-84 but he was promoted as Head Constable in 1987.

16. A criminal case is stated to be pending against the father of Shri Sushil Kumar Tyagi (Applicant in OA 1943/91) but he has got about 40 commendation certificates.

17. The father of Shri Naveen Kumar (Applicant in OA 2000/1991) was awarded some punishment in 1956. He retired on superannuation.

18. The father of Shri Jasbir Singh (Applicant in OA 2385/1991) was discharged from service on 4.9.1957 on medical ground.

19. The denial of relaxation to the wards of police personnel who at one time or other had suffered punishment while in service can be justified only if there is any rational or reasonable basis for the assumption that the wards would prove to be no better on their appointment to the service. In our view, there is no such basis. The respondents have, until the issue of the revised Standing Order in 1989, adopted the policy of not giving any concession to wards of police officers who had been dismissed or removed or compulsorily retired from service by way of penalty imposed on the father of the applicant which would stand the test of reasonableness. We hold that the provisions of the revised Standing Order issued

in 1989 should be construed as disentitling the wards of only such police personnel from the benefit of relaxation and none-else. Otherwise it would not be legally sustainable.

20. The performance and conduct of the applicants will be subject to periodical review after their appointment as Constables and the respondents will be at liberty to take any appropriate action against them for any alleged misconduct in accordance with law. In our opinion, it would be unfair and unjust to deny to the applicants the relaxation under Rule 9(vii) of the Recruitment Rules solely on the ground that some punishment or other except dismissal, removal or compulsory retirement by way of penalty had been imposed on the fathers with which the applicants were in no way concerned.

21. We, therefore, hold that the correct interpretation of the revised Standing Order No.212/1989 is that for the purpose of grant of relaxation, imposition of the punishment of dismissal, removal or compulsory retirement by way of penalty alone will make the record of the police personnel short of being clean and good. Accordingly, the applications are disposed of with the direction to the respondents to consider the case of the applicants for the grant of relaxation on the basis of the said interpretation and strictly in accordance with the provisions of Rule 9(vii) of the Recruitment Rules. The case of the applicants for appointment as Constables shall be processed expeditiously and the necessary orders issued preferably within a period of three months from the date of receipt of this order.

There will be no order as to costs.

Let a copy of this order be placed in all the case files.

Attested

(B.N. DHOUNDIYAL)
MEMBER (A)
10.09.1992

10/9/92

(P.K. KARTHA)
VICE CHAIRMAN(J)
10.09.1992

Central Administrative Tribunal
Principal Bench, Faridkot House

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