

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

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Regn.No. OA 2645/91

Date of decision: 17-08-1993

Shri Subhash Kumar ...

Petitioner

vs

Delhi Administration
through its Chief Secretary
& ors. ...

Respondents

For the Petitioner ... Sh. Shyam Babu, Counsel.

For the Respondents .. Sh. D. N. Goberdhun, Counsel.

CORAM:

THE HON'BLE MR. JUSTICE S.K. DHAON, VICE CHAIRMAN
THE HON'BLE MR. B.N. DHOUNDIYAL, MEMBER (A)

JUDGEMENT

(By Hon'ble Mr. Justice S.K.
Dhaon, Vice Chairman)

The petitioner, a son of a Constable in the Delhi Police, is desirous of being recruited as a Constable in Delhi Police. He fulfills all requirements for recruitment except ^{in which} the measurement of chest ^{he is short of 5 cms.}

He feels aggrieved because the authority concerned has not given him a relaxation of the said requirement. According to the respondents, the relaxation cannot be given in view of a Standing Order/circular dated 21.12.1990. The prayer is that the Standing Order/circular may be quashed and the respondents may be directed to recruit the petitioner as a Constable in Delhi Police after giving him necessary relaxation of the measurement of his chest.

2. The respondents have contested this OA by filing a counter-affidavit. According to them, no relaxation can be given to the petitioner in view of the aforementioned Standing Order/circular dated 21.12.1990 which provides that the relaxation can be given to the son of a Police Constable only if such a Police Constable has ^{an} unblemished record. The father of the petitioner does not have that record since he is facing a departmental enquiry. Rule 9(vii) of the Delhi Police (Appointment & Recruitment) Rules, 1980 (hereinafter referred to as the Rules) provides, *inter-alia*, 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 qualifications. Relaxation of maximum of 5 centimeters in height and chest measurement can be given.

3. A copy of the Standing Order/circular dated 21.12.1990 has been filed as Annexure 'B' to the OA. Its contents, as material, are these. It is provided in the Standing Order/circular that a relaxation may be granted to the wards of only those Police personnel whose service records are clean and good as the relaxation is given as a reward. It is reiterated that relaxations to the sons/daughters of Delhi Police personnel, as permissible under the Standing Order will only be granted, if the service record of father/mother of the candidate is found clean.

4. When this OA was preferred in this Tribunal on 8.11.1991, the father of the petitioner was facing a departmental enquiry with respect to a particular charge which was also the charge framed against the father of the petitioner in a criminal case. The father of the petitioner was subjected to a criminal trial and given a clean acquittal by the Metropolitan Magistrate. He on 1.10.1988 preferred OA No.2002/88 in this Tribunal praying therein that the departmental proceedings against him may be quashed and the authorities therein may be restrained from holding any further enquiry. Basis of the said OA was that after a clean acquittal from the competent criminal court he could not be subjected to departmental enquiry with respect to the same charge on which he had been acquitted.

5. This OA (OA No.2645/91) came up for hearing before us. We directed that the same should be heard along with OA No.2002/88. We heard both the OAs together. By our order have passed today we / dismissed OA No.2002/88. The result of the dismissal of OA No.2002/88 is that the father of the petitioner is facing a departmental enquiry.

6. It is contended by Shri Shyam Babu, learned counsel appearing for the petitioner that the father of the petitioner having been acquitted, the mere fact that he(the father) was facing departmental enquiry did not mean that the father did not have a clean record. We are not impressed with this contention. It may be that after enquiry the father may be

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found guilty of serious misconduct. Relaxation in the standard prescribed cannot be claimed as of right. In Rule 9(vii), the word used is "can". It is, therefore, not obligatory for the authority concerned to grant relaxation. The fact that a departmental enquiry is being faced by the father of the petitioner cannot be considered to be an irrelevant consideration.

7. It is contended that the Standing Order/circular is in conflict with the statutory rule(Rule 9(vii)) and, therefore, cannot be given effect to. We do not find any conflict between the Standing Order/circular and the Rule. The Standing Order/circular provides the guidelines for exercising the discretion given in Rule 9(vii). Rule 9(vii) is absolutely silent as to what should be the criteria or the considerations for granting the relaxation. The contents of the Standing Order/circular, as material, supplement Rule 9(vii). They do not supplant the Rule.

8. On 12.11.1991, an interim order was passed by this Tribunal to the effect that the respondents were directed to provisionally depute the petitioner for recruitment training along with other fresh recruits. In line with the interim order already passed, we direct the respondents to give provisional appointment to the petitioner as a Constable in Delhi Police if he fulfils all other requirements except the prescribed standard of measurement of chest. In case, the father of the petitioner is exonerated in the departmental enquiry, it shall be presumed that the petitioner fulfils

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the standard prescribed for the measurement of chest and the respondents shall treat the petitioner as having been validly selected for the post of Constable. In case the father of the petitioner is not exonerated, the respondents shall act strictly in accordance with the directions given by this Tribunal in OA No.2140/1991 & connected cases on 10.09.1992.

9. With these directions, this OA is disposed of finally. There shall be no order as to costs.

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

S.K.Dhaon
(S.K.DHAON)
VICE-CHAIRMAN(J)

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