

Central Administrative Tribunal
Principal Bench, New Delhi.

OA-2663/2004

New Delhi this the 12th day of December, 2006.

Hon'ble Mr. Justice M.A. Khan, Vice-Chairman(J)
Hon'ble Mrs. Chitra Chopra, Member(A)

Sh. Rajinder Kumar,
H.No. 29, Gali No.2,
Ghaziapur Village,
P.O.-Vasundhara Enclave,
Delhi-96.

..... Applicant

(through Sh. C.D. Singh, Advocate)

Versus

1. Staff Selection Commission,
Northern Region
(Examination Section-II)
Block No.12, CGO Complex,
Lodhi Road,
New Delhi-110003
Through : Director
2. Commissioner of Police,
Police Headquarters,
I.T.O. New Delhi
Through : Commissioner of Police,
Delhi.

..... Respondents

(through Sh. S.M. Arif, counsel for R-1 and Sh. Ajesh Luthra, counsel for R-2)

O R D E R

Hon'ble Mrs. Chitra Chopra, Member(A)

Through this O.A. the applicant is assailing the communication dated 30.09.2004 whereby his candidature for the post of Sub Inspector (Exe.) in Delhi

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Police was cancelled on the ground that a Government servant cannot acquire lien over two permanent posts.

2. The facts leading to the filing of the O.A. by the applicant are as under:-

Applicant (Rajinder Kumar) was selected in Delhi Police as Constable (Exe.) on 15.07.1996. He applied for the post of Sub-Inspector in Delhi Police through Combined (Graduate level) Examination 2001. One of the conditions of eligibility to be considered as a departmental candidate as notified by Staff Selection Commission (SSC) was that a candidate having 5 years regular service as on that date was eligible.

Applicant alongwith others were accorded permission by the DCP/ACP vide order dated 29.11.2000 (Annexure-2) to appear as departmental candidates in the Combined (Graduate Level) Examination 2001 through SSC.

Applicant qualified the preliminary examination for the post of SI in Delhi Police and thereafter applied for the main Exam 2001 with the SSC as departmental candidate. He appeared in the said Exam held on 27-29.12.2002. At that time he was a regular employee of Delhi Police when he appeared in the aforesaid two examinations conducted by the SSC.

While the result of the main Exam 2001 was still awaited, an advertisement was issued for the post of Security Assistant Grade-II in Lok Sabha Secretariat where the last date for submission of the form was 30.09.2001. Applicant intimated to the Delhi Police that he is appearing for the

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post of Security Assistant Grade-II in the Parliament. He was selected as Security Assistant Grade-II in the Lok Sabha Secretariat. He was given offer of appointment by Lok Sabha Secretariat vide letter dated 30.12.2002 and was relieved from Delhi Police vide letter No. 583-640/Estd/T(D-II) dated 14.01.2003 and joined the post of Security Assistant Grade-II in Lok Sabha Secretariat on 15.01.2003.

In the meanwhile, applicant qualified in the Delhi Police Exam and the result was published in Employment News dated 11.10.2003 (Annexure-8). He received call letter for interview from SSC dated 13.10.2003 to appear for personal interview on 18.11.2003. It has been submitted that in his bio-data provided alongwith the call letter for interview applicant had clearly mentioned that he is presently serving in Lok Sabha Secretariat. Applicant qualified as departmental candidate in the final result of the Delhi Police Exam for the post of Sub-Inspector(Exe.). He received call from the recruitment cell of Delhi Police vide letter dated 10.03.2004 directing him to bring certain documents in original for verification. He was also asked to attend medical examination on 16.04.2004. However, he received Memorandum No. 5/1/2003 Exam II dated 29.07.2004 from respondent No.1 i.e. SSC to show cause as to why he did not intimate the change of his status/category i.e from a departmental candidate to non-departmental candidate in OBC category to respondent No.1 for consideration in the Commission. The Memorandum also pointed out that at no stage of the recruitment process the applicant informed the SSC about his resignation from Delhi Police and joining as Security Assistant Grade-II in the Lok Sabha

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Secretariat. Although applicant gave reply to the same on 03.08.2004 and clarified that he had not resigned from Delhi Police but was relieved on 14.01.2003 to enable him to join Lok Sabha Secretariat. He also made a representation to the Commissioner of Police, Delhi on 09.08.2004 seeking to be treated as a departmental candidate as his lien was still being maintained in the Delhi Police. His representation was rejected vide the impugned order dated 30.09.2004 in which it was stated that in view of FR 14(a)(d) an employee cannot simultaneously be a member of the two posts/service/grade/cadre, nor he is eligible to hold lien on two posts. Thereafter, his candidature was cancelled by the Commission. The applicant has sought appointment in the Delhi Police as a departmental candidate on the ground that his lien in Delhi Police expires only on 14.01.2005. His contention is that he is at liberty to join Delhi Police before his lien expires and Delhi Police would have to consider him as their regular employee without break in service. Learned counsel for the applicant Shri C.D. Singh has very strongly submitted that the applicant should be allowed to join Delhi Police as Sub-Inspector (Exe.) as a departmental candidate and the impugned order cancelling his candidature be set aside.

3. In the counter-affidavit filed on behalf of respondent No.2, Shri Ajesh Luthra, learned counsel has vehemently opposed and rebutted the contentions of the applicant. He has, at the outset, submitted the rule position for recruitment to the post of Sub-Inspector (Exe.) Male in Delhi Police. The direct recruitment is made under Rule-7 of Delhi Police (Appointment & Recruitment) Rules, 1980 on the basis of Combined (Graduate Level) Examination, 2001 conducted by the

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SSC, New Delhi on yearly basis, whereas recruitment to various other Group-C & D posts is made by Delhi Police itself. While setting out the facts, learned counsel has submitted that 114 vacancies of Sub-Inspector (Exe.) Male in Delhi Police were intimated to the SSC for Combined (Graduate Level) Examination, 2001. 112 candidates including 11 departmental candidates have been recommended/selected by the SSC for the post of Sub-Inspector (Exe.) in Delhi Police on 05.12.2003. Accordingly, all the selected/recommended candidates including the applicant (Sh. Rajinder Kumar, Roll No.1230731) selected against the reserved vacancy of departmental candidates, were called to fill up the Attestation Form and Medical Form etc.

4. On scrutiny of the Attestation Form submitted by the applicant it was found that prior to his selection to the post of Sub-Inspector (Exe.) in Delhi Police, applicant had already left the department and joined as Security Assistant Grade-II in Lok Sabha Secretariat, Parliament House, New Delhi on 15.01.2003. The physical measurement and endurance test of all the qualified candidates including the applicant was held from 14.07.2003 to 18.07.2003. The applicant had disclosed towards his service as Security Assistant Grade-II in Lok Sabha Secretariat at the time of interview as revealed from his dossier.

5. Learned counsel has emphatically submitted that in terms of Rule-7 of Delhi Police (Appointment & Recruitment) Rules, 1980, the applicant cannot be treated as a departmental candidate, as he ceases to be in the employment of the Delhi Police and once he was relieved, he did not remain either a Constable,

Head Constable or Asstt. Sub-Inspector: According to Rule-7, 10% of the posts of Sub-Inspector (Exe.) are to be filled by limited departmental competitive tests from amongst Constables, Head Constables and Asstt. Sub-Inspectors with minimum 5 years of service. In view of this clear rule position, applicant cannot be treated as a departmental candidate from the date he left the department. Applicant while serving as Constable (Exe.) in Delhi Police had only appeared in the written (Main) Examination conducted by the SSC for the post in the month of December, 2002. Immediately after that he left the Delhi Police and joined Lok Sabha Secretariat in January, 2003. In the remaining tests i.e. physical measurement, endurance test and interview, he was thus no more a departmental candidate and as such was not entitled to be considered for appointment against the reserved vacancy of departmental candidate.

6. Learned counsel Shri Ajesh Luthra has further submitted that the applicant did not give any intimation in this regard immediately after he left the department or at the time of physical measurement and endurance test held in July 2003. He disclosed the same only when he was given proforma for his bio-data at the time of interview. Hence, the SSC was requested to examine the whole issue and convey the decision vide Delhi Police Headquarters Letter No. 5572/Rectt. Cell (AC-II)/PHQ dated 21.06.2004. The SSC, in turn, issued the Memorandum/show cause notice dated 29.07.2004 to the applicant. In his response to show cause notice the applicant took the same plea that he has been in Delhi Police for a period of two years and he has to rejoin Delhi Police before completion of two years. Applicant made another representation to the Delhi Police Headquarters

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stating that in case he could join back before completion of his lien period i.e. 14.01.2005, provided he would be considered as a departmental candidate for the post of Sub-Inspector (Exe.) and in case Delhi Police was ready to consider him as a departmental candidate on his joining back and assurance of giving appointment as SI (Exe.) accordingly then he would rejoin.

7. The matter was examined in the Delhi Police Headquarters in the light of the judgments of the Hon'ble Supreme Court in the case of **Jagdish Lal and Others Vs. State of Haryana and Others** (1997 SCC (L&S) 1550) and **Dr. S.K. Kacker Vs. AIIMS & Ors.** (1996(10)SCC 734). The Hon'ble Supreme Court has held that under FR 14(a)(b) a Government servant's lien on a post shall stand terminated on his acquiring a lien on a permanent post (whether under the Central Government or a State Government) outside the cadre on which he is borne. As such, an employee cannot simultaneously be a member of two posts/service/grade/cadre nor he is eligible to hold lien on two posts. Learned counsel has very strongly contended that in view of the observations of the Hon'ble Supreme Court in the above two cases, the lien of the applicant with Delhi Police stands terminated once he had joined the Lok Sabha Secretariat.

8. In the counter-affidavit filed by Shri S.M. Arif on behalf of Respondent No.1, SSC, it has been submitted that the applicant has no cause of action as he cannot be treated as a departmental candidate and also that he concealed the fact of his no longer remaining with the Delhi Police. His candidature has thus rightly been rejected by the respondent-SSC. As applicant ceases to be an

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employee of the Delhi Police, thus he could not be treated to be a departmental candidate and, therefore, he was rightly not issued offer of appointment to the post of Sub-Inspector (Exe.) in Delhi Police.

9. During the course of arguments, learned counsel for the applicant very strongly submitted that there are no grounds for not treating the applicant as a departmental candidate, primarily on the ground that he continued to retain his lien in the Delhi Police. Learned counsel placed reliance on the decisions of the Hon'ble Supreme Court in **Triveni Shankar Saxena Vs. State of UP and Others** (AIR 1992 SC 496); **M.P. Tewari Vs. U.O.I.** (1974 ALJ 427) and **Parshotam Lal Dhingra Vs. U.O.I.** (1958 SCR 828) and very extensively argued on the point of lien of the applicant being maintained in the Delhi Police. He submitted that the communication dated 30.09.2004 is a misinterpretation of the judgments of Hon'ble Supreme Court and regardless of the fact that applicant had joined the Lok Sabha, there is no reason why he should not be still entitled to get appointment as a departmental candidate.

10. While rebutting the arguments of learned counsel for the applicant, Shri Ajesh Luthra, learned counsel for respondent No.2 very strongly averred that once the applicant was relieved from the Delhi Police and no longer remained on the strength of the department, he cannot claim to be a departmental candidate by any stretch of imagination. He further submitted that the question of lien is basically a charge, which affords a protection to an employee till the employee is confirmed in any department/cadre etc. By relieving any employee from a

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department, the relationship between the employee and the department is severed and the relieving Department thereafter has no control over the employee. Lastly, Shri Luthra contended that simply in terms of the requirement of the rules, applicant has no case for being appointed as a departmental employee.

11. In so far as the issue of lien is concerned, this is laid in FR -13 and there is no ambiguity to the effect that lien of a Central Government servant may be retained for a period of two years in the parent department/office for a period of two years. It is not in dispute that the applicant like any other Government employee would retain lien for two years in terms of FR 13(2). However, the main question, which needs to be addressed in so far as the applicant's claim for his appointment as Sub-Inspector in Delhi Police, is whether he could qualify as a departmental candidate, even after he had left the Delhi Police.

12. It would be relevant to reproduce the rule in terms of which recruitment of Sub-Inspectors (Exe.) is made under the Delhi Police (Appointment and Recruitment) Rules, 1980:-

"7. Recruitment of Sub-Inspectors (Executive) – Fifty per cent of vacancies in the rank of Sub-Inspector (Executive) shall be filled by direct recruitment and 50% by promotion. Out of 50% direct quota, 10% of the post shall be filled by limited departmental competitive tests from amongst constables/Head constables, and Asstt. Sub-Inspectors with minimum 5 years of service who shall not be more than 35 years (40 years for Scheduled Castes/Scheduled Tribes candidates) of age on the first day of January of the year if the examination is held in the first half of the year and on the first

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day of July of the year if the examination is held in the later half of the year."

13. The requirement and consideration of the rule is absolutely clear in so far as the recruitment to the post of Sub-Inspector (Exe.) is concerned, viz.-that for recruitment to the post of Sub-Inspector (Exe.), 10% of the posts shall be filled by limited department competitive tests from amongst Constables/Head Constables and Asstt. Sub-Inspectors. As per the factual position the applicant having been relieved from Delhi Police on 14.01.2003 and joined Lok Sabha Secretariat on 15.01.2003, ceased to be an employee/member of the Delhi Police ^{from that date} and could not obviously be treated to be either a Constable/Head Constable/Asstt. Sub-Inspector. Consequently, he could by no stretch of imagination, be treated as a departmental candidate. Thus, in terms of Rule 7 of the Delhi Police (Appointment & Recruitment) Rules, 1980, as applicant was no longer in the Department the question of his being treated as a departmental candidate does not arise. In this view of the matter, we do not find any merit in the contention of the applicant as his claim for being treated as a departmental candidate is not only unfounded but misplaced. Finding no merit, the O.A. is hereby dismissed. No costs.

Chitra Chopra
(Chitra Chopra)
Member(A)

M.A. Khan
(M.A. Khan)
Vice-Chairman(J)