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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1498/2004

Original Application No.1499/2004

Original Application No.1500/2004

New Delhi, this the 28th day of January, 2005

Hon'ble Mr. Justice V.S. Aggarwal, Chairman

Hon'ble Mr. S.A.Singh, Member (A)

O.A.No.1498/2004:

Nehpal Singh (Roll No.448648)

Recruit Constable (Ex.) in Delhi Police

S/o Sh. Krishan Singh

R/o V&PO: Damdama, Tehsil : Sohna

Distt: Gurgaon, Haryana.

... Applicant

(By Advocate: Sh. Anil Singal)

Versus

1. Govt. of NCT of Delhi
Through Commissioner of Police
Police Headquarters
IP Estate, New Delhi.
2. Dy. Commissioner of Police
2nd Bn. DAP, New Police Lines
Kingsway Camp, Delhi
3. The Department of Personnel & Training
Through its Secretary
Ministry of Personnel, Public Grievances and Pension
North Block
New Delhi.

... Respondents

(By Advocate: Sh. Ajesh Luthra for R-1 & R-2)

O.A.No.1499/2004:

Nafe Singh (Roll No.449201)

Recruit Constable (Ex.) in Delhi Police

S/o Sh. Ranvir Singh

R/o V&PO: Jahangirpur,

Tehsil & Dist.: Jhajjar, Haryana.

... Applicant

(By Advocate: Sh. Anil Singal)

Versus

1. Govt. of NCT of Delhi

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Through Commissioner of Police
Police Headquarters
IP Estate, New Delhi.

2. Dy. Commissioner of Police
2nd Bn. DAP, New Police Lines
Kingsway Camp, Delhi

3. The Department of Personnel & Training
Through its Secretary
Ministry of Personnel, Public Grievances and Pension
North Block, New Delhi. ... Respondents

(By Advocate: Sh. Ajesh Luthra for R-1 & R-2)

O.A.No.1500/2004:

Ram Avtar Singh (Roll No.448806)
Recruit Constable (Ex.) in Delhi Police
S/o Sh. Umrao Singh
R/o Vill: Gujarwas, PO: Lookhi,
Tehsil: Kosli, Distt: Rewari, Haryana.

... Applicant

(By Advocate: Sh. Anil Singal)

Versus

1. Govt. of NCT of Delhi
Through Commissioner of Police
Police Headquarters
IP Estate, New Delhi.

2. Dy. Commissioner of Police
2nd Bn. DAP, New Police Lines
Kingsway Camp, Delhi

3. The Department of Personnel & Training
Through its Secretary
Ministry of Personnel, Public Grievances and Pension
North Block, New Delhi. ... Respondents

(By Advocate: Sh. Ajesh Luthra for R-1 & R-2)

O R D E R(Oral)

By Mr. Justice V.S.Aggarwal:

By this common order, we propose to dispose of the following
three Original Applications:

Original Application No.1498/2004
Original Application No.1499/2004
Original Application No.1500/2004

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The facts are identical and, therefore, for the sake of convenience, we are taking the facts from **OA 1498/2004 (Nehpal Singh v. Govt. of NCT of Delhi & Others)**.

2. The applicant had applied for the post of Constable, (Executive) in Delhi Police in the April 2002. The posts were reserved for Ex-Servicemen. The applicant had been selected provisionally subject to medical fitness and verification of character & antecedents. It was found that the applicant had earlier applied in January 2002 for the post of Constable in the India Reserved Battalion (for short 'IRB') and had joined IRB, Haryana Police. The candidature of the applicant, after show cause notice, was cancelled by the respondents relying upon the instructions of the **Government of India dated 7.11.1989** stating that the second time benefit of Ex-Serviceman will not be admissible to him.

3. By virtue of the present application, the said order is being challenged contending that the **Office Memorandum dated 7.11.1989**, in any case, does not stop the applicant from being inducted in Delhi Police because he was temporarily employed in IRB, Haryana Police. In any case, it is contended that the said OM is violative of Articles 14 and 16 of the Constitution of India. The applicant had applied for the post in Delhi Police little after he applied for the IRB, Haryana Police and thus, it was not a case of

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second time benefit. It was urged that result incidentally in Haryana Police was declared earlier.

4. The applications are being contested.

5. The contentions of the applicants are controverted urging that the OM is not violative of Articles 14 and 16 of the Constitution. The Ex-Servicemen are a Class in themselves. They are given this concession and they are not asked to compete ^{with} each other. Thus, once they had availed of the benefit, the second time benefit is not violative of the right of equity. It further pointed that concession is not a right. It was insisted that once the applicants had joined, as temporary Constables in IRB, Haryana Police and were on probation, they are debarred from being inducted in Delhi Police.

6. We have heard the parties' counsel and have seen the relevant record.

7. In the first instance, the applicants' learned counsel urged that the Government of India, **Departmental of Personnel & Training's OM of 7.11.1989**, copy of which is Annexure A-I, violates Articles 14 and 16 of the Constitution of India. The said OM reads:

"Second time benefit to Ex-Servicemen for reservation in Groups 'C' and 'D' posts/services, - In this Department's O.M. No.36034/27/84-Est. (SCT), dated the 2nd May, 1985, it was decided that the second time benefit of Ex-Servicemen will not be admissible to those Ex-Servicemen who have already availed of the

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benefit of Ex-Servicemen on their first re-employment in civilian posts. On the request made by the Directorate-General of Resettlement, Ministry of Defence, that the decision contained in the above OM, dated 2-5-1985, should not be made applicable to those Ex-Servicemen who have been re-employed or are re-employed by the Private Companies/Autonomous Bodies/Public Sector Undertakings and Government Offices on casual/contract/temporary/ad hoc basis and who can be removed from such service at any time by the Employer concerned, the matter has been reconsidered by this Department and it has been decided that the provisions contained in this Department's O.M. No.36034/27/84-Estt.(SCT), dated the 2nd May, 1985, shall not apply to those Ex-Servicemen who have been re-employed or are re-employed by Private Companies/Autonomous Bodies/Public Sector Undertakings/Government Offices on casual/contract/Temporary/ad hoc basis and who can be removed from such service at any time by their Employer concerned."

8. It was rightly pointed by the respondents' learned counsel that the Ex-Servicemen are a Class in themselves. It is for the benefit of the Ex-Servicemen for their being given certain jobs in the Indian Police and even in the India Reserved Battalion. Consequently, to make sure that they do not impinge on the rights of other Ex-Servicemen, it has been decided that second time benefit of the Ex-Serviceman shall not be given for reservation of Groups 'C' and 'D' posts as provided. We accept the said plea. This is for the added reason that concession also cannot be claimed as a matter of right. This concession being given is confined to Ex-Servicemen. The restriction imposed that second time benefit is not to be given is reasonable and cannot be termed to be violative of principles of equity enshrined under Articles 14 and 16 for public service.

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9. There is another way of looking at the matter. The concessions are being given to them so that they do not compete with the General candidates and it is to make way to the similarly situated Ex-servicemen, thus, there is no reason to quash the OM of 7.11.1989.

10. It was in that event contended that, in any case, in pursuance of the said OM, the Ex-Servicemen, who have been re-employed on casual/contract/temporary/ad hoc basis, are still have second time benefit. Indeed, this is the plain language used in the said OM, which we have reproduced above.

11. In the representative order, to which we have referred to above, the applicant had been appointed on temporary basis in the IRB. The order of appointment reads:

"..... He has been declared medically fit by the C.M.O./RTK on 4.6.02 and his character and antecedents have been verified by DC/SP JJR and he is hereby appointed as temporary constable in India Reserve Battalion with effect from 17.6.02 in the pay scale of Rs.3050-85-4325EB-100-5325. He is allotted India Reserve Battalion constabulary on 508 and declared as a member of force under Act 5 of 1861. He is vested with the powers functions and privileges of police officers. He has been enlisted of the condition that he will be fully bound and abide the PPR and other Rules, instructions issued by the Govt. from time to time."

12. It clearly shows that the applicant was appointed as temporary Constable in the IRB. Respondents' learned counsel

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contended that if the applicant is appointed on probation, then it could be a substantive appointment. We do not dispute the proposition that if a person was appointed on substantive basis on a temporary post, he will not be able to take the advantage of the abovesaid OM. But, as we have already reproduced above, on perusal of the order of appointment, it is clear that the applicant had been appointed as temporary Constable rather than on a substantive basis.

13. Otherwise also, while interpreting the said OM, we cannot put the common sense into the cold-storage. The second time benefit contemplated would come into play in these matters where after joining on a post, an Ex-Serviceman again applies for a post. In that event, he should not be given the benefit of the abovesaid OM.

14. In the present case before us, admittedly the applicant had applied in the IRB. Thereafter, he applied for the post concerned in Delhi Police under the Ex-Serviceman quota. Incidentally, the result in the IRB was declared earlier and the applicant joined there. It was accidental that the results in Haryana were declared faster than the Delhi Police. Therefore, when the applicant applied, he was not taking benefit of Ex-Serviceman quota in Delhi Police. It was not a second time benefit that he was claiming. It was co-incidental. Thus, when he was selected in both the competitions to his category, it will not be a second time benefit for Ex-Serviceman.

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15. For these reasons, we allow the abovesaid three applications and quash the impugned orders. It is directed that the claim of the applicants may be considered for appointment against the reserved vacancies of the Ex-Servicemen in accordance with the findings arrived at.

(S.A.Singh)
Member (A)

/NSN/

(V.S.Aggarwal)
Chairman