

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O. A. NO. 314/2004

New Delhi, this the 30<sup>th</sup> day of July, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN  
HON'BLE SHRI S.A.SINGH, MEMBER (A)

Kailash Chand Meena  
Recruit Constable (Ex.) in Delhi Police  
s/o Sh. Ram Kumar Meena  
r/o Vill: Kharsnki  
PO : Rambas  
Distt: Alwar, Rajasthan. .. Applicant

(By Advocate: Sh. Anil Singhal)

Versus

1. Govt. of NCT of Delhi  
through Commissioner of Police  
Police Head Quarters  
IP Estate, New Delhi.
2. Dy. Commissioner of Police  
2nd Bn. DAP, New Police Lines  
Kingsway Camp, Delhi. ... Respondents

(By Advocate: Sh. George Paracken)

ORDER

Justice V.S. Aggarwal:-

Applicant (Kailash Chand Meena), by virtue of the present application, seeks quashing of the show cause notice of 16.4.2003 and order of 31.12.2003 with further direction to the respondents to issue the letter of appointment to the applicant to the post of Constable (Executive).

2. The relevant facts are that the applicant had applied for the post of Constable (Executive) in Delhi Police during the recruitment held in the year 2002. He was provisionally selected subject to medical fitness, verification of character and antecedents and final checking of documents.

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3. As per the advertisement that was issued for the post, the eligibility condition was that the candidates from all parts of the country should have got their names registered with Employment Exchange for a period of at least one month before, i.e., 13.3.2002. During the scrutiny of the documents of the applicant, it was revealed that he had got his name registered with Zila Sainik Kalyan Office, Alwar only on 21.3.2002, i.e., after the cut off date fixed for the purpose. On noticing these facts, a show cause notice was served on the applicant which reads:

"You Mr. Kailash Chand Meena (Roll No.449140) S/o Sh. Ram Kumar Meena, had applied to the post of Const (Exe.) in Delhi Police during the recruitment held in the Year 2002 and selected provisionally for the post against the vacancy reserved for Ex-Serviceman. As per notification issued for the post, one of the eligibility conditions was that the candidates from all parts of country should have got their name registered with Employment Exchange of any State for at least a month before i.e. on or before 13.03.2002. During the scrutiny of your documents, it revealed that you had got your name registered with Zila Sainik Kalyan Office, Alwar vide registration No.1483 on 21.3.2002 i.e. after the cut of date fixed for the purpose. As such, you have not been found eligible for the post of Const. (Exe.) in Delhi Police.

In view of above, you are, therefore, called upon to Show Cause as to why your candidature for the post of Const. (Exe.) in Delhi Police should not be cancelled. Your reply, if any, in this regard should reach this office with in 15 days positively from the date of receipt of this notice, failing which it will be presumed that you have nothing to say in your defense and the case will be decided exparte on its merits."

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4. The applicant had replied and on consideration of the same, vide the impugned order dated 31.12.2003, it was conveyed that he did not fulfil the eligibility condition and his candidature was cancelled. Hence the present application.

5. Needless to state that the application had been contested. The basic facts were not in dispute. It is admitted that applicant was an Ex-Serviceman. He was put through Physical Endurance & Measurement Test, Written Test and Interview. He was provisionally selected against the vacancy reserved for Ex-Serviceman, subject to verification of the character and antecedents, final checking of original documents, medical fitness, etc. It is reiterated that one of the eligibility condition was that candidates from all parts of the country should have got their names registered with Employment Exchange for a period of one month before the Notification issued, i.e., 13.3.2002. The applicant had got his name registered only on 21.3.2002. The reply to the show cause notice was not found to be convincing and therefore, the candidature was cancelled.

6. Learned counsel for the applicant, had urged that the prescribed condition that a person must be registered with Employment Exchange before a particular date, is not valid. He relied upon the decision of the Punjab and Haryana High Court in the case of THE STATE OF HARYANA AND ANOTHER v. BIKRAM SINGH MAZDOOR AND OTHERS, 2002(1) ATJ 487. In the cited case, the respondents before the Division Bench of that Court were employed as daily wage Mazdoors.

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Their services were terminated. They had challenged the said order. During the pendency of that petition, the department sent requisition to the Employment Exchange for filling up 15 posts on regular basis. They had invoked jurisdiction of the said High Court for directing them to consider their cases for regularisation by contending that the zone of consideration cannot be confined to those sponsored by Employment Exchange. The learned Single Judge of the aforesaid Court had allowed the petition and directed that their claim should also be considered. The Division Bench dismissed the appeal.

7. Perusal of the aforesaid decision of the Punjab and Haryana High Court clearly shows that it has little application in the present case. It is, therefore, distinguishable.

8. Reliance also is being placed on the decision of the Supreme Court in the case of EXCISE SUPERINTENDENT, MALKAPATNAM, KRISHNA DISTRICT, A.P. v. K.B.N. VISWESWARA RAO AND OTHERS, (1996) 6 SCC 216. Therein, the admitted position was that certain private respondents before the Supreme Court were not sponsored through Employment Exchange. They independently applied for consideration of their claims but were not considered. As they had approached the Tribunal and sought a direction, the Tribunal held that sponsorship of the candidates through the medium of employment exchange was valid and not violative of Articles 14 and 16 of the Constitution. The Supreme Court in this regard held:

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"6. Having regard to the respective contentions, we are of the view that contention of the respondents is more acceptable which would be consistent with the principles of fair play, justice and equal opportunity. It is common knowledge that many a candidate is unable to have the names sponsored, though their names are either registered or are waiting to be registered in the employment exchange, with the result that the choice of selection is restricted to only such of the candidates whose names come to be sponsored by the employment exchange. Under these circumstances, many a deserving candidate is deprived of the right to be considered for appointment to a post under the State. Better view appears to be that it should be mandatory for the requisitioning authority/establishment to intimate the employment exchange, and employment exchange should sponsor the names of the candidates to the requisitioning departments for selection strictly according to seniority and reservation, as per requisition. In addition, the appropriate department or undertaking or establishment should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television and employment news bulletins; and then consider the cases of all the candidates who have applied. If this procedure is adopted, fair play would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates."

9. In fact, even this decision must be taken to be distinguishable because the Supreme Court held that many deserving candidates would be deprived of the right to be considered for appointment to the post under the State. It should be mandatory for the requisitioning authority to intimate the Employment Exchange and the appropriate department should call for the names by publication in the newspapers.

10. We hasten to add that this is not the controversy before us, <sup>that</sup> the whole of the selection process should be quashed in this regard. Therefore, keeping in view the said fact, the decision must be

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confined to the peculiar facts of that particular case or in those cases where, as referred to, above, the said controversy arises.

11. In fact, the Supreme Court in the case of SURENDRA KUMAR SHARMA v. VIKAS ADHIKARI AND ANR., 2003(3) SLR (SC) 601 held:

"Although there is the Employment Exchange Act which requires recruitment on the basis of registration in the Employment Exchange, it has become common practice to ignore the Employment Exchange and the persons registered in the Employment Exchanges, and to employ and get employed directly those who are either not registered with the Employment Exchange or who though registered are lower in the long waiting list in the Employment Register. The Courts can take judicial notice of the fact that such employment is sought and given directly for various illegal considerations including money. The employment is given first for temporary periods with technical breaks to circumvent the relevant rules, and is continued for 140 or more days with a view to give the benefit of regularization knowing the judicial trend that those who have completed 240 or more days are directed to be automatically regularized. A good deal of illegal employment market has developed, resulting in a new source of corruption and frustration of those who are waiting at the Employment Exchanges for years. Not all those who gain such backdoor entry in the employment are in need of the particular jobs. Though already employed elsewhere, they join the jobs for better and secured prospects. That is why most of the cases which come to the courts are of employment in Government Departments, Public Undertakings or Agencies. Ultimately it is the people who bear the heavy burden of the surplus labour. The other equally injurious effect of indiscriminate regularization has been that many of the agencies have stopped undertaking casual or temporary works though they are urgent and essential for fear that if those who are employed on such works are required to be continued for 240 days or more days have to be absorbed as regular employees although the works are time bound and there is no need of the workmen beyond

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the completion of the works undertaken. The public interests are thus jeopardized on both counts."

12. In other words, the Supreme Court took judicial notice of the fact that such employment is sought and given directly for various illegal considerations. If such a condition is imposed, the same cannot be termed to be arbitrary, unjust or illegal.

13. In fact, the present case necessarily has to be considered in the light of Rule 27 of Delhi Police (Appointment & Recruitment) Rules, 1980. The said Rule reads:

"27. Recruitment through Employment Exchange.- All vacancies which are not filled through the Union Public Service Commission or by competitive examination or by departmental promotion or transfers should invariably be notified in good time to the Employment Exchange."

14. Perusal of the aforesaid Rule would clearly shows that all vacancies which are not filled through the Union Public Service Commission or by competitive examination or by departmental promotion or transfers, should invariably be notified to the Employment Exchange. The present vacancy was filled up through a competitive examination confined to Ex-Serviceman. The applicant was put admittedly to Physical Endurance & Measurement Test, Written Test and Interview. Therefore, in terms of Rule 27, taking resort to the names to be sponsored by Employment Exchange, was contrary to the Rules referred to above.

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15. Learned counsel for the respondents, however, pointed that the same can only be taken to be relevant for the purpose of cut off date and cut off date was the date of registration with Employment Exchange.


16. We do not dispute the logic that there should be a cut off date but once role of the Employment Exchange for recruitment of the above said post is excluded, we fail to understand why it should be linked with any such date for registration with Employment Exchange. Therefore, the very purpose of such a date must be taken to be arbitrary.

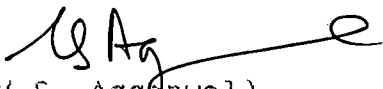
17. Cut off date can be, when a person is to hold educational qualification. It could be a date when application must be received. It could be a date when a person is relieved from the Indian Army or the number of years he has put in by a particular date, but to link the date of registration with Employment Exchange keeping in view the Rule 27 of the Rules referred to above, does not appear to be having any logic and on that count, therefore, candidature of the applicant could not be rejected.

18. A similar situation had arisen before this Tribunal in the case of JAGBIR SINGH v. LT. GOVERNOR, GOVT. OF NCT OF DELHI & OTHERS (OA 1170/2000, decided on 19.1.2001). The application had been allowed. For different reasons which we have recorded, we are also of the opinion that the candidature has not validly been rejected.

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19. For the reasons recorded above, we quash the impugned order and direct that the claim of the applicant should be processed in accordance with law and decision taken preferably within three months from today.

  
(S.A. Singh)  
Member (A)

  
(V.S. Aggarwal)  
Chairman

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