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**CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH**

**Original Application No.522/2004**

New Delhi, this the 13<sup>th</sup> day of October, 2004

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman**  
**Hon'ble Mr. S.K. Naik, Member (A)**

Mohd. Faisal  
Recruit Constable (Ex.) in Delhi Police  
S/o Mohd. Yasin  
R/o Vill.: Dhanmatputra  
PO: Thoon, Tehsil: Nagar  
Distt. Bharatpur, 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  
2<sup>nd</sup> Bn. DAP, New Police Lines  
Kingsway Camp, Delhi. ... Respondents

**(By Advocate: Sh. Ram Kanwar)**

**ORDER**


**By Mr. Justice V.S. Aggarwal:**

Applicant had applied for appointment as Constable (Executive) in Delhi Police. He was provisionally selected after he qualified the Physical, Written as well as the Personality Test. He was declared medically unfit for the post of Constable due to colour blindness. The applicant submitted an appeal for re-medical examination. A Medical Board was constituted at Lok Nayak Hospital, New Delhi which declared him medically unfit for the post of Constable due to 'Colour Blindness'. A representation in this regard even had been given.

2. By virtue of the present application, he seeks setting aside of the order passed whereby he has been declared medically unfit for appointment and for a direction to issue a letter of appointment for the post of Constable (Executive).



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3. The application has been contested. The basic facts are not in dispute. It is admitted that applicant was declared unfit due to colour blindness. As per Rule 9 of Delhi Police (Appointment & Recruitment) Rules, 1980 the physical standard for recruitment of the Constable cannot be relaxed and one has to be free from colour blindness.

4. The short question, therefore, that comes up for consideration is as to whether when applicant admittedly suffers from colour blindness, he can be directed to be appointed as Constable (Executive) or not?

5. Learned counsel for the applicant has relied upon the decision of the Supreme Court in the case of UNION OF INDIA AND OTHERS v. SATYA PRAKASH VASISHT, 1994 Supp(2) SCC 52. In the cited case, in 1978 Shri Satya Prakash was selected for appointment as Sub-Inspector in Delhi Police. The appointment was denied to him on the ground that he was suffering from colour blindness. His application was allowed by the Central Administrative Tribunal. The Supreme Court referred to the Rules introduced by amendment dated 8.5.1978 and dismissed the appeal holding that one should be free from colour blindness only in case of Drivers and Traffic Staff.

6. From the facts of the present case, it is patent that decision in the case of *Union of India v. Satya Prakash Vashist (supra)* is distinguishable. This is for the reason that the advertisement therein had been issued in the year 1978. At that time, Rules were different. Presently, as would be noticed hereinafter, the Rules had been framed in the year 1980 under the Delhi Police Act and consequently, once the rules are different as applicable in the case of the applicant, the decision referred to above and so much thought of by the learned counsel, will not come to his rescue.



7. Our attention was further drawn to another case of the Supreme Court in Civil Appeal No.2018/1996 entitled JAIBIR SINGH v DEPUTY COMMISSIONER OF POLICE & ANR., decided on 12.1.1996. The decision in the case of *Union of India v. Satya Prakash Vashist (supra)* was relied upon and it was held that the concerned person was fit for appointment as Constable. As already mentioned above, the matter in question is governed by the relevant rules on the subject. Learned counsel for the respondents urged that the decision is sub silentio on the provisions of the Rules applicable on appointment to the post of Constable and referred to us the Supreme Court decision in the case of STATE OF U.P. & ANR. v. SYNTHETICS & CHEMICAL LTD. & ANR. (1991) 4 SCC 139. The Supreme Court held that even the decisions of the Apex Court which are sub silentio on certain facts and law would not be a binding precedent. The findings of the Supreme Court are:

“41. Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here again the English courts and jurists have carved out an exception to the rule of precedents. It has been explained as rule of sub-silentio. “A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind.” (Salmond on Jurisprudence 12<sup>th</sup> Edn., p.153). In *Lancaster Motor Co. (London) Ltd. v. Bremith Ltd.* the Court did not feel bound by the earlier decision as it was rendered without any argument, without reference to the crucial words of the rule and without any citation of the authority. It was approved by this Court in *Municipal Corporation of Delhi v. Gurnam Kaur*. The bench held that, precedents sub-silentio and without argument are of no moment. The courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decidendi. In *B.Shama Rao v. Union Territory of Pondicherry* (AIR 1967 SC 1480) it was observed, it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein’. Any declaration or conclusion arrived without application of

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mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restrained in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law."

8. It is this principle which is being highlighted.

9. The said principles in the facts of the present case, in our opinion, must prevail.


10. Delhi Police (Appointment & Recruitment) Rules, 1980 have been framed in exercise of the powers conferred by Sub-Sections (1) and (2) of Section 147 of the Delhi Police Act, 1978. Rule 9 of the said rules referred to recruitment of Constables pertaining to Physical Standards. It prescribes:

“(e) Physical standard	Sound state of health, No relaxation permissible” free from defect/ deformity disease, vision 6/12 without glasses both eyes, free from colour blindness.
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11. It is obvious from the aforesaid that a person has to be free from colour blindness and even no relaxation is permissible.

12. Keeping in view the aforesaid, we have little hesitation in holding that the applicant cannot take advantage of the decision of the Supreme Court referred to above, because they were not concerned with Rule 9 of the Delhi Police (Appointment & Recruitment) Rules, 1980.

13. Resultantly, the Original Application is without merit. It must fail and is dismissed.

  
(S.K.Naik)  
Member (A)

  
(V.S. Aggarwal)  
Chairman

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