

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

(14)

O.A. NO. 525/92

DECIDED ON : 2.6.1992

Mohd. Safi & Ors.

... Applicants

Versus

Delhi Administration & Ors.

... Respondents

O.A. NO. 547/92

Umar Singh & Ors.

... Applicants

Versus

Delhi Administration & Ors.

... Respondents

O.A. NO. 581/92

S. Dharam Raj

... Applicant

Versus

Commissioner of Police & Ors.

... Respondents

O.A. NO. 695/92

Bankim Baskay & Ors.

... Applicants

Versus

Delhi Administration & Ors.

... Respondents

O.A. NO. 800/92

Bajrang Lal & Ors.

... Applicants

Versus

Delhi Administration & Ors.

... Respondents

O.A. NO. 900/92

Q. M. Rehman & Ors.

... Applicants

Versus

Delhi Administration & Anr.

... Respondents

O.A. NO. 974/92

Chander Bhan & Anr.

... Applicants

Versus

Delhi Administration & Anr.

... Respondents

O.A. NO. 601/92

Afzal Ahmed & Ors.

... Applicants

Versus

Delhi Administration & Anr.

... Respondents

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O.A. NO. 635/92

Kailash Chand & Ors. ... Applicants
Versus
Delhi Administration & Anr. ... Respondents

O.A. 567/92

Sada Ram & Ors. ... Applicants
Versus
Delhi Administration & Anr. ... Respondents

CORAM : THE HON'BLE MR. JUSTICE V. S. MALIMATH, CHAIRMAN
THE HON'BLE MR. P. C. JAIN, MEMBER (A)

Petitioners through Ms. Urmila Bendre,
Ms. Meera Chibber, Counsel

Respondents through Ms. Geeta Luthra,
Shri M. C. Garg, Shri O. N. Trishal, Counsel

J U D G M E N T (ORAL)

(Hon'ble Mr. Justice V. S. Malimath, Chairman) :

As common questions of law and fact arise for consideration in these cases, they were heard together and are being disposed of by this common judgment. The petitioners in these cases entered service as Police Constables in the Central Police Organisations (for short 'CPOs'). They came to the Delhi Police Organisation on deputation. The deputation was for a term which came to be extended from time to time. It is when they were thus serving as deputationists that a decision was taken by the respondents to permanently absorb the Police Constables who had come on deputation. The respondents made orders regarding permanent absorption of nearly 400 Police Constables. They took a decision to repatriate more than 100 Police Constables back to their parent department. The petitioners in these cases are some of those persons who were

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not absorbed in service under the Delhi Police and were directed to be repatriated to their respective parent departments. It is those decisions that have been challenged by the petitioners in these cases.

2. The principal contention of the learned counsel for the petitioners in all these cases is that in the matter of a permanent absorption of Police Constables who have come on deputation, the petitioners have been discriminated against; that picking and choosing has taken place in the matter of absorption and that, therefore, the action of the respondents is arbitrary and violative of Articles 14 and 16 of the Constitution. Some of the petitioners have also taken the plea of promissory estoppel.

3. So far as the respondents are concerned, they have taken the stand that some time in the year 1989 a decision was taken to the effect that only those who have passed matriculation examination should be considered for permanent absorption and not those possessing lower educational qualifications. They have further taken the stand that after such a decision was taken in the year 1989, nearly 300 persons had been repatriated on the ground that they did not possess the required matriculation qualification. In other words, their stand is that the very same decision that was taken in this behalf in the year 1989 was once again applied when the impugned action was taken of repatriating the petitioners. It is their case that as Rule 9 of the Delhi Police (Appointment & Recruitment) Rules, 1980 (hereinafter referred to as the recruitment rules) prescribes Matric/Higher Secondary, 10th or 10th plus 2 as the minimum educational standard; that a decision was taken to absorb only such of the Police Constables who possess this educational qualification.

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4. So far as the permanent absorption of the Police Constables is concerned, it stands regulated by statutory provision, namely, Rule 17 of the Delhi Police (General Conditions of Service) Rules, 1980 (hereinafter referred to as the rules) which reads as follows :-

"The Commissioner of Police, Delhi, may sanction permanent absorption in Delhi Police of upper and lower subordinates, except Inspectors from other States/Union Territories and Central Police Organisations, with their consent and with the concurrence of the Head of the Police Force of the State/Union Territory, or the Central Police Organisation concerned. Similarly, the Commissioner of Police, may sanction permanent transfer of upper and lower subordinates of Delhi Police, except Inspectors with their consent for permanent absorption in Police forces of other States/Union Territories or Central Police Organisations, subject to the concurrence of the Head of the Police force concerned. In the case of such permanent transfer of an Inspector of Delhi Police to any other State or vice versa, the Commissioner of Police, shall obtain the prior sanction of the Administrator."

It is clear from this statutory provision that the Commissioner of Police, Delhi has been empowered to sanction permanent absorption in the Delhi Police of upper and lower subordinates except Inspectors from the States/Union Territories and Central Police Organisations provided two conditions are satisfied, namely, that the persons concerned have given their consent and the head of the police force of the State/Union Territory has given his consent. We do not find any express stipulation in regard to the qualification of the persons whose absorption can be sanctioned under Rule 17. It is well settled that a person who comes on deputation from one department to another, unless there is a provision to the contrary, has no right for permanent absorption in service in the department to which he has gone on deputation for a term. This is well settled by the decision of the Supreme Court reported in AIR 1990 SC 1132. Though the petitioners may not

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have a right as such under ~~the~~ statutory provisions for absorption in service, they have undoubtedly the constitutional and fundamental right not to be discriminated against under Article 14 and 16 of the Constitution. The petitioners having assailed the action of the respondents in regard to the absorption as being arbitrary, the respondents have to satisfy us that their action is founded on just and valid reasons.

5. It is in this background that we have to examine the reasons or justification put forth by the respondents in support of their action in not absorbing the petitioners in the Delhi Police under Rule 17 of the rules *ibid*. The only justification pleaded is that matriculation has been decided upon as the qualification to be insisted upon for absorption in respect of which decision was taken long back in the year 1989 and acted upon. The question for consideration is as to whether the prescription of the matriculation or the equivalent qualification as a minimum standard for absorption can be regarded a valid criteria. It would be valid provided it has relevance or nexus with the object sought to be achieved. It is ^a cardinal principle of service law that the qualifications must be prescribed in such a manner as to meet the requirements ^{service and} of ~~also~~ to ensure that the best talent becomes available for the administration. In this behalf the respondents rely upon rule 9 of the recruitment rules which prescribes for recruitment for the post of Police Constable the educational qualification of matric/higher secondary or 10th of ten plus two. It is no doubt true that this prescription is in regard to direct recruitment of Police Constables in the Delhi Police. It was brought to our notice that under the earlier scheme even non-matriculantes were eligible for being appointed as Police Constables. Having regard to the fact that more and more

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educated persons have become available in the country and it is also ~~felt~~ ~~necessary~~ that people with higher educational qualifications ~~can serve better~~ in such responsible posts that the statutory prescription as it now stands ~~prescribed~~ for direct recruitment, the possession of higher qualification of matriculation or equivalent. The Supreme Court has held in AIR 1974 SC page 1: State of Jammu & Kashmir vs. Triloki Nath/^{Khosa} & Ors. that the classification in service rules founded on educational qualification for promotion to the posts is constitutionally permissible. The reason is obvious that a person possessing higher educational qualification is better equipped to perform his duties and functions as a Police Constable. The rule making authority itself has prescribed matriculation or equivalent as the appropriate qualification for direct recruitment to the post of Police Constable in Delhi Police organisation. That being the position, it has to be held that the criteria adopted for absorption in regard to educational standard on par with the qualification for direct recruitment in the Delhi Police as Constables is just and proper. Hence, the prescription cannot be regarded as arbitrary and violative of Articles 14 and 16 of the Constitution. As already stated, such a decision was taken in the year 1989 and was operated and nearly 300 persons were repatriated on the ground that they did not possess the prescribed qualification. Hence, we are inclined to hold that the prescription of the educational qualification of matriculation or equivalent for absorption is reasonable and valid.

6. The next question for consideration is as to whether in the matter of implementing the policy decision in this behalf, the petitioners have been discriminated against.

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Some of the petitioners have stated that they too possess the matriculation qualification, but their cases have not been considered. The information in regard to the qualification possessed appears to have been gathered by the department from their own subordinates. It is likely that the subordinate officers forwarded the information which is already available with them in the records without ascertaining if some of the petitioners had subsequently acquired matriculation qualification. So far as the petitioners are concerned, the following petitioners have asserted that they possess the prescribed matriculation qualification :-

- (1) Shri Kaushal Pratap Singh, petitioner No. 9 in O.A. 525/92; &
- (2) Shri Chandra B. Yadav, Petitioner No. 11 in O.A. 525/92;
- (3) Shri Ishwar Singh, petitioner No.13 in OA-547/92;
- (4) Shri Shanti Lal, petitioner No.24 in OA-567/92;
- (5) Shri Maya Nand, petitioner No.3 in OA-601/92;
- (6) Shri Silvanthan, petitioner No.5 in OA-695/92;
- (7) Shri Ramesh Chander, petitioner No. 9 in OA-800/92.

The counsel for the respondents submitted fairly that if these petitioners now make a representation ^{that they are matriculates} and produce evidence in support thereof, their cases would be examined for permanent absorption bearing in mind the date of the decision to repatriate them to their parent department.

7. The other contention of the learned counsel for the petitioners is that several persons who did not possess the prescribed matriculation or equivalent qualification have in fact been absorbed in service. The petitioners have given the names of the persons in their respective affidavits. The respondents have controverted the assertions and have stated

✓ that in respect of some of the persons the particulars furnished

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by the petitioners are not accurate or adequate and that, therefore, it is not possible to reply; that some of the persons named by them were matriculates; that some others named by them were actually absorbed in service in the year 1988 before a decision was taken to insist on matriculation or equivalent in the year 1989. Even accepting the stand taken by the respondents, we still find that the assertion of the petitioners that the following persons though they did not possess the matriculation or equivalent qualification have been absorbed permanently, is not ~~contested~~:

- (1) Ram Singh;
- (2) Bhure Lal;
- (3) Sanjay; and
- (4) Shankar.

It was contended that the petitioners having thus established that at least in respect of these four persons permanent absorption has been accorded even though they did not possess the required educational qualification, the petitioners are entitled to similar treatment. It is necessary to point out that we have earlier recorded a finding upholding the prescription of the matriculation or equivalent as the educational qualification for permanent absorption as valid and we have also held that such a decision ~~having~~ been taken in the year 1989 ~~was~~ also implemented by the respondents. If in the process, the respondents committed error and gave absorption to persons who did not possess the required educational qualification, what can be annulled is the action in conferring the unjust absorption in service. A wrong or illegal treatment in respect of some of the persons does not give rise to the right in favour of others for similar wrong or illegal treatment in their favour. ^{This is not} ~~The content of Article~~

✓ 14 of the Constitution at all. The petitioners

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have been able to establish that four persons have been absorbed permanently though they did not possess the prescribed qualification of matriculation or equivalent. That the decision taken by the respondents ^{for absorption} in regard to the persons who are not matriculates is arbitrary does not mean that the respondents ^{ought} issued a direction to absorb the petitioners. Besides, it is necessary to point out that it is not possible to annul the absorption of these four persons as they are not before us. We should also mention that a justification has been pleaded by the respondents in regard to the absorption of these four persons. So far as Shri Bhure Lal is concerned, it is stated that he is the personal security officer of Shri Devi Lal, Deputy Prime Minister and President of Samajvadi Janta Dal. So far as Shri Ram Singh is concerned, it is stated that he was the personal security officer of Shri Prakash Singh, IPS officer. The absorption of these two persons is sought to be justified having regard to Rule 30 of the recruitment rules which has conferred power on the Administrator to relax the provisions of the rules even in individual cases. The justification pleaded is that these two Police Constables were incharge of personal security of responsible persons and that, therefore, relaxation of qualifications was made in their favour. So far as Sanjay and Shankar are concerned, they are said to be the wards of Delhi Police personnel in whose cases relaxation was granted under rule 9 of the recruitment rules which provides for relaxation upto 9th class in respect of this category of persons. As already stated, even assuming that there was no justification for relaxation of the qualification in their favour regarding absorption, we cannot grant a direction in favour of the petitioners for making a similar mistake in their favour as well.

8. Some of the petitioners have contended that the respondents are barred by the principle of promissory estoppel. They have stated that there was an assurance given to them that they would be absorbed in service and on the strength of that assurance they have admitted their children in schools here and also foregone their promotion in their parent department and have thus altered their position to their disadvantage. The foundation for invoking the principle of promissory estoppel is the assurance said to have been given by the respondents about their permanent absorption. Apart from a bald assertion no satisfactory material has been placed before us in this behalf.

9. As none advanced any arguments before us, we have not examined if the petitioners who were members of the armed force before deputation can invoke the jurisdiction of the Tribunal for seeking absorption in the Delhi Police.

10. For the reasons stated above, while upholding the decision of the respondents to repatriate the petitioners who did not possess the matriculation or equivalent qualification to their parent department, we direct the respondents, so far as the following seven petitioners are concerned, if they file a representation within two weeks from this date and produce material in support of their cases that they possess the matriculation or equivalent qualification along with the representation, that their cases shall be examined for absorption and if they are found eligible and fit for absorption a decision in this behalf shall be taken within four weeks after receipt of the representations:-

- (1) Shri Kaushal Pratap Singh, petitioner No.9 in OA 525/92;
- (2) Shri Chandra B. Yadav, petitioner No.11 in OA 525/92;
- (3) Shri Ishwar Singh, petitioner No.13 in OA 547/92;
- (4) Shri Shanti Lal, petitioner No.24 in OA 567/92;
- (5) Shri Maya Nand, petitioner No.3 in OA 601/92;
- (6) Shri Silvanthan, petitioner No.5 in OA 695/92;
- (7) Shri Ramesh Chander, petitioner No.9 in OA 800/92.

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Until such representations are decided, they shall not be repatriated to their parent department. The petitions having been dismissed in regard to the rest, it is obvious that the interim order of stay already granted stands vacated. No costs.

C. C.
(P. C. Jain)
Member (A)

V. S. Malimath
(V. S. Malimath)
Chairman

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