

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI.

O.A. No. 1168/92
~~T.A. No.~~



DATE OF DECISION 2-1-98

Parveen Kumar Applicant(s)

Versus

Commissioner of Police & Another Respondent(s)

(For Instructions)

1. Whether it be referred to the Reporter or not? Yes
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No

(Di. A. Vedaralli)

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2-1-98

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1168/92

New Delhi this the 2nd day of January, 1998.

HON'BLE DR. A. VEDAVALLI, MEMBER (J)
HON'BLE MR. R.K. AHOOJA, MEMBER (A)

Parveen Kumar,
S/o Retd. A.S.I. Puran Chand,
R/o 36-D, D.A. Block,
Hari Nagar,
New Delhi-110064.

...Applicant

(By Advocate Shri Shankar Raju)

-Versus-

1. Commissioner of Police,
Police Headquarters,
M.S.O. Building,
I.P. Estate,
New Delhi.

2. Dy. Commissioner of Police,
3rd Bn. DAP, Kingsway Camp,
Delhi.

...Respondents

(By Advocate Shri Ajesh Luthra, proxy for Mrs. Jyotsna
Kaushik, Counsel)

ORDER

HON'BLE DR. A. VEDAVALLI, MEMBER (J):

The applicant, son of a retired A.S.I. (Delhi Police) was selected against the post of a Constable in the Delhi Police during the year 1989 to 1990 by the respondents by order dated 11.8.90 (Annexure A-2). He is aggrieved by his non deputation to the training course and non appointment by respondents. He has impugned the order dated 9.3.92 issued by respondent No.1 (Annexure A-5) and the circular dated 19.11.90 issued by respondent No.2 (Annexure A-6) in the present O.A.

2. The facts of this case briefly stated are as under:

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3. The applicant applied for the aforesaid post of Constable as a Ward of Police personnel and was physically examined on 19.1.90. He was interviewed and passed the written test also subsequently. On being informed about his selection he filled up the attestation/verification forms etc. after physical and medical examinations. However, he was called for physical re-measurement by the respondents vide letter dated 4.2.91 (Annexure A-3). It was stated in the said letter that the applicant's appointment as a Constable will be subject to the passing of this test and on receiving police verification and medical reports. While the other selected candidates were sent for training on 1.8.91, the applicant who reported for training on 7.8.91 was denied participation in the training without assigning any reasons. According to the applicant's statement in para 4 (vi) of this OA it is stated by him that on being aggrieved by the non-deputation to the training course and appointment in the Delhi Police he preferred representations vide Annexure A-4 (colfy.) and in the meanwhile it was learnt that he has not been given the relaxation of one c.m. in chest measurement due to adverse record of his father who was serving in Delhi Police. It is also stated by the applicant in the OA (para 4 (vii)) that he was informed by the impugned order dated 9.3.92 (Annexure A-5) that his case for relaxation cannot be acceded to as he does not merit it on administrative grounds. The circular dated 22.11.90 reiterating certain provisions of S.O. No.212/89 and denying relaxation to the candidates whose fathers/mothers while serving in Delhi Police had service record which were not clean and good (Annexure A-6) has also been impugned in this O.A.

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4. The applicant has sought the following reliefs in this O.A.:

- "(i) To quash the orders dated 9.3.1992 passed by the Commissioner of Police, vide Annexure A-5;
- (ii) To declare the impugned order at Annexure A-6 as well as Standing Order No.212/1989 of Delhi Police, as illegal and ultravires.
- (iii) To declare the orders passed by the respondents refusing to the relaxation to the applicant and further denying him an offer of appointment as illegal.
- (iv) To direct the respondents to appoint the applicant as a Constable in Delhi Police on completion of his training after granting him relaxation, applied for, alongwith continuity of service and other benefits;
- (v) Any other relief as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

5. The O.A. is contested by the respondents who have filed their reply. No rejoinder has been filed by the applicant.

6. We have heard the learned counsel for the parties and have perused the pleadings and the relevant materials and documents placed on record. The matter has been considered carefully.

7. The applicant has challenged the impugned order dated 9.3.92 (Annexure A-5) rejecting the request for relaxation in physical measurement of chest, inter alia, on the main ground that it is violative of the basic principles of natural justice since it is a non speaking order. The learned counsel for the applicant argued that under Section 25 of the Delhi Police (Appointment and Recruitment) Rules, 1980 a candidate who had been successful in all the tests is

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provisionally enrolled for the post pending police verification and hence reasonable opportunity to show cause should have been afforded by the respondents to the applicant before taking any adverse action against him since he had already cleared the written and viva voce test etc. He contended that the impugned order is, therefore, bad in law.

8. Learned counsel for the respondents in reply submitted that the applicant was to appear for the test only on a provisional basis, as he was a ward of police personnel subject to the outcome of the requisite relaxation in physical measurement to be granted by the competent authority. Since the requisite relaxation in chest by one c.m. was not granted by the competent authority due to the indifferent service record of the applicant's father as per the provisions of SO No.212/89, he was not called to join the Delhi Police for training alongwith other candidates. The applicant, therefore, has no claim to participate in the training. It was further submitted that the applicant and his father were fully aware of the provisions of the aforesaid S.O. No.212/89 which is a part of the relevant rules and the non grant of the requisite relaxation by the competent authority. It was argued by the learned counsel for the respondents that in view of the above position and the applicant's selection being purely provisional there is no violation of Rule 25 of the aforesaid rules. Moreover, there is no obligation to give any opportunity to the applicant before the issue of the said impugned order or to give any reasons for the rejection of the request for relaxation. He contended that the said order is, therefore, perfectly valid in law.

[Signature]

9. Re the issue as to the validity of the impugned order dated 9.3.92 (Annexure A-5) it is noticed that the said order was issued with reference to the application by Puran Chand, retired A.S.I. who is the father of the applicant requesting granting of relaxation in chest measurement by one c.m. for his son but his request was not acceded "on administrative grounds". Though the applicant has stated in the O.A. as noted supra that he has preferred a representation vide Annexure A-4 (colly), he had not filed copies of the said representation alongwith the OA. The copies which have been filed at Annexure A-4 colly. dated 29.8.91, 3.9.91 and 7.2.92 obviously were submitted by the applicant's father to the Commissioner of Police, Delhi (respondent No.1). It is, therefore, presumed that the applicant himself has not submitted any representation to the respondents regarding his grievances raised in the OA against action of the respondents.

10. In this connection the relevant provisions of S.O. No.212/90, a copy of which has been furnished by the learned counsel for the applicant and which was taken on record is extracted below:-

"f) In case of sons/daughters of either serving, retired or deceased Police Personnel/Class-IV employees of Delhi Police, who do not fulfill the general conditions of physical standard, age & educational qualifications, a relaxation of maximum of 5 Cms. in height & chest measurement; one standard in educational qualifications and in higher age upto 25 years can be given by the Additional C.P. (A.P.), Delhi, provided their names are registered with the Employment Exchange. Any candidate of this category can be admitted provisionally in the recruitment test, with the prior approval of the DCP concerned, in case the candidate comes within the prescribed relaxation. Sanction for relaxation shall be obtained from Additional C.P. (AP), Delhi, only in case of those candidates who qualify in the test and come within the selection range, at par with the general

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candidates. There is no percentage limit on this, but the Additional C.P. (AP). Delhi will exercise this discretion henceforth with care. The relaxation will hereafter be extended to the sons/daughters of only those policemen whose service records are clean and good. This relaxation will be given as a reward.

NOTE:- The candidates in this category would need to attach a certificate from the DCP of District/Unit, in which their father/mother is/was last posted, in support of their claim with the application form (or latest at the time of interview, in exceptional cases, with the permission of DCP/Incharge recruitment). This certificate must be produced by the sons/daughters of both serving and retired Delhi Police personnel and in case of those whose father/mother is not alive, submission of a documentary proof that they are sons/daughters of deceased Delhi Police Personnel, like pension papers etc. will suffice."

11. In view of the aforesaid provisions and since the applicant himself, as noted supra, presumably has not submitted any representation to the respondents regarding his grievances, we are of the opinion that there is no legal justification for the applicant to challenge the impugned order dated 19.11.90 (Annexure A-6) marked to his father and we do not see any valid reason to interfere judicially with the aforesaid order at this stage in view of the above position.

12. Re the impugned circular dated 19.11.90 (Annexure A-6) the contention of the applicant is that the respondents are estopped from withholding his appointment as they were aware of the record of service of his father from the inception of recruitment and yet they allowed the applicant to qualify in all the physical and educational tests. Moreover, he will become overaged for the said post and will be denied his fundamental right to employment.

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13. The respondents refuted the above contention. They submitted that all the police personnel including the father of the applicant were aware of the service record and application for relaxation should not have been submitted. It was further submitted that the applicant was allowed to take tests provisionally.

14. The aforesaid impugned circular No.45057-902/SIP(PHQ) dated 19.11.90 (Annexure A-6) reads thus:

"According to provisions of Standing Order No.212/89 the sons/daughters of serving/retired or deceased police personnel/Class IV employees of Delhi Police who do not fulfill the general conditions of physical standard, age & educational qualifications, are allowed provisionally to appear in the recruitment test for the post of Constable in Delhi Police. In the words qualify in the test and come within the selection range at par with the general candidates, necessary relaxation is granted by the Competent authority. It is also provided in the Standing Order that the relaxations will be granted to the wards of only those Police personnel whose service records are clean and good on the relaxation is given as a reward.

It is reiterated for the information of all concerned not (sic - that) relaxation to the sons/daughters of Delhi Police personnel as permissible under the Standing Order, will only be granted if the service record of father/mother of the candidate is found clean. All Police personnel may be informed of his position and to avoid unnecessary correspondence arising out of their requests for recruitment of their wards. They may be announced at giving roll call daily for one month."

15. It is noticed that, inter alia, the Standing Order No.212/89 supra as well as the aforesaid circular dated 19.11.90 make it quite clear that the candidates who fall under the category specified therein who do not fulfil the relevant general condition of physical standard etc. are admitted to the recruitment tests provisionally with the prior approval of DCP concerned in case the candidate comes within

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the prescribed relaxation. Moreover, sanction for recruitment is to be obtained only in the case of those candidates who qualify in the tests and come within the selection range at par with the general candidates. Further the relaxation is to be extended to the sons/daughters of Police men whose service record is clean and good and it will be given as a reward.

16. While so, the applicant has not been able to substantiate his challenge to the aforesaid impugned circular with any valid and tenable grounds. Hence we see no reason to quash and set aside the said Circular No.45057-902/SIP(PHQ) dated 19.11.90 (Annexure A-6).

17. On the facts and circumstances of this case and in view of the foregoing discussion we are of the considered opinion that the applicant has failed to establish the violation of any legally enforceable right in this case. O.A. is, therefore, dismissed. Interim orders, if any, stand vacated.

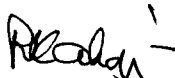
18. However, in view of the fact that the applicant has already cleared the tests except physical measurement of chest by one chest (whereas the maximum limit is upto 5 c.m. can be granted as per the standing order and also the circular dated 19.11.90) and he has been allowed to attend the training also provisionally under an interim order of this Court dated 13.5.92 and according to his statement he would be over aged if he loses this chance we make it clear that in case he submits a self contained and detailed representation regarding his grievances to the respondents within one month from the date of receipt of a copy of this order the same should be considered on merits and appropriate orders passed by the



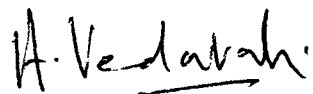


respondents in the light of the relevant rules and instructions including, inter alia, the general power to relax any of the provisions of the rules with respect to any class and category of persons or posts on an individual case under Rule 30 of the Delhi Police (Appointment and Recruitment) Rules, 1980. within two months from the date of receipt of such representation. Disposal of the representation will not give a fresh cause of action.

19. There will be no order as to costs.


(R.K. AROOJA)

MEMBER (A)


(DR. A. VEDAVALLI)

MEMBER (J)

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