

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

O.A 1592/93

New Delhi, dated the 16th December, 1994

CORAM

Hon'ble Shri N.V. Krishnan, Vice Chairman (A)

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Shri Dara Singh s/o Sh. Komal Singh
c/o Ashok Kumar D-78, New Police Lines,
Kingsway Camp, New Delhi

... Applicant

(By Advocate Shri A.K. Bajpai)

v/s

1. The Administrator,
Delhi Administration, Old Sectt., Delhi.
2. The Commissioner of Police,
M.S.O. Building, I.T.O. New Delhi
3. The Dy. Commissioner of Police,
4th Bn.D.A.P. Delhi
4. The Union of India,
(Service to be effected through its Secy.)
Ministry of Home Affairs,
Govt. of India, New Delhi
5. Medical Superintending,
Civil Hospital,
Delhi Administration,
Rajpur Road, Delhi

... Respondents

(By Advocate Shri Surinder Adlakha)

ORDER(ORAL)

(Hon'ble Shri N.V. Krishnan, Vice Chairman (A)

This applicant participated in the
recruitment of constables which took place in 1987.

He is aggrieved by the Annexure-A order dated 26.2.93
of the Commissioner of Police, the second respondent,
that he could not be recruited because he did not

fullfil the conditions prescribed for recruitment

as Constable (Bandman) and that, in addition,

as communicated to him on 17-3-1988(Ann.B), he has

been declared medically unfit due to colour blindness-

He prays that the impugned orders dated 17.3.1988(Ann.B)

and dated 26-2-1993(Ann.A) be quashed and that respondents

be directed to appoint him as Bandman(Constable)

w.e.f. 17.9.87 with benefits of all back wages and

fix his seniority from the date of appointment made

in pursuance of Recruitment made on 17.9.87.

2. The brief facts of the case are as follows:-

2.1. Admittedly, the applicant was interviewed on 17.9.87. He was also sent for medical examination on 2.12.1987.

2.2. The applicant was informed by the Ann.B order dated 17.3.1988 that he has been declared medically unfit due to colour blindness.

2.3. Not satisfied, the applicant made private enquiries from the hospital. He then made a representation on 19.12.1992(Ann.D) stating that he has come to know that he was not declared medically unfit by the medical authorities.

2.4. Thereupon, the Deputy Commissioner of Police took up the matter with the Medical Superintendent cum-Medico-Legal Expert cum-consultant, Civil Hospital, Rajpur Road, Delhi. That authority

U

informed the Deputy Commissioner, IVth Bn. (page-21) (third respondent) on 23-9-92/ " Dara Singh s/o Shri Komal Singh was examined in this hospital on 2-12-1987 for the post of constable (Bandman) and declared fit for the same."

2.5 Having obtained information about this reply, the applicant again represented to the authorities on 19.12.1992. A lawyers notice was also sent on 19.1.93(Ann.E)

2.6. In reply to his representation dated 19.12.92 he was given the reply dated 26.2.93(Ann.A), the substance of which has been given above.

3. When this matter came up for admission we felt it necessary that the Medical Supdt. of the Civil Hospital should also be impleaded as an Additional respondent and that has been done and this authority has been impleaded as Respondent No.5.

4. Respondent No.5 was represented on 14.11.1994 by Shri Karan Singh, PA who brought the records. Learned counsel for the Respondents 1 to 4 admits that whatever has been mentioned by the 5th Respondent in the letter dated 23.9.92 (page 21 of the paper book) is correct viz the applicant was examined on 2-12-1987 and that he was declared fit for the post.

u

5. In the circumstances, the reasons given in the Ann.B order that the applicant was declared medically unfit cannot be sustained.

6. The question was whether the respondents had rejected the applicant's candidature on the grounds mentioned in the Ann.A. memo, namely, that the applicant had not fulfilled the conditions prescribed for the recruitment of Constable.

7. A reference has been made, to this aspect in the reply. It is stated that in respect of both educational qualifications as well as chest measurement, the applicant did not satisfy the minimum of requirements. He was however, given relaxation treating him as a ward of a policeman. The reply thereafter states as follows:-

"After receiving medical report the whole case was put up before Chairman for final orders. The case of applicant was considered by the Chairman, as his case was not covered in the category of Police Ward because he was brother of police personnel and his father never served in Delhi Police. Actually he was of general category. He had submitted an application on 10.2.1988 in Police Headquarters in this regard and the same was considered at PHQ level and reply thereof was conveyed to him vide PHQ letter No.5536/SIP(PHQ) dt.17.3.1988."

8. It is this issue that remained to be decided. For this purpose, we directed the respondents on 14.11.1994 to produce the records of the case relating to this aspect to substantiate their case. Learned counsel for the

respondents stated on 2-12-94 that the departmental official had not produced the records. Therefore, in the interest of justice, we granted one more opportunity to produce the records with a warning that adverse inference will be drawn, otherwise.

9. Today, when the matter came up for final hearing, learned counsel for the respondents again submitted that records are not available and hence they are not being produced.

10. The question is whether the applicant is otherwise qualified. Learned counsel for the applicant points out that Delhi Police (Appointment and Recruitment) Rules, 1980 governs the matter. Rule 9 provides for recruitment of constable. Item 5 thereof relates to physical/educational/age and other standards for recruitment to the rank of constable. In so far as chest is concerned, the requirement is 81 CMS to 85 CMS- relaxable by 5 centimetres for residents of hill areas. The educational qualifications required is Matric/Higher Secondary (10th or 10 plus 2). This was relaxable upto 9th pass only for Bandman, buglers, despatch riders etc. A provision has also been added by notification dated 15.11.1985 which empowers Addl.

Commissioner of Police (Armed Police and Training) to grant relaxation to the sons/daughters of either serving, retired, or deceased police personnel who do not fulfil the general conditions of physical standard, age and educational qualifications. The relaxation permitted is a maximum of 5 centimeters in Height and Chest measurement, and one standard in educational qualifications.

11. Learned counsel for the applicant has taken us through reply given by the respondents in this regard. It is stated therein as follows:-

" Only 57 candidates on 17.9.87 and 21 candidates on 18.9.87 reported for their physical measurement. Out of them 78 candidates were found physically fit and were called for trade test and interview on 23.9.87. The applicant was one of them. After completing all the formalities, the case was referred to PHQ for approval of Addl.C.P.(AP) Delhi, PHQ has approved the case of the applicant after giving him relaxation in education as well as in chest as police ward.

(emphasis added)

He wants us to note that 78 candidates were already found physically fit and were called for trade test and interview on 23.9.87. This included the applicant.

Therefore, the applicant was already found physically fit. There was no need or occasion for granting any relaxation in regard to chest. He also contends that the relaxation

(f)

in respect of educational qualification is not restricted towards only. It could be given to persons who were to be employed only as Bandman, which is the post for which the applicant applied and was interviewed. In the circumstances, he contends that the applicant was entitled to be selected.

12. The respondents have not produced the records stating the records have been lost. In the circumstances, we find it proper to draw an adverse inference. This is justified for two reasons. In the first place, the letter addressed to the applicant on 17.3.1988 (Ann.B) merely informed him that he was not selected because he was declared medically unfit due to colour blindness. It was not further stated therein that he did not satisfy either the educational qualifications or chest measurement. Secondly, it appears that when it was discovered that the ground regarding medical unfitness does not stick, an additional reason was given for rejection viz he does not fulfil the eligibility conditions.

16

13. In this regard we are fully satisfied by the arguments put forth by the learned counsel for the applicant, that, in any case, no relaxation was needed.

14. The OA has been resisted on the ground of limitation also. We find no merit in this plea. The impugned order which finally rejects the applicants case is the Ann.A order dated 26.2.1993.

15. In the circumstances, this OA has to succeed. Accordingly we dispense this OA with the following directions:-

*L placed
vz*

- (i) We direct the second respondent (Commissioner of Police) to take the applicant in service as a Constable (Bandman) within a period of one month from the date of receipt of this order.
- (ii) In so far as seniority is concerned, the applicant shall be placed with the batch of persons who have been recruited in 1987 in the selection in which he was interviewed at the appropriate place.
- (iii) We do not find any merit in the claim of back wages.
- (iv) If the applicant completes the period of probation satisfactorily his pay, on the completion of such probation, would be fixed at the stage at which it would have reached on that date, had he been appointed like his batchmates in 1987 and completed his probation satisfactorily.

12

..

16. When the dictation of this order was completed,

Shri Arun Bhardwaj, Advocate, appeared and stated that

he has been instructed to appear on behalf of

respondent No.2 (Commissioner of Police). We note this

for the purpose of records.

Lakshmi Swaminathan

(Lakshmi Swaminathan)

Member (J)

N.V. Krishnan

(N.V. Krishnan)

Vice Chairman (A)