

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.660 OF 2014

New Delhi, this the 12th day of February, 2016

CORAM:

HON^oBLE SHRI SUDHIR KUMAR, ADMINISTRATIVE MEMBER

AND

HON^oBLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

í í í .

Kapil,
Aged about 24 years,
Son of Shri Balwan Singh,
Candidate-Constable (Driver), Delhi Police,

Resident of House No.373,
Village & Post Nangal Thakran,
OUTER DELHI 110039

í . Applicant

(By Advocate: Mr. R.C.Gautam)

Vs.

1. The Commissioner of Police,
Police Headquarters, Indraprastha,
New Delhi 02
2. The Dy. Commissioner of Police,
Recruitment Cell, New Police Lines,
Kingsway Camp, Delhi 110009

í . Respondents

(By Advocate: Ms. Alka Sharma)

ORDER

RAJ VIR SHARMA, MEMBER(J):

The brief facts of the applicant's case are that he was an SC candidate for selection and recruitment to the post of Constable (Driver) in

Delhi Police, pursuant to the notification published in leading newspapers dated 30.5.2012 and Employment News dated 2-8 June, 2012(Annexure A/2). He was put through the Physical Endurance Test, and appeared in the written examination, in which he scored 45 marks. As per the merit list, the SC candidate scoring 45 marks in the written examination was selected and offered appointment. As he was not selected, information was sought for by him from the Recruitment Cell of Delhi Police about his non-selection. The Recruitment Cell of Delhi Police, vide its letter dated 25.11.2013 (Annexure A/1), informed him that one SC candidate, namely, Jugnu (Roll No.800019), who was elder in age, was selected and appointed to the post of Constable (Driver). Hence, he has filed the present O.A. seeking the following reliefs:

- ø8.1 allow the OA and quash the impugned order dated 25.11.2013 (Ann.A-1) and consequently command the respondents to release the appointment to the post of Constable (Driver) PB-1 Rs.5200-20200 GP Rs.2000/-; and
- 8.2 grant any other further relief as deemed just and proper by this Honøble Tribunal as per facts and circumstances of the case besides cost and expenses of present OA.ö

1.1 It is, *inter alia*, contended by the applicant that neither the Delhi Police (Recruitment & Appointment) Rules, nor the instructions issued by the Government, stipulate that when more than one candidate score same cut-off marks in the recruitment examination, the candidate, who is older in age, will be selected, and no other factors will be taken into consideration.

2. In their counter reply, the respondents have stated, *inter alia*, that the date of birth of the applicant is 19.9.1989, while the date of birth of

the selected candidate, namely, Mr. Jugnu, is 6.6.1979. Though both the applicant and the said selected candidate scored 45 marks, i.e., the cut-off marks for SC candidates, yet Mr.Jugnu, being older in age than the applicant and other SC candidates, was selected. In support of their plea, the respondents have referred to Rule 22 of the Delhi Police (Recruitment & Appointment) Rules, 1980. They have also placed reliance on the decision of this Tribunal in **Mr.Vikash Vs. Govt. of NCT of Delhi and another**, OA No.1839 of 2013, decided on 18.2.2014.

3. In his rejoinder reply, the applicant, while reiterating more or less the same averments and contentions as in his O.A., has refuted the stand taken by the respondents.

4. In support of their case, the respondents have also filed the copies of the order passed by the Tribunal in **Mr.Vikash's** case (supra), and the list of 15 SC candidates including the applicant and the selected candidate (Mr.Jugnu) who scored 45 marks (cut-off marks) in the written examination(Annexure R/III).

5. We have carefully perused the pleadings, and have heard Mr.R.C.Gautam, the learned counsel appearing for the applicant, and Ms.Alka Sharma, the learned counsel appearing for the respondents.

6. In the advertisement (Annexure A/2), total 752 vacancies in the post of Constable (Driver) were notified to be filled up through the recruitment process. Out of the total 752, 192 vacancies were reserved for SC candidates. It is the admitted position between the parties that the last

selected SC candidate, namely, Mr.Jugnu scored 45 marks in the written examination. From the aforesaid list of 15 SC candidates (Annexure R/III), it transpires that all other candidates including the applicant are younger in age than Mr.Jugnu, the selected candidate.

7. In **Mr.Vikash's case** (supra), the applicant was a candidate for the post of Head Constable (Ministerial) in Delhi Police. He scored same marks as the last selected candidate, i.e., 92 marks, but he was not selected. Therefore, he filed O.A., challenging his non-selection. The respondents took the stand that as per rules/instructions and paragraph 22 of the Standing Order, in case of equal marks obtained by candidates, their merit was fixed as per date of birth. There were 230 vacancies for open/unreserved category, and 230 candidates were selected. The last selected UR candidate scored the cut-off marks of 92. As per the merit list, five candidates, who scored 92 marks, were selected, while the number of candidates, who scored same marks, was 25. After considering the facts and circumstances of the case, and the rival contentions of the parties, the Tribunal, in paragraphs 4 and 5, held thus:

õ4. We have heard learned counsel for parties and perused the record. We have seen that in the Standing Order No.Rec.12, it is specifically provided that where equal marks have been obtained by candidates, their merit will be fixed as per their date of birth and the older candidate will be given preference and in case the date of birth is also the same, marks in the written test would decide the same. Thus, we find no infirmity in the stand taken by respondents in giving appointment to older candidates. For easy reference, para 22 of the Standing Order is extracted hereinbelow:-

“22. Final list of successful candidates. The final list of successful candidates (as per the number of

vacancies advertised (category-wise) strictly as per merit shall be declared after completion of medical examination and police verification. Where equal marks have been obtained by candidates their merit will be fixed as per date of birth. The older candidate will be given preference and in case the date of birth is also the same, marks in the written test would decide the merit.

Cases of selected candidates against whom any criminal case is registered/pending investigation/pending trial in the court, will be kept pending till the finalization of the same and their cases will be decided on merit after finalization of cases. As regards the cases of departmental selected candidates against whom any DE/PE/Crl. case/Vigilance Enquiry etc. is pending will also be kept pending till the finalization of the same and their cases will be decided on merits after finalization of cases.”

We may also make a reference to Rule 22 of the Delhi Police (Appointment and Recruitment) Rules, 1980, wherein it is provided that seniority in the rank of upper and lower subordinate should be initially reckoned from the date of first appointment and the seniority of direct recruits in all ranks except Sub-Inspector (Executive) as a result of same examination/selection should be reckoned by the order of merit determined by the Selection Board and in case no order of merit is indicated by the age of candidates, the oldest being placed senior-most and the youngest the junior-most. For easy reference, Rule 22 is extracted hereinbelow:-

“22. Seniority in the rank of upper and lower subordinate shall be initially reckoned from the date of first appointment, and officer of subordinate rank promoted from a lower rank being considered senior to persons appointed direct to the same rank on the same day. The seniority of direct recruits in all ranks except Sub-Inspectors (Executive) appointed as a result of some examination or selection shall be reckoned by the order of merit determined by the Selection Board and in case no order of merit is indicated by the age of candidates, the oldest being placed senior-most and the youngest the junior-most. The inter-seniority of directly recruited Sub-Inspectors (Ex.) shall be fixed, on the basis of total of marks obtained by them in the Staff Selection Commission Examination/Interview as well as in the final examination held at Police Training School/College.”

5. In view of the aforementioned rule position, we are of the considered view that the OA is devoid of merit and liable to be dismissed. Ordered accordingly. No costs.ö

8. From the foregoing, it is clear that there are instructions/rules followed by the respondents to select the candidates up to the number of vacancies notified for each category of candidates by taking the age factor into consideration in cases of candidates scoring the same cut-off marks. In the present case, we do not find any reason to take a view different from what has been taken by the Tribunal in **Mr.Vikash's case** (supra). Therefore, we do not find any substance in the contention of the applicant that there is no instruction/rule in support of the stand taken by the respondents. We also do not find any substance in the contention of Mr.R.C.Gautam, the learned counsel for the applicant, that since the applicant scored the cut-off marks in the written examination for recruitment to the post of Constable (Driver) and could not be selected because of his being younger in age than the selected candidate, the respondents should consider his case for appointment against a vacant post reserved for SC.

9. In the light of our above discussions, we hold that the O.A. is devoid of merit and liable to be dismissed. Accordingly, the O.A. is dismissed. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SUDHIR KUMAR)
ADMINISTRATIVE MEMBER