

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA-978/2013

New Delhi this the 18th day of October, 2016

**Hon'ble Sh. P.K. Basu, Member (A)
Hon'ble Sh. Raj Vir Sharma, Member (J)**

Sh. Adesh Kumar
S/o Late Sh. Sukhveer
r/o H.No. 807, Sector-5
IInd Floor Vashundhra
Ghaziabad, U.P.

... Applicant

(By Advocate : Mr. Ajesh Luthra)

Versus

1. Commissioner of Police
PHQ, MSO Building
IP Estate, New Delhi
2. Joint Commissioner of Police
Headquarters
PHQ, MSO Building
IP Estate, New Delhi
3. Deputy Commissioner of Police
(Establishment)
PHQ, MSO Building
IP Estate, New Delhi.

... Respondents

(By Advocate : Mr. Amit Anand)

ORDER (ORAL)

Mr. P.K. Basu, Member (A)

The applicant who was Constable in Delhi Police had applied for the post of Head Constable on possessing eligibility and also took part in the examination. He obtained the following marks :

- | | | | |
|-----|-----------------------------|---|----|
| “1. | Mark in written examination | - | 75 |
| 2. | Marks for length of service | - | 16 |
| 3. | Marks for no punishment | - | 10 |

Total - 101

The others in his category namely general category, who secured 101 marks were appointed as Head Constable but the applicant was not. The reasons for this was that respondents as per Provision in SO No. 91/2011, added one mark to those candidates who had valid driving license before the cut-off date which was 31.3.2011 and in the records of the respondents/DPC there was no mention that the applicant had a driving licence.

2. The applicant had a driving licence issued to him in March, 2010 (Annexure A-3) which was not incorporated in the service book of the applicant and unfortunately he had failed to intimate to the authorities before the cut off date that this is not incorporated in his service book. Therefore, when the matter was taken up before the DPC, the DPC had no knowledge that he had a driving licence and therefore one mark for driving licence was not added in his case. As a result he was not promoted as Head Constable.

3. The applicant is aggrieved because, though he had a valid driving licence and hence should have earned one mark and not miss out on his promotion as Head Constable, due to the reasons that the respondents did not have knowledge of this, one mark was not included. It is stated by the learned counsel for the applicant that neither in the rules or the notification pertaining to his promotion, it is mentioned that one mark will be awarded for possessing a driving licence. Per contra the learned counsel for the respondents stated that in SO No. 91/2011 it is mentioned that one additional mark will be awarded for possessing a driving licence and the applicant is supposed to have had knowledge of this and his now raising this issue as an afterthought.

4. The fundamental issue is that the applicant had a driving licence well before the cut off date. Due to the reason that the question of addition of one

mark on possession of a driving licence was not specifically in rules or the notification but only in SO No. 91/2011, which being a lower rung employee, the applicant might not have been aware of, he did not intimate in writing to the respondents that he had a driving licence before the cut off date. This means that despite having driving licence he shall not be allotted one mark which would decide whether he gets the promotion as Head Constable or not.

4. We feel that it would be grossly unfair to deny him the promotion on the ground that this information was not available with the respondents. We, therefore, allow the OA and direct the respondents to take into the consideration his driving licence, and, therefore add one mark i.e. total 102 and in case with 102, he becomes eligible for promotion as Head Constable, he will be promoted w.e.f. from the date the others are promoted as a result of the selection process. He would get salary allowances of Head Constable from the date of joining but notional benefits of fixation of pay and seniority will be given from the date as was granted to others who had been promoted as a result of the selection process. If there is no vacancy, the respondents may create a supernumerous post, till a vacancy actually arises. This exercise will be completed by the respondents within a period of 90 days from the date of receipt of a certified copy of this order. No costs.

(Raj Vir Sharma)
Member (J)

(P.K Basu)
Member (A)

/sarita/