

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

O.A.No.2189/2008

Thursday, this the 10th day of December, 2015

**Hon'ble Mr. A.K. Bhardwaj, Member (J)
Hon'ble Mr. V.N. Gaur, Member (A)**

Gajraj Singh
Constable in Delhi Police
PIS No.28884394
r/o RZH-821, Palam Colony
Raj Nagar-II, New Delhi-45

.. Applicant

(Mr. Anil Singal, Advocate)

Versus

1. Govt. of NCT of Delhi
Through Commissioner of Police
Police Head Quarter
IP Estate, New Delhi
2. Joint C.P./HDQRS
Police Head Quarter
IP Estate, New Delhi
3. DCP HDQRS (Estt.)
Police Head Quarter
IP Estate, New Delhi

.. Respondents

(Mr. Amit Anand, Advocate)

O R D E R (ORAL)

Mr. A.K. Bhardwaj:

The applicant herein was enlisted in Delhi Police as Constable on 15.03.1988 (PIS No.28884394). In the year 2007, he participated in Limited Departmental Competitive Examination held for promotion to the post of Head Constable and remained unsuccessful, thus he approached this Tribunal by way of present Original Application praying therein:

“A) To quash the Question Paper for Promotion List “A” Test consequent result and promotions and Order dt.15.7.2008 declaring it to be in violation of Syllabus mentioned in the SO No.91/2007 since many questions put in the question paper were out of Syllabus.

B) To direct the respondents to constitute an Expert Body to examine the Question Paper for Promotion List “A” Test held in the year 2007 and give a report as to how many questions were out of syllabus mentioned in the SO No.91/2007.

C) To direct the respondents to re-examine the answer script of the applicant in the event it is found that any question has been put out of syllabus and grant extra marks to the applicant for those questions that were out of syllabus and could not be answered correctly by the applicant.

D) To direct the respondents to prepare the revised merit list for Promotion List ‘A’ after the completion of above-mentioned exercise and bring the name of the applicant on Promotion List ‘A’ & ‘B’ and consequent promotion to the post of Head Constable (Ex.) with all consequential benefits as per revised merit list.

(E) To award costs in favour of the applicant and pass any order or orders which this Hon’ble Tribunal may deem just & equitable in the facts & circumstances of the case.”

2. When the Original Application came up for hearing in the year 2009, this Tribunal disposed of the same in terms of the Order dated 13.10.2009 with direction to the respondents to give one mark to the applicant for question No.53. The operative portion of the Order reads thus:-

“7. Since the issue had zeroed down to the above, we had directed the respondents to make available the answer paper of the applicant and also comparable candidates. Mr. Gangwani, counsel appearing on behalf of the respondents, submits that although coming from out of syllabus taking notice of the answer of the applicant to Question No.79, he had been awarded one mark. Therefore, nothing further turned on this question. The applicant had not received any mark for the incorrect question (53). We feel that insofar as marks have been awarded to some candidates on the basis of the answer key, right of the applicant to receive one mark cannot be justly denied. If that be so, he will be entitled to one mark more, taking his total into 125. He, therefore, can cross over to the successful group. In respect of justifiability of Question No.68, it may not be necessary for us to examine further since the applicant has to be awarded at least 125 marks which takes him to the category of selectable candidates.

Further, exercises for upsetting the selection, at this distance of time will be inexpedient.”

3. Nevertheless, when the Order was challenged by the respondents before the Hon’ble High Court of Delhi in Writ Petition (C) No.45/2010, their Lordships viewed that if one more mark could be given to the candidates for question No.53, the same should have been given to many other candidates and in such way, might be, not the applicant but a different candidate could be benefitted, thus the Tribunal should not have ventured into the exercise of awarding one mark and the exercise could have been left to the expert body in the Department. Paragraphs 6 to 8 of the judgment dated 06.12.2012 read thus:-

“6. We are not in agreement with the manner in which the Tribunal has dealt with this matter. The Tribunal ought not to have granted 1 mark to the respondent ignoring the other 191 candidates who had obtained 124 marks. This is apart from the fact that the Tribunal is not an expert body and was not in a position to determine as to whether question No. 53 was correct or incorrect and as to whether question Nos. 68 and 79 were outside the syllabus or not. That should have been referred to an expert body, if at all.

7. As such, the Tribunal’s order cannot stand. The petitioner has taken the plea that only 34 of the senior most constables, out of the 105 who had obtained 125 marks in the General Category, had been promoted to the post of Head Constable. But, as this plea had not been taken before the Tribunal, it would only be proper if the Tribunal examines this aspect of the matter also. Because if it were so, then even the grant of an additional 1 mark would not be of any use to the respondent as he was, according to the learned counsel for the petitioner, not amongst the 34 senior-most constables.

8. The impugned order is set aside. The matter is remitted to the Tribunal for consideration afresh enabling the petitioner to place an additional affidavit with regard to the status of the 105 candidates in the General Category who had also obtained 125 marks in the test conducted in 2007. The matter shall be placed before the Tribunal, in the first instance, on 07.01.2013.”

4. Apparently, Hon'ble High Court did not approve the view of this Tribunal of awarding one mark to the applicant and remitted the matter back for fresh examination. Today, when the matter came up for hearing before us, Mr. Anil Singal, learned counsel for applicant submitted that on line he got one mark for question No.53, thus the applicant is also entitled to an additional mark for question No.68 and in that eventuality his position would be above the candidates, who are given appointment ahead of him after the Order passed by this Tribunal. When one mark was awarded to a candidate for question No.53, indubitably many other candidates turned entitled for such mark and their entitlement for promotion was ahead of the applicant even. If the applicant is given one more mark for question No.68 on this ground that Section 108 of the Indian Evidence Act, 1872 was not indicated in the syllabus for the examination, there is possibility that certain other candidates may also become entitled to same and may turn qualified ahead of the applicant. In paragraph 6 of the Order of the Hon'ble High Court, it has been categorically viewed that the Tribunal is not an expert body and is not in a position to determine as to "whether the question No.53 was correct or incorrect" and "whether question Nos.68 and 79 were outside the syllabus or not". In the wake of such view taken by the Hon'ble High Court, it could not be open for us to take any definite view on the argument put-forth by Mr. Anil Singal, learned counsel, i.e., the question No.68 being out of syllabus the applicant should be awarded one extra mark for the same.

5. The stand of the applicant in his additional affidavit is that if he is given one more mark, he will be above all those candidates who could find place above him after grant of one mark for question No.53. It is not

explained by him if other candidates are also given one more mark for question No.68 being out of syllabus, what would be his position. In our considered view, both the issues, i.e., “whether the applicant is entitled to one additional mark for question No.68 after being given such mark he would be amongst first 34 candidates” need to be examined by the respondents.

6. *Ergo* the Original Application is disposed of with direction to the respondents to examine the said issue and communicate the outcome of the examination to the applicant by way of a speaking order, within eight weeks from the date of receipt of a copy of this Order. No costs.

(V.N. Gaur)
Member (A)

(A.K. Bhardwaj)
Member (J)

December 10, 2015
/sunil/