

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.3352/2013

Order Reserved on: 28.09.2016
Order pronounced on 06.12.2016

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Dr. Birendra Kumar Sinha, Member (A)

Sh. Sonu Kaushik
S/o Late Sh. Ved Prakash Kaushik
R/o H.No.465, Mohalla Maharam
Shahdara, Delhi – 32. ... Applicant

(By Advocate: Sh. Ajesh Luthra)

Versus

1. Commissioner of Police
PHQ, MSO Building
IP Estate, New Delhi.

2. The Addln. Commissioner of Police
(Crime & Railway)
PHQ, MSO Building
IP Estate
New Delhi.

3. The D.C.P.
(Establishment)
PHQ, MSO Building
IP Estate
New Delhi. ... Respondents

(By Advocate: Sh. Amit Anand)

O R D E R**By V. Ajay Kumar, Member (J):**

Questioning the impugned Annexure A1 dated 03.07.2013, in rejecting the request of the applicant to change his cadre from Head Constable (Executive) to Draftsman (Sub Inspector), the applicant, who is presently working as Head Constable, filed the OA.

2. Brief facts of the case, as narrated by the applicant in the OA, are that the applicant, on his selection, was enlisted in Delhi Police as Constable (Executive) on 07.08.1991. Later, he was promoted as Head Constable (Executive) on 16.06.2010.

3. The applicant, even before his appointment as Constable (Executive) had passed the Draftsman Test in July, 1991 in the trade of Draftsman (Civil) and was awarded National Trade Certificate by the National Council for Vocational Training, Ministry of Labour, Govt. of India.

4. On account of possessing of the above mentioned technical qualification, the applicant, while working as Constable (Executive) itself, was transferred to the Draftsman Section of Crime Branch in the year 1994 to work as Draftsman and since then he has been continuously working as a qualified Draftsman in the Crime Branch of Delhi Police. Though in the year 2000, the applicant was transferred out of crime branch, but on account of his exemplary work, as a Draftsman, the higher authorities, themselves cancelled the said

transfer and accordingly, the applicant has been continuing as Draftsman in Crime Branch. In view of the better performance of the applicant as Draftsman he was deputed for a specialised course, i.e., "MAP Info Professional" from 22.05.2002 to 24.05.2002 conducted as per the requirement of the Crime Branch and the applicant successfully completed the said specialised course and was issued with a certificate. Again though applicant was issued with a transfer order on 18.12.2008 from Crime Branch to Security but the same was not implemented, in view of the need and necessity of the applicant's services as Draftsman in Crime Branch. In the meanwhile, the applicant was promoted as Head Constable in Delhi Police on 16.06.2010, while working as Draftsman in Crime Branch. The applicant was detailed as Draftsman to accompany the SWAT Team of Commandos in second All India Commando Competition, 2011-2012 by the Crime Branch, which was held on 12th to 17th March, 2012.

5. It is further submitted on behalf of the applicant that the applicant has been continuously working and performing the duties of a qualified Draftsman in the department. The maps of the scene of heinous crime cases prepared and submitted by the applicant as a Draftsman in crime cases were placed before the trial courts and he has been attending Courts as a Draftsman as per provision of S.O.No.241 after receipt of summons from the concerned Courts even in heinous crime cases. The details of evidence given by the applicant in the courts even in heinous crime cases and copies of some of the summons received by him for giving evidence as a Draftsman in the

Courts are annexed as Annexure A/6 (Colly.). It is further stated that a list of cases visited and scaled site plans of scene of crime prepared by the applicant is annexed as Annexure A/7. He has stated that 704 cases have been attended by him. Further, the outstanding work done by him as a qualified Draftsman was appreciated and recognized by the senior police officers and awarded him Commendations with cash reward. The details of the same are available in his service record and ACRs which shows that he is a skilled person and performed duty as a qualified Draftsman in the department.

6. It is the contention of the applicant that there are sufficient sanctioned posts of Draftsman (Sub Inspector) in Delhi Police, and at present two posts are lying vacant since long time, and since the applicant has been continuously performing the duties of a qualified Draftsman, in the Department, he is entitled for change of his cadre from Head Constable (Executive) to Draftsman (Sub Inspector), and he is also entitled for payment of the salary attached to the Draftsman (Sub Inspector) post w.e.f. the year 1994 onwards, i.e., from which date he was continuously discharging the functions of a Draftsman.

7. The respondents vide their counter while denying the contention of the applicant that he was working continuously as Draftsman from 1994 onwards, stated that the applicant was enlisted in Delhi Police as Constable (Exe.) on 07.08.1991. He was transferred from VII Bn. DAP to Crime & Railways vide PHQ Order No.624-84/P.Br.(PHQ) dated 07.01.1994. On arrival he was posted to

Draftsman Section/Crime Branch to assist the I/C Draftsman on 28.02.1994. Nowhere in the transfer order, it is mentioned that the applicant shall work as Draftsman. The applicant is simply assisting the Draftsman, but never worked as Draftsman. Number of executive officials are assisting the Technical Section and the applicant is one of them. The other executive staff namely Constables Gulbagh Singh, No.1449/Cr. And Ct. Vinod Kumar, No.1582/Cr. are still posted in Draftsman Section and assisting the Draftsman. He was promoted (on ad hoc) as Head Constable (Exe.) on 16.06.2010. On promotion as Head Constable (Exe.), he was transferred from C&R to CR vide order dated 16.11.2010. In the month of July, 2013, he was considered for transfer from Draftsman Section to other Sections of Crime Branch along with other lower subordinates who have completed their normal tenure in Sections as well as Railways/Metro. As per his willingness, he was considered to retain in Crime Branch to work in Draftsman Section to assist the SI Draftsman.

8. The respondents also submit that on 16.05.2013, the applicant filed a representation for grant of seniority and promotions as SI Draftsman which was considered and rejected. He was informed the decision vide UO No.4268/SIP(AC)(C&R) dated 03.07.2013. It is pointed out that as per provision in Rule 18(ii) of Delhi Police (Appointment & Recruitment) Rules, 1980, the posts of SI Draftsman in Delhi Police are to be filled by direct recruitment. Hence, the applicant cannot be promoted to the rank of SI Draftsman beyond normal procedure of recruitment.

9. The respondents further submit that deputing him with the team of commandos or commanding the services of the applicant in assisting in Draftsman services does not confer any right on him either for change of cadre or promotion as Sub Inspector (Draftsman).

10. Heard Shri Ajesh Luthra, the learned counsel for the applicant and Shri Amit Anand, the learned counsel for the respondents, and perused the pleadings on record.

11. It is not disputed that the posts of Draftsman (Sub Inspector) shall be filled up only by direct recruitment, as per Rule 18(2) of Delhi Police (Appointment and Recruitment) Rules, 1980. Hence, the same cannot be filled up either by promotion or transfer or by change of cadre as requested by the applicant. The learned counsel for the applicant, while not denying the aforesaid fact, however, submits that Rule 30 of the said Rules, provides for relaxation of rules and that the respondents, considering the fulfilment of qualifications by the applicant and his actual discharging of functions as Draftsman, w.e.f. 1994 onwards, with exemplary performance, shall have to consider his case for relaxation and accordingly he would have been permitted to change his cadre to Draftsman (Sub Inspector).

12. Rule 30 of the Delhi Police (Appointment & Recruitment) Rules, 1980 reads as under:

"30. Power to relax.- When the Administrator is of the opinion that it is necessary or expedient so to do, he may, by order, for reasons to be recorded in writing, relax any of the provisions of these Rules with respect to any class, category of persons or posts or in an individual case."

13. The aforesaid rule only empower the administrator to relax the rules if in his opinion it is necessary or expedient to relax any of the provisions of the rules, but no individual employee can compel the administrator to do so. Hence, in the circumstances, no direction can be issued to the administrator to relax the rule in favour of the applicant.

14. With regard to the contention of the applicant that he has been discharging the functions of a Draftsman w.e.f. 28.02.1994 to till date, i.e., in a higher post by discharging the duties of a higher post, and hence, he is entitled for the pay attached to the post of Draftsman (Sub Inspector), is having force, in the following circumstances:

- a) It is not denied that the applicant is possessing the essential qualifications for appointment as Draftsman (Sub Inspector), even before his appointment as Constable (Executive) in Delhi Police.
- b) Though the respondents contend that the applicant has been assisting in Draftsman services, but not actually working as either Assistant Draftsman or Draftsman, but various Annexures enclosed by the applicant, whose genuinety was not disputed by the respondents, clearly indicate that the applicant in fact has been working as either Assistant Draftsman or Draftsman (Sub Inspector) w.e.f. 28.02.1994, on which date even as per the counter

averments, the applicant was posted in Draftsman Section of Crime Branch to assist the Incharge Draftsman.

c) Vide Annexure A9-Circular, dated 29.05.2003, instructions were issued, while intimating that in respect of one Shri Gulshan Rai, a Cycle Mistry, who was unauthorizedly allowed to work in MP Workshop of P&L as Constable (MT Helper), directions were issued by this Tribunal in OA No.2771/2001 to pay the difference in the pay and allowances of the higher post held by him, instructions are issued that the services of the police personal should be utilized for the post to which the employee has been appointed.

15. In **Bhagwan Singh v. R.S.R.T.C.**, 2001 (8) SLR 742 (Raj), on which the respondents placed reliance, though it was held that mere working on officiating capacity on the post of Booking Clerk, will not de-link lien from the post of Conductor, but no finding with regard to payment of salary was given, and hence, the same has no application.

16. In the circumstances, and for the aforesaid reasons, the OA is partly allowed and the respondents are directed to consider the case of the applicant for payment of difference of salary between the posts of Draftsman (Sub Inspector)/Assistant Draftsman and Head Constable (Executive)/Constable, for the period in which the applicant discharged the functions as Draftsman/Assistant Draftsman, within a period of two months from the date of receipt of a copy of this order. However, the

applicant is not entitled for any interest on the arrears, if any. No costs.

(Dr. Birendra Kumar Sinha)
Member (A)

(V. Ajay Kumar)
Member (J)

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