

**Central Administrative Tribunal
Principal Bench**

OA No.2699/2012

New Delhi, this the 11th day of December, 2018

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)**

Shri Ajay Kumar,
S/o Shri Attar Singh,
R/o VPO : Dehkora,
Tehsil: Bahadurgarh,
Distt. Jhajjar, Haryana.

...Applicant

(By Advocate : Shri Ajesh Luthra)

Versus

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

2. Dy. Commissioner of Police,
Security (HQ) Security,
PHQ, MSO Building,
IP Estate, New Delhi.

...Respondents

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(By Advocate : Ms. Harvinder Oberoi)

ORDER (ORAL)

Justice L. Narasimha Reddy, Chairman :-

The applicant herein was appointed as a Constable in the Delhi Police on 29.04.2009. He was issued an Show Cause Notice dated 21.02.2012, alleging that when he submitted application to the post of Constable in

response to an advertisement, he held the post of SEP in Territorial Army, and that it was only on 26.04.2009, i.e. three days before his appointment as Constable that he was discharged by Territorial Army on resignation. The applicant submitted his explanation stating that it was on the basis of NOC issued by the Territorial Army, that he submitted the application, and on being satisfied about his qualification and status, he was appointed as Constable. It was also submitted that he also did not mis-lead the authorities, and no action is warranted against him.

2. The disciplinary authority i.e. the Deputy Commissioner of police (Security) passed an order dated 18.05.2012, terminating the services of the applicant as a Constable. The same is challenged in this OA.

3. The applicant contends that when he submitted his application in response to an advertisement, it was processed, in accordance with law, and only on being satisfied about his eligibility and physical condition, he was appointed as Constable. He contends that as on the date of his appointment, he ceased to be working in

Territorial Army, it cannot be said that he misled the authorities in any manner.

4. The respondents filed counter affidavit opposing the OA. According to them, the applicant does not answer the description of 'Ex-serviceman', inasmuch as he was very much in service of Territorial Army, when he submitted the application. It is stated that the applicant was neither receiving any pension nor holding the status of ex-serviceman, even on the date of his appointment.

5. We heard Shri Ajesh Luthra, learned counsel for applicant and Ms. Harvinder Oberoi, learned counsel for respondents.

6. The Delhi Police initiated the process of appointment of Constables in the year 2009. The reservation was made in favour of Ex-serviceman. The applicant was recruited as SEP in Territorial Army. He intended to apply for the post of Constable in the category of Ex-serviceman and in his own way of understanding, he enclosed an NOC issued by the Territorial Army. It is not, as if, the applicant made any mis-representation as

regards his status. On being found to be otherwise fit, he was appointed on 29.04.2009 as Constable.

7. It may be true that the applicant was relieved from Territorial Army only on 26.04.2009, the fact, however, remains that he was Ex-serviceman for all practical purposes, as on the date of his appointment as Constable.

8. The respondents proceeded with, understanding that the applicant deserves to be treated as Ex-serviceman and appointed him as Constable. Obviously, because he was selected in the Delhi Police, he got relieved from the Territorial Army and thereafter joined the Delhi Police. Once, he took steps detrimental to his interest and joined the Delhi Police, he cannot be thrown away. The result of the action of the respondents is that the applicant who was serving in the Territorial Army lost his employment there and the post of Constable which he joined thinking it to be a better avenue, is denied to him. Not only the applicant, but also his entire family is exposed to a penury for no fault of them. Things would have been different had it been a case where the applicant resorted to any misrepresentation, but for which, he would not have been selected as Constable.

9. Under these circumstances, we are of view that the order of termination deserves to be set aside, subject, however, to the condition that the applicant would not be entitled to be paid the back wages.

9. We therefore, allow the OA, setting aside the order of termination and direct the respondents to re-instate the applicant as Constable within a period of six weeks from the date of receipt of a certified copy of this order. However, the applicant shall not be entitled to any back wages, but he shall be entitled to count his service, from the date of his appointment, for the purpose of pension and promotion.

There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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