

Yogender Pal Singh and Others

Vs

Union of India Others

Civil Appeal No. 2547 of 1985

(K. N. Singh, E. S. Vankataramiah JJ)

23.01.1987

JUDGMENT

VENKATARAMIAH, J. -

1. The above appeal by special leave arises out of a write petition filed by the appellants in the High Court of Delhi for the issue of a direction to the Delhi Administration to appoint them as Police Constables.

2. Prior to the coming into force of the Delhi Police Act, 1978 (Act No. 34 of 1978) (hereinafter referred to as 'the Act') with effect from July 1, 1978, there was in force in the Union territory of Delhi the Police Act, 1861. On the commencement of the Act, the Police Act, 1861 ceased to be in force in Delhi by virtue of Section 149 of the Act. The first proviso to Section 149 (1) of the Act, however, provided that all rules and standing orders (including the Punjab Police Rules, as in force in Delhi) made under the Police Act, 1861 would be insofar as they were consistent with the Act be deemed to have been respectively made under the Act. Accordingly the Punjab Police Rules, 1934 as in force in Delhi which had been enacted under the Police Act, 1861 continued to be in force even after the commencement of the Act. Chapter 12 of the Punjab Police Rules, 1934 contained the rules relating to the appointments and enrollments of Assistant superintendents of Police, Deputy Superintendents of Police, Inspectors, Sergeants, Assistant Sub-Inspectors, Range Auditors, Head Constables and Constables. Recruitment to the cadre of Constables was done under Rules 12.12 to 12.22 of the Punjab Police Rules, 1934. Rules 12.14 and 12.15 dealt with the status of the recruits, the qualifications, age and the physical standards which the recruits had to satisfy. Rules 12.14 and 12.15 of the Punjab Police Rules, 1934 read as follows :

12.14 Recruits - Status of. - (1) Recruits shall be of good character and great care shall be taken in selecting men of a type suitable for police service from candidates presenting themselves for enrollment.

(2) The enlistment in the police of Gurkhas of Nepalese nationality is absolutely forbidden. The enlistment of Gurkhas, who can prove British nationality or continuous domicile, is permitted, but only with the formal sanction of the Deputy Inspector General. Before giving sanction the Deputy Inspector-General should verify the nationality of the proposed recruit by a reference to the recruiting officer for Gurkhas.

(3) Sons and near relatives of persons who have done good service in the Punjab Police or in the Army shall, subject to the consideration imposed by Rule 12.12 have

preference over the other candidates for police employment.

12.15. Recruits - Age and physical standards of - (1) Recruits shall be not more than 25, or less than 18 years of age, at the time of enrolment, and shall have a minimum height of 5' 7 "and normal chest measurements of 33", with expansion of 1 1/2 inches. These physical standards shall not be relaxed without the general or special sanction of the Deputy Inspector General. A general reduction of the standard may be allowed by Deputy Inspector-General in the case of special castes or classes, which provide desirable recruits, but whose general height does not come up to that prescribed. In such cases a standard of chest measurement and general physique shall be fixed, which will permit the enlistment of strong and well-proportioned youths to the class in question.

(2) The greater care shall be taken to ensure that the age of every police officer is correctly recorded at the time of this enrollment and appointment. The record at the time of his enrollment and appointment. The record then made becomes of the utmost importance when the question arise of an officer's right to pension, and is accepted as decisive in the absence of full proof both that the original entry was wrong and that the date of birth originally given was due to a bona fide mistake.

A copy of this rule shall be pasted inside the cover of the recruit register (From 12.13) and the attention of the Civil Surgeon shall be drawn to it.

3. Section 147 of the Act authorises the Administrator (Lt. Governor of the Union territory of Delhi) to make rules for carrying out the purposes of the Act. Clause (a) of Section 147(2) of the Act expressly states that such rules may provide for recruitment to, and the pay, allowances and all other conditions of service of the members of, the Delhi police under clause (b) of Section 5. In exercise of the said power the Administrator (Lt. Governor of the Union territory of Delhi) promulgated the Delhi Police (Appointment and Recruitment) Rules, 1980 (hereinafter referred to as "the rules") providing for the appointments of Inspectors, Sub-Inspectors, Assistant Sub-Inspectors, Head Constables and Constables. Rule 9 of the Rules laid down the procedure for the recruitment of the Constables. The said rule, as it was originally promulgated, read as follows :

9. Recruitment of Constables. - Delhi being a cosmopolitan city, it is imperative to attract candidates from all parts of the country.

(ii) The recruitment of Constables shall be done twice a year in the months of January and July by the Board to be nominated by Commissioner of Police as per Rule 8.

(iii) The Commissioner of Police may also order special recruitment at any time if there are sufficient number of vacancies and the panels prepared earlier have exhausted.

(iv) A panel shall be drawn up of selected candidates on the basis of existing and anticipated vacancies. This panel shall be valid till the next recruitment is held.

(vi) Physical, educational, age and other standards for recruitment to the rank of constables shall be as under :

#(a) Age 18-21 years Relaxable by 5 years for : (i) Scheduled Caste/Scheduled Tribes candidates. (ii) Sportsmen of distinction. (iii) Ex-servicemen as per Rule 28 of these rules.(b) Height 170 centimeters Relaxable by 4 centimeters for residents of Hill areas e.g. Gurkhas, Garwalis.(c) Chest 170 centimeters Relaxable by 2 centimeters for residents (sic) of hill areas(d) Educational Matric/Higher Relaxable up to 9th pass only for : Qualifica- Secondary (i) Bandsmen, buglers, mounted tion 10th of 10 constables, drivers, dispatch plus 2 riders etc. (ii) For sons of police personnel who die in service.(e) Physical Sound state of No relaxation permissible. standard health, free from defect/ deformity/disease, vision 6/12 without glasses both eyes, free from colour blindness.(f) Reservation (i) For Scheduled Castes, Scheduled Tribes, Ex-servicemen etc. as per orders issued by government from time to time. (ii) For sons of police personnel not more than 5 per cent. of vacancies##

(vii) The Commissioner of Police shall frame standing orders prescribing application forms and detailed procedure to be followed for conducting physical efficiency, physical measurement, written tests and viva-voce for regulating the above mentioned recruitment.

4. The Rules were amended by the Administrator (Lt. Governor of the Union Territory of Delhi) on May 2, 1983 and one of the amendments made on that occasion was the addition of Rule 32 to the Rules. The new Rule 32 of the Rules read as follows :

All provisions contained in the Punjab Police Rules as applicable to the Union territory of Delhi, relating to appointments and recruitment of employees are hereby repealed, subject to the provisions as contained in the provisos to sub-sections (1) and (2) of Section 149 of the Delhi Police Act, 1978.

5. The Rules were again amended in 1985. On that occasion Rule 9 of the Rules which provided for the recruitment of the Constables was amended but we are not concerned with these amendments made in the year 1985 since we are concerned in this case with the rules which were in force prior to the abovesaid amendment. Rule 30 of the Rules which is relevant for purposes of this case reads as follows :

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 he provisions of these Rules with respect to any class, category, or persons or posts or in an individual case.

6. As stated at the commencement, this appeal arises out of the writ petition bearing No. C.W.P. No. 1891 of 1982 on the file of the High Court of Delhi filed under Article 226 of the Constitution. The said writ petition was filed by 23 petitioners, who were applicants for the posts of Constables in the Delhi Police Force governed by the Act. They prayed for the issue of a writ to the Delhi Administration to appoint them as Constables and for other consequential reliefs. None of them was fully qualified to be recruited as a Constable under the Rules. But being the sons of Delhi policemen, they depended upon an order dated October 3, 1981 passed by the Deputy Commissioner of Police Headquarters (1) Delhi under which he had relaxed rules relating to the qualifications in favour of the sons or wards of Delhi policemen. The relevant part of the said order dated October 3, 1981 reads thus :

The wards of Delhi policemen should be given the following concessions in age,

educational qualifications and physical standards, etc., for recruitment as Constables in Delhi Police :

#1. Age Up to 25 years2. Educational Qualifications 9th Pass3. Height 5' 5"4. Chest - 2" Relaxation.##

All those wards of Delhi Police Personnel who confirm to the qualifications laid down above should be appear in the physical and written tests. Their forms should be accepted as it was being done before the introduction of new Rules.

The last date for acceptance of forms may be enhanced from October 3, 1981 to October 15, 1981 and forms should be sold during holidays also.

Sd/- A. K. Aggarwal Deputy Commissioner of Police :HQ (1) DelhiNo. 19512-45/SIP dated Delhi, October 3, 1981.##

7. The petitioners were eligible to be considered for the appointment as Constables in the light of the order of relaxation referred to above but even then they were not sent up for training which they had to undergo before the appointment because six of them were found to be ineligible since their brothers had already been recruited in the Police Department by relaxing the rules of appointment in their favour. 15 of them were refused permission to join the training course on the ground that the Administrator (Lt. Governor of Union territory of Delhi) had not relaxed the qualifications in their cases. Two of them, however, had in fact received a letter stating that the Administrator (Lt. Governor of the Union territory of Delhi) had accorded sanction for relaxation for recruitment in their cases and they could join the training course with effect from June 15, 1982 but later on they were also denied admission into the police force because their brothers had been recruited earlier in the Delhi Police service after according relaxation. The order of relaxation in their favour had, therefore, been withdrawn. The petitioners who were thus aggrieved by the denial of admission into the service preferred the abovementioned writ petition in the High Court for the issue of writ of mandamus to the Delhi Administration to appoint them as Constables on the ground that they satisfied the qualifications prescribed by the rules read with the order of relaxation dated October 3, 1981 referred to above.

8. The petition was resisted by the Delhi Administration. It was contended on behalf of the Delhi Administration that the order of relaxation which had been passed on October 3, 1981 was not a valid one because (i) it had been passed on the assumption that Rule 12.14 (3) of the Punjab Police Rules, 1934 was in force on the date on which it was passed but in fact the said rule stood repealed on the coming into force of the Rules on December 31, 1980

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