

(2025) 07 DEL CK 0761

In the Delhi High Court

Case No : Writ Petition (C) No. 3424 Of 2019

Amar Singh

APPELLANT

Vs

Commissioner Of Police & Ors

RESPONDENT

Date of Decision : 01-07-2025

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Code of Civil Procedure, 1908 — Order 8 Rule 4, Order 8 Rules 5

Code of Criminal Procedure, 1973 — Section 340

Evidence Act, 1872 — Section 3, 102, 103

Delhi Police (Appointment and Recruitment) Rules, 1980 — Rule 9(ii), 9(vi), 20, 20(1)

Citation : (2025) 07 DEL CK 0761

Hon'ble Judges : Navin Chawla, J; Renu Bhatnagar, J

Bench : Division Bench

Advocate : Sourabh Ahuja, Neeraj, Vedansh Anand, Sachin Saraswat,
Soumyadip Chakraborty

Final Decision : Allowed

Judgement

Navin Chawla, J

CM APPL. 15723/2019

1. Additional documents have already been taken on record vide

2. The application is accordingly disposed of.

W.P.(C) 3424/2019

3. The petitioner, an unsuccessful candidate in the 2009 selection process for the post of Constable (Bugler) in the Delhi Police, has approached this Court by way of the present writ petition filed under Article 226 of the Constitution of India, seeking the following reliefs:

"a. Quash and set aside order dated 12.10.2018 passed by Ld. Tribunal in OA No. 407/ 2013. And

- b. Declare the action of the Respondents (Selection Board/Board of Officers) as illegal in as much as they have deviated from the practice (whereby the marks are awarded to a candidate/aspirant for the post of Constable (Bugler) on the basis of his performance on playing Bugle only) which was followed in Delhi Police since time immemorial. And
- c. Direct the Respondents to appoint the Petitioner to the post of Constable (Bugler) and accord him all the consequential benefits viz. seniority, fixation of pay, promotion, back wages etc. And
- d. Award cost in favour of the Petitioner and against the respondents."

FACTS OF THE CASE:

4. In 2009, the Delhi Police issued an advertisement notifying vacancies for multiple posts, including Constable (Bugler), Constable (Brass Band), and Constable (Pipe Band), to be filled via direct recruitment. A total of 13 posts for Constable (Bugler) were advertised, consisting of 8 posts for the Unreserved (UR) Category, 2 posts for the Scheduled Caste (SC) Category, and 3 posts for the Other Backward Classes (OBC) Category candidates.

5. The recruitment process was governed by the Delhi Police (Appointment and Recruitment) Rules, 1980 (hereinafter referred to as

the 'Rules') and the Standing Order No. 258/2006 ('SO') dated 27.10.2006 issued by the Commissioner of Police. The process comprised of three stages, namely, a Physical Endurance and Measurement Test, which was qualifying in nature; a Trade Test, which was for 50 marks, and; an Interview, which was for 10 marks.

The final merit list was prepared based on marks obtained in the Trade Test and the Interview.

6. While the Rules prescribed that the selection be carried out by a Board of Officers comprising of the Deputy Commissioner of Police, as President, and the Asstt. Commissioner of Police and the Inspector (Band), as members to be nominated by Commissioner of Police, the SO further stated that the Board of Officers would consist of Addl. CP assisted by a DCP nominated by the Commissioner of Police, and the SI or rank of the S.O. In-charge (Band) from two Central Para Military Forces.

7. The petitioner, being a UR category candidate, applied for the post of Constable (Bugler) and was assigned Roll No. 466. He cleared the Physical Endurance and Measurement Test, and appeared for the Trade Test.

8. During the Trade Test, he claims to have played 12 military calls on the bugle, and secured 30 marks out of 50 marks, that is, more than the required 40% cut-off marks. The petitioner, subsequently appeared for the Interview, and scored 9 marks out of 10, bringing his total to 39 marks.

9. The final result was declared on 01.06.2010. Despite scoring 39 marks, the petitioner's name did not appear in the Merit List, as the cut-off for the UR category was 40 marks.

10. It is the case of the petitioner, that upon obtaining video recordings of the Trade Test through RTI, it was discovered that one candidate, namely, Shri Vikas Thapa (Roll No. 272), who was selected for the post, had not played any military calls on the bugle during his Trade Test, but was awarded 36.5 marks in the Trade Test and 8.5 marks in the Interview (total 45 marks). It is the case of the petitioner that this video evidence revealed that the Board of Officers had departed from the established practice of testing candidates solely on bugle-playing for the post of Constable (Bugler), and had instead, adopted a process wherein the candidates were required to play band instruments, bugle, and sing songs, with marks being awarded based on overall performance rather than bugle proficiency alone.

11. The petitioner initially filed OA No. 2269/2010 and, thereafter, OA No. 1665/2011, before the learned Central Administrative Tribunal, Principal Bench (PB), New Delhi, (hereinafter referred to as 'Tribunal'), both of which were allowed to be withdrawn with liberty to file fresh applications, vide Orders dated 20.07.2010 and 08.08.2012, respectively.

12. Subsequently, OA No. 407/2013 was filed by the petitioner, on or about 30.01.2013.

13. The learned Tribunal, vide Order dated 16.12.2015, directed the respondents to file an additional affidavit clarifying whether marks were awarded solely for bugle playing.

14. In their additional affidavit dated 04.02.2016, the respondents asserted that marks were awarded based on performance in respective trades only, that is, bugle playing for Constable (Bugler) posts and band instruments for band posts. It was stated that the Selection Board, in addition, also preferred that the candidates have knowledge of musical theory and have actual practical skill on musical instruments.

15. The petitioner then filed MA No. 3262/2016 before the learned Tribunal under Section 340 of the Code of Criminal Procedure, 1973, challenging the assertions made by the respondents in the additional affidavit. Herein, it was also averred that the constitution of the Board of Officers was also illegal and improper.

16. The learned Tribunal, vide Order dated 18.09.2018 directed the respondents to file a short affidavit specifically stating whether Mr.Thapa was tested on bugle during the Trade Test. The respondents then filed an application seeking extension of time and therein also admitted that upon viewing the video of 25.02.2010, Mr. Thapa was seen with the bugle instrument but not actually playing it, though he was seen playing other instruments like Pipe Band, Bag Pipe, and Drum. The respondents stated as under:

"The trade test was conducted from 22.02.2010 to 26.02.2010 and the event was videographed. The trade test of candidate Sh. Vikas Thapa (Roll No. 272) was held on 25.02.2010 and he was first candidate to appear in the trade test on that day. The videography cassettes/records of the trade tests are available in Recruitment Cell/PHQ. On viewing the video of 25.02.2010, the candidate Sh. Vikas Thapa is being seen with his own Bugal instrument and touching the bugal but not seen playing the bugal. He was first candidate to appear for the trade test on that day so it is not clear whether he had already played the bugal before start of recording of video or he was not asked to play bugal. However, the candidate is being seen playing the other instrument like pipe band, bagpipe and drum. The post of Buglar was in the rank of Constable and so the candidates should have been tested on bugal and other instruments as per S.O. No. 258/2006. The candidates were given marks in the trade test by the board which were added with the interview marks and candidates were selected on the basis of merit. An short affidavit specifically mentioning that whether Sh. Vikas Thapa was tested on Bugal instrument in the Trade Test on 25.02.2010 or not is to be filed. The matter has been examined in Delhi Police Hdqrs. and it has been decided to seek comments of the trade test board, before filing the short affidavit as directed by the Hon'ble CAT."

17. The respondents, thereafter, filed an affidavit dated 05.10.2018 stating that a meeting of the members of the Trade Test Board was called on 03.10.2018, and "all members of the board and the chairman concurred that Vikas Thapa, Roll No. 272 was tested on 25.02.2010 as a Buglar along with other musical instruments."

18. The learned Tribunal, however, placing reliance on the above short affidavit filed by respondents, vide the Impugned Order, dismissed the OA filed by the petitioner, observing that all points raised by the petitioner have been satisfactorily replied to by the respondents and it has been made clear through the additional affidavit filed by the respondents earlier that candidates were awarded marks in their respective trade only.

19. Aggrieved by the Impugned Order dated 12.10.2018 passed by the learned Tribunal, the petitioner has approached this Court by the present Writ Petition.

SUBMISSIONS OF THE LEARNED COUNSEL OF THE PETITIONER:

20. The learned counsel for the petitioner submits that candidates for the post of Constable (Bugler) have traditionally been evaluated solely based on their performance on the bugle instrument. However, during the impugned selection process, the Board of Officers illegally expanded the evaluation criteria to include band performance and singing. He places reliance on the Judgement of the Supreme Court in Shailendra Dania vs. S.P. Dubey, 2007 (5) SCC 535, to submit that long-standing departmental practices acquire the status of rules and any deviation from such established practice without justification amounts to the violation of rules.

21. He highlights that Mr. Thapa, that is, the respondent no. 12, was awarded 36.5 marks out of 50 in the Trade Test for the post of Constable (Bugler), despite being unable to play any call on the bugle. He submits that this fact is evident from the video recordings of the Trade Test obtained under the Right to Information Act, 2005 ('RTI Act'), which showed Mr. Thapa holding and touching the bugle instrument but not actually playing it. The learned counsel submits that the petitioner has discharged his burden of proof as required under Sections 102 and 103 of the Indian Evidence Act, 1872 ('IEA'), by placing on record electronic evidence in the form of the video recording of the Trade Test obtained from the Delhi Police. He submits that these electronic records, being admissible as evidence under Section 3 of the IEA, clearly demonstrate the irregularities in the impugned selection process. He further submits that the failure on part of the respondents to deny these assertions in the additional affidavit, amounts to an admission of fact under Order VIII Rules 4 and 5 of the Code of Civil Procedure, 1908 ('CPC').

22. The learned counsel states that the selection of Mr. Thapa reflects the glaring differences in marking, while the petitioner played 12 calls on the bugle and received only 30 marks in the Trade Test, candidates who failed to play even a single call on the bugle were awarded higher marks (36.5 marks). The learned counsel contends that the actions of the respondents therefore violate Articles 14 and 16 of the Constitution of India, being discriminatory and arbitrary in nature.

23. The learned counsel for the petitioner further submits that not only was the selection process adopted by the Board of Officers arbitrary and violative of the existing rules, but even the constitution of the Board itself was not in accordance with law. To this effect, he highlights that HC (Band)-Puroshattan was improperly made a member of the Board of Officers contrary to Rule 9(ii) and (vi) read with Rule 20 of the Rules as well as Clause-7 of the SO, which did not authorize Head Constables to be a part of the same. Reliance is placed on the Judgement of the Supreme Court in *Cherukuri Mani vs. Chief Secretary, Govt. of Andhra Pradesh and Ors.* (2015) 13 SCC 722, to contend that when a statute or a rule prescribes that a particular act must be performed in a specific manner, it must be carried out in that manner alone or not at all.

24. Additionally, citing the Judgement of the Supreme Court in *Raj Kumar & Ors. vs. Shakti Raj & Ors.*, 1997 (9) SCC 527, the learned counsel submits that where the government commits glaring illegalities in the selection process, the principle of estoppel is not applicable, and candidates retain the right to challenge the selection process.

25. The learned counsel for the petitioner further places reliance on the Judgement of this Court in W.P.(C) 10718/2016 titled *Devender Yadav vs. The Secretary Delhi Subordinate Services Selection Board and Ors.*, to submit that the petitioner cannot be penalised on grounds of delay in a case where he has promptly approached the learned Tribunal and thereafter timely challenged the Order passed by the learned Tribunal, before this Court.

SUBMISSIONS OF THE LEARNED COUNSEL OF THE RESPONDENTS

26. The learned counsel for the respondents submits that the Trade Test conducted from 22.02.2010 to 26.02.2010 was in accordance with law and that there is no violation of Clause-7 of SO or the Rules. He submits that as per the report received from In-charge (Band) of Delhi Police, the then In-charge (Band), SI (Band)-Mam Singh, was on three days casual leave, and that therefore, in his place, HC (Band)-Purshottam Bahadur, was made a part of the Board of Officers, being the senior most officer in the absence of the In-charge (Band). He submits that no prejudice was caused to individuals who participated in the Trade Test, on mere induction of the senior most HC (Band) of Delhi Police in place of and in the absence of the In-charge (Band).

27. He submits that based on marks obtained in the Trade Test and the Interview, the final result of successful candidates as per the number of vacancies advertised, was declared on 01.06.2010. Accordingly, all 13 posts were filled up and all selected candidates joined their basic training on 01.11.2010 at PTC/Jharoda Kalan, New Delhi. He states that the claim of the petitioner alleging violation of Clause-7 of the SO is highly belated, being raised only in 2019, that is, after the OA dated 2013 was dismissed.

28. He contends that the petitioner had secured a total of 39 marks as a UR category candidate, and failed to make the grade in the list of finally selected candidates as the cut-off marks of the UR category was 40 marks. Hence, the action taken by the respondents was justified.

29. The learned counsel for the respondents submits that Mr. Thapa was tested on the bugle in the Trade Test. He submits that pursuant to the direction of the learned Tribunal dated 18.09.2018, a meeting of all the members of the Board of Officers who conducted the Trade Test for the post, was held on 03.10.2018 under the Chairmanship of Shri Tajendra Singh Luthra, Spl. C.P./Planning & Implementation (then Additional CP/Special Branch, the Chairman of the Board of Officers). All members of the Board and the Chairman concurred and re-confirmed that Mr. Thapa was tested on the bugle along with other musical instruments.

30. With regard to the video recording of Mr. Thapa, the learned counsel for the respondents submits that in the video recording, Mr. Thapa is seen handling the bugle instrument and thereafter, playing the other instruments like pipe band, bagpipe and drum.

31. He submits that in general, it is preferred that the candidates have knowledge of musical theory and have actual practical skill in playing musical instruments. He states that the entire recruitment process was conducted in accordance with the prescribed rules and regulations and, therefore, the present petition is misconceived.

ANALYSIS AND FINDINGS:

32. We have considered the submissions made by the learned counsels for the parties.

33. The three issues which arise for consideration of this Court are:-

a) Whether by including HC (Band) in the Board of Officers, the Board of Officers was not properly constituted, and the selection process is vitiated thereby;

b) Whether for the post of Constable (Bugler), the candidates were to be tested only for playing bugle, and as it is admitted that the candidates were also tested on other instruments, the selection process is vitiated;

c) If the answer to the above two questions is in the affirmative, what is the effect thereof.

34. As far as the first two issues are concerned, Rule 20 of the Rules not only makes a distinction between 'Bandmen' and 'Buglars' but also gives the constitution of the Board of Officers which form the selection committee, to include the Deputy Commissioner of Police as President, and Assistant Commissioner of Police and Inspector (Band) as member to be nominated by Commissioner of Police. It further states that the Board shall test the candidate in playing the band/bugle and ensure that they are proficient, before approving their appointment. Rule 20 (1) of the Rules is reproduced herein under: -

"20. Appointment of Bandsmen.-(1) Bandsmen and buglars shall be enlisted centrally in the rank of constable by the DCP/Lines by notifying the vacancies to Employment Exchange, neighbouring States, local Soldiers Board. Reservations shall be made for Scheduled Castes/Scheduled Tribes and Ex-servicemen as per Government of India orders issued from time to time. No applicant shall be accepted as a candidate for appointment unless he has been certified physically fit for police service. The candidates must possess age and other standards as prescribed in Rule 9 of these Rules. Selection shall be made by a board of officers consisting of Dy-Commissioner of Police, as President, Asstt. Commissioner of Police and Inspector (Band) as members to be nominated by Commissioner of Police. The Board shall actually test the candidates in playing of band instruments/bugles and ensure that they are really proficient, before approving them for appointment."

35. In addition, Rule 9(vi) of the Rules states that the Commissioner of Police shall frame Standing Orders inter alia prescribing the procedure to be followed and for the regulation of the recruitment process. It reads as under:

"(vi) 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."

36. In discharge of the above power, the SO has also been issued for recruitment of Constables (Band) in the Delhi Police. Clause 1 of the said SO states that there

are two bands in Delhi Police, which are Brass Band and Pipe Band. In addition, a number of buglers are also required for police parade and other functions at Provisioning and Logistic, New Police Line, Police Training College and Police Training School. It states that the above necessitate recruitment of trained personnel periodically so that required number of bandsmen and buglers can be recruited. It, therefore, recognizes that buglers are in addition to the Brass Band and Pipe Band, and are required to perform specific jobs, different from Brass Band and Pipe Band, at specific locations. We reproduce Clause 1 of the SO as under:-

"1. INTRODUCTION

There are two bands in Delhi Police viz. Brass Band and Pipe Band. In addition, a number of buglers are also required for the police parades and other functions at Provisioning & Logistics, New Police, Line, Police Training College and Police Training School. This necessitates recruitment of trained personnel periodically so that we may have required number of bandmen and buglers. Deputy Commissioner of Police 4th Bn., DAP will be incharge of the Brass Band while Principal/PTC will be in-charge of the Pipe Band."

37. As far as the composition of the selection committee for conduct of the Trade Test is concerned, Clause 7 of the SO prescribes the same as under:-

"7. TRADE TEST

No written test will be held. However, a trade test in playing of band instruments/buglers shall be held by a Board of Officers consisting of any Addl. CP assisted by a DCP to be nominated by the Commissioner of Police, Delhi and SI or Inspr. in-charge (Band) from Delhi Police, representative of Bands not below the rank of S.O. In-Charge Bands from two Central Para Military Forces should also be included in the Trade Test Board as members. The test will carry 50 marks. Candidates who secure less than 40% marks will be declared failed and not allowed to appear for the interview."

38. A reading of the above clause would show that the selection committee must consist of Addl. CP assisted by a DCP, to be nominated by the Commissioner of Police of Delhi, and SI or Inspector In-Charge (Band) from the Delhi Police. In addition, representative of Bands not below the rank of SO In-Charge (Bands) from two Central Para Military Forces should also be included in the Trade Test Board as members. Therefore, apart from others, the selection committee to conduct the Trade Test, must consist of either a Sub-Inspector or Inspector In-Charge (Band) from the Delhi Police. In the present case, in the Impugned selection process admittedly the selection committee did not consist of the Inspector or Sub Inspector In-Charge (Band) and, instead, consisted of Head Constable (Band). The constitution of the Committee was, therefore, not in conformity with either the Rules or the SO. On this short ground itself the entire selection process is vitiated and is liable to be quashed.

39. The submission of the learned counsel for the respondents that the plea of the selection committee not being properly constituted, having been taken belatedly by the petitioner and only after the OA was dismissed, in our view, cannot validate the selection committee or the selection process. Once it is held that the selection committee was not properly constituted, the entire process must fall.

40. We also find that the plea of illegal constitution of the Board of Officers was raised by the petitioner before the learned Tribunal in MA No. 3262/2016, though not very clearly. The respondents, in its reply to the same, in fact, submitted that the Board of Officers included the Incharge-Band from the Delhi Police. This statement was, clearly, incorrect.

41. In addition to the above, it is the specific case of the petitioner, which remains un-rebutted by the respondents, that as far as respondent no.12 is concerned, who is a person appointed against a UR vacancy of Constable (Bugler), could not play any call on the bugle, yet was awarded 36.5 points marks in the Trade Test, presumably based on his performance on the pipe band and/or singing songs. In fact, the respondents have relied upon an affidavit dated 05.10.2018 filed before the learned Tribunal wherein, in answer to a specific query of the learned Tribunal whether the respondent no.12 was tested on bugler in the Trade Test at the time of his selection or not, the respondents stated that the members of the Selection Board concurred that the respondent no.12 was tested as a Bugler "along-with other musical instruments". It, therefore, has been admitted that though the post was of Constable (Bugler), respondent no.12 was tested not only for playing bugle but also other instruments. As it has not been refuted by the respondents that the respondent no.12 could not play any call on his bugle, it follows that the marks given to him in the Trade Test are for playing other instruments.

42. We have hereinabove highlighted that the Rules make a distinction between the 'bandmen' and 'buglers'. The position and the specific role of the Bugler is highlighted in the SO. They also mandate testing of the candidates for the instruments, that is, the band or bugle. These are not interchangeable. It cannot be said that a person who can play a pipe band or other instrument, would also play a bugle well or vice versa.

43. In the present case, the advertisement itself highlighted this distinction, inasmuch as, 13 posts of Constable (Bugler) were advertised, separately from 13 posts of Constable (Brass Band) and 1 post of Constable (Pipe Band). Even assuming that there were applicants who had applied for multiple posts, while judging them for a particular post, it is that particular instrument which would be relevant, and only their performance on that instrument can be relevant for giving them marks for the Trade Test. This not having been followed in the present case, the selection process was, therefore, completely vitiated also on the ground that the discipline for which the selection was to be made, the candidates were not tested against it but generally, thereby, defeating the very

purpose of having a Trade Test and assigning substantial marks of almost 80% to it.

44. For the above reasons, the impugned selection process is otherwise liable to be set aside.

45. At the same time, we recognize that the selection process is of the year 2009-10, with the result having been declared in 2010 itself. Cancelling the results now would, therefore, cause injustice to the selected candidates who are not at fault. Mala fide has not been alleged by the petitioner against the respondents or to the selection committee.

46. At the same time, the petitioner has been pursuing his remedies with full diligence. As noted hereinabove, he not only has filed applications before the learned Tribunal for seeking justice, but also gathered information through RTI for substantiating his claim, which we find stands substantiated. The petitioner, therefore, cannot be denied relief only on ground of judicial delays.

47. Following the Judgment of this Court in *Devender Yadav* (supra), therefore, we mould the relief by directing that the petitioner, if in the selection process was next in rank to gain appointment to the post of Constable (Bugler) in the UR category but for the appointment of the respondent no.12 in the UR category post of Constable (Bugler), he shall be accommodated to the said post against the available vacancy, and, if necessary, by creating supernumerary post, which may be adjusted against the future vacancies, within a period of eight weeks from today. In such case, the petitioner shall be entitled to only notional seniority treating him at the bottom of the selected candidates in the impugned selection process. The petitioner shall also be entitled to notional fixation of pay from the date the respondent no.12 was appointed, however, would not be entitled to grant of any actual pay or other benefits for the period till his appointment.

48. The petition is allowed in the above terms. There shall be no orders as to costs.