

(2013) 07 DEL CK 0083

In the Delhi High Court

Case No : Writ Petition (C) 4473 of 2013

Commissioner of Police and Another

APPELLANT

Vs

Tasvir Singh

RESPONDENT

Date of Decision : 18-07-2013

Acts Referred:

Citation : (2013) 07 DEL CK 0083

Hon'ble Judges : V. Kameswar Rao, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : S.P. Sharma and Dr. Ashwani Bhardwaj, for the Appellant; Amita Kalkal Chaudhary, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.

Caveat No. 617/2013

1. Since counsel as above appears for the respondent/caveator, the Caveat is discharged.

WP (C) No. 4473/2013

The petitioner is playing a cat and mouse game with the respondent and making the respondent litigate repetitively.

2. The petitioner is guilty of changing its stand from time to time. It all commenced when an advertisement was issued in the year 2006 inviting applications to fill up posts of Constable (Executive) Male in the Delhi Police.

3. There exists an OM No. 15012/3/84-Estt. (D) dated 12.11.1983 on the subject of grant of relaxation for upper age limit for meritorious sportsmen to be appointed in Central Government which reads as under:-

No. 15012/3/84-Estt. (D)

Government of India

Ministry of Personnel, P. G & Pensions

(Department of Personnel & Training)

Dated 12-11-1987

OFFICE MEMORANDUM

Sub: Relaxation of upper age limit for meritorious sportsmen/sportsmen for appointment in the Central Government.

The undersigned is directed to say that orders were issued for appointment of meritorious sportsmen/sportswomen in Group "C and D" posts in relaxation of the recruitment procedure vide this Department's O.M. Nos. 14015/1/76-Estt. (D) dated 18th September, 1985 (copies enclosed). The question of giving further concessions to this category has been engaging the attention of the Government for some time past. In particular, a proposal to extend the concession of age relaxation for entry of the sportspersons into Government service has been under consideration.

2. The matter has been carefully considered in consultation with the UPSC, the Ministry of Law/and the Department of Youth Affairs and Sports. It has now been decided that the categories of sportsmen/sportswomen specified in para (a) of this Department's O.M. dated 4.8.1980 may be allowed relaxation in upper age limit upto a maximum of 5 years (10 years in the case of those belonging to Scheduled Castes and Scheduled Tribes) for the purpose of appointment to all Group of civil posts in services under the Govt. Of India filled otherwise than through competitive examinations conducted by the UPSC. This concession will be available only to those sportspersons who satisfy all other eligibility conditions relating to educational qualifications etc. and furnish a certificate in the form and from an authority prescribed in the O.M. dated 4th August 1980. Sub-para (b) of paragraph 1 of this O.M. would be deemed to have been amended to this extent.

Sd/-

(K.S.R. Krishna Rao)

Deputy Secretary to the Govt. of India

4. There also exists an OM No. 14/1/72-Estt. (D) dated 28.12.1972, relevant portion whereof reads as under:-

1. Eligibility

(a) Appointments under these orders can be made of sportsmen considered meritorious with reference to the following criteria:-

i. Sportsmen who have represented a State or the Country in the National or International competition in any of the games/sports mentioned in the list at

Annexure A".

ii Sportsmen, who have represented their University in the inter-University Tournaments conducted by the Inter-University Sports Board in any of the sports/games shown in the list at Annexure-"A".

iii Sportsmen who have represented the State Schools Team in the National Sports/Games for schools conducted by All India School Games Federation in any of the games/sports shown in the list at Annexure-A".

iv Sportsmen who have been awarded National Awards in Physical Efficiency under the National Physical Efficiency Drive.

(b) No such appointments can be made unless, the candidate is, in all respects, eligible for appointment to the post applied for, and in particular in regard to age, education or experience, qualification prescribed under the Recruitment Rules applicable to the post, except to the extent to which relaxation thereof have been permitted in respect of class/category of persons to which the applicant belongs.

5. The respondent applied and sought benefit of age relaxation on the strength of a certificate pertaining to the 43rd National School Games 1997 held under the auspices of the School Games Federation of India of the Directorate of Education, Government of Delhi as the co-host. It pertained to the discipline of hockey.

6. The respondent relied upon the said certificate to avail benefit of age relaxation.

7. At that stage the writ petitioners took the stand that the certificate did not pertain to a representation at the State level in National School Games.

8. Without analysing the certificate issued the Original Application filed by the respondent was dismissed by the Tribunal but in WP(C) No. 5589/2010 an order was passed on November 26, 2010 which reads as under:-

1. A short issue arose for consideration and unfortunately nobody focused on the primary data to be gathered and this is the result why petitioner lost the battle which he is fighting with the respondents; the loss being before the Central Administrative Tribunal.

2. The petitioner sought employment. Issue relates to whether petitioner was entitled to 5 years age relaxation on account of being a sportsman having represented his State at the National School Games.

3. Neither party is in disagreement on the fact that if it was established that the petitioner had represented his State at a National Level Sporting event, he would be entitled to five year age relaxation.

4. To claim benefit of age relaxation the petitioner relied upon a certificate issued with respect to the discipline Hockey at the 43rd National School Games, 1997. It may be noted that the 43rd National School Games were held under the auspices

of the School Games Federation of India and the Directorate of Education, Government of Delhi was a co-host.

5. Vide impugned decision dated 10.03.2010, the Tribunal has held that the certificate in question was insufficient to give desired relief to the petitioner and for which purposes the Tribunal was influenced by the fact that it was not evidenced from the certificate that the reference to the State referred therein was a reference to representing the State team.

6. We had impleaded the National School Games Federation of India as respondent No. 3 and had directed an affidavit to be filed, clarifying on the certificate relied upon by the petitioner.

7. Under signatures of Sh. Ramphal, a member of the School Games Federation of India, necessary affidavit has been filed throwing light upon the certificate relied upon by the petitioner. In para 4 of the affidavit we are informed as under:-

4. That the role of the Respondent No. 3, who was the then Organizing Secretary and Deputy Director of Education (Sports) and now the President of School Games Federation of India was limited to issuance of the said certificate to the petitioner for representing the State of Haryana in the official game of hockey, at the 43rd National School Games, 1997, organized by the Directorate of Education, Govt. of NCT, Delhi. Equating the National School Games with the State Level Events or not, is entirely upon the department to whom the said certificate is presented as different departments have different recruitment rules and guidelines and they treat the said certificate according to their recruitment rules and guidelines. For instance, earlier the Delhi Police and Railways considered the said National School Games as State Level Events for the purpose of recruitment, but now they refuse to recognize the same for the reasons best known to them; while the Delhi Administration still considers the said National School Games as State Level Events for the purpose of recruitment and all the concession to this effect are being extended to the eligible candidates.

8. Suffice would it be to state that as per the affidavit filed by the School Games Federation of India, the certificate issued to the petitioner is equating the National School Games with State level events and certifies that the petitioner represented the State of Haryana at the National School Level event pertaining to the subject of Hockey at the 43rd National School Games, 1997.

9. We note that the relevant notification enabling age relaxation reads as under:- "Relaxable by 5 years for sportsmen of distinction who have represented the state or the country at the National or International Level in sports and athletics. List of sports is given below:-".

10. Given below is the list of sports/games being 19 Hockey being one of them.

11. Suffice would it be to state that the benefit of age relaxation is not restricted to State representation at any particular level. Now representation could be at the school level, college level or otherwise. The notification requires that the

representation must be for the State.

12. Noting as aforesaid, we dispose of the writ petition issuing a direction to the Commissioner of Police to re-decide the issue of petitioner's entitlement of age relaxation and while so doing the affidavit filed on behalf of the School Games Federation of India, relevant part whereof being para 4, has been extracted by us hereinabove.

13. Needful would be done within four weeks from today. Consequences shall enure if petitioner is found entitled to be granted benefit of age relaxation but that would not include back wages.

9. At the remanded stage the petitioner started taking a totally different stand for the reason indeed, the certificate in question pertained to a sporting event at the national level. The stand which the petitioner started taking was that equating a National School Game at a State level event was not justified because neither office memorandum, contents whereof we have noted above, required so.

10. Regretfully, this was not the stand taken at the earlier round of litigation. This by itself may operate as an estoppel against the petitioner.

11. But this is not our reason to dismiss the writ petition in limine.

12. We have reproduced hereinabove the relevant part of the office memorandum dated December 28, 1972 and would simply highlight that Clause 1 (a)(i) pertains to sportsmen who have represented a State or the country in the national or international competition in any of the games/sports mentioned in the list at Annexure-A. Sub-para (iii) thereof pertains to sportsmen who have represented the State schools team in the national sports/games for schools. We need not therefore quibble whether representation at the State level contemplated by sub-para (i) is at the school or the college or the State level as understood with reference to, say a cricket team representing a State, for the reason Clause (iii) clearly embraces sportsmen who have represented the State's school team. Accordingly, we dismiss the writ petition in limine but without any order as to costs.

CM No. 10336/2013

Dismissed as infructuous.