
(2019) 04 DEL CK 0002

In the Delhi High Court

Case No : Civil Writ Petition No. 873, 874, 11505, 2407, 2427 Of 2018

Const. Rajesh Kumar And Ors

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 01-04-2019

Acts Referred:

Citation : (2019) 259 DLT 109

Hon'ble Judges : S.Muralidhar, J;I.S.Mehta, J

Bench : Division Bench

Advocate : Ankita Patnaik, Ruchir Mishra, Mukesh Kumar Tiwari, Vivek Kumar Singh, Vijay Joshi, R.M.Tripathi, Abhimanyu, Abhishek Khanna, Soumaya Karmakar

Final Decision : Allowed

Judgement

Dr. S. Muralidhar, J

1. These petitions arise from a common set of facts and seek similar reliefs. They are accordingly being disposed of by this common judgment.

2. The Petitioners are presently Constables (Trade) in the Central Reserve Police Force (CRPF). Each of them seeks re-musteration as Constable (Driver) in the CRPF on the strength of the decision dated 28th July, 2017 of this Court in WP(C) No. 10548/2016 (Constable Karan Singh v. Union of India). For the sake of convenience, the facts in the lead petition i.e. W.P. (C) No. 873 of 2018 are discussed in detail.

3. In WP (C) No. 873/2018 there are five Petitioners. These five Petitioners joined CRPF as Constables (Trade) between 23rd July, 2004 and 17th June, 2011. The Respondents issued Signals whereby the Petitioners' Battalions were informed that the Driver & Mechanic Course (D & M Course) Sl. No. 34 for being re-mustered as a Driver was being conducted. Nominations for the course were invited from all the companies.

4. One basic qualification for applying for the D&M course is that the candidate should be below 30 years of age. It must be mentioned at this stage each of the Petitioners is an OBC candidate and each was below 30 years of age at the time of applying for re-musteration as Constable (Driver). This was the age limit for OBC candidates in terms of a standing instruction No. 3/2011 dated 20th May, 2011.

5. It is stated that each of the five Petitioners in WP(C) No. 873/2018 completed the D & M course successfully on 20th June, 2015. The results were announced by a signal dated 25th January, 2016. On the ground that each of these Petitioners would be above 30 years after going the further 44 week's basic training, the Respondents have declined to re-muster them.

6. In WP (C) No. 2407/2018 there are three Petitioners. Each is a Constable (Trade) in the CRPF and was below 30 years of age at the time of applying for re-mustering as Constable (Driver). They too successfully completed the D & M course. Their re-mustering is being denied by the Respondents on the ground that they would be over 30 years of age when they complete the 44 weeks' basic training.

7. In WP (C) No. 2427/2018 the Petitioner is a Constable in the CRPF. Although at present he is above 30 years of age at the time of applying for the D & M course he was below 30 years. In WP (C) No. 874/2018 there are three Petitioners placed identically as the others. In WP(C) No. 11505/2018 there is one Petitioner. All of them have successfully completed the D&M Course.

8. The stand of the Respondents in all these matters is more or less the same. It is pointed out that the Petitioners would have crossed 30 years of age by the time of completion of training and therefore would not be eligible for being re-mustered. It is further submitted by the Respondents that after the notification dated 13th November, 2014 issued by the Ministry of Home Affairs amending the Central Reserve Police Force, Group-C (General Duty)/Technical cadre (Cadre Recruitment Rules, 2010) the relaxation in age has been done away with. The earlier age relaxation of three years for OBC candidates and five years for SC/ST candidates has been replaced by one uniform norm. The outer age limit is now 30 years irrespective of whether the candidate is SC/ST or OBC or an open candidate. This change was upheld by this Court by judgment dated 10th December, 2018 in WP(C) No. 1468/2018 (Const Amit Kumar v. Union of India). Consequently, it is submitted by the Respondents that it is not open to any of these Petitioners to claim age relaxation.

9.1 The Petitioners in Const Amit Kumar v. Union of India (supra) were all above 30 years of age even by the time they applied for the D & M course, which was a pre-requisite for the re-musteration as Constables (Drivers). However, as far as the decision in Constable Karan Singh v. Union of India (supra) is concerned, the Petitioner was, just as the Petitioners in the present petitions, below 30 years when applying for the D & M course. In that case also it was contended by the

Respondents that since the Petitioner would have crossed the age of 30 years by the time he completed the 44 week's basic training he would be rendered ineligible.

9.2 This Court in *Constable Karan Singh v. Union of India* (supra) did not accept that contention. Importantly, this Court took note of the fact that under 2010 Rules it had been clearly stipulated that "the crucial date for deciding whether the candidate was overage or within the age limit would be the cut off date mentioned in the advertisement". Reference was also made to the basic requirements for being re-mustered as Constable (Drivers). The first was that they should be below 30 years on the date of applying for the re-mustering in terms of the note to Column 7 which incidentally was not deleted or modified by the 2010 Rules as amended in 2014. The second was that the Constable (Tradesman) should have a driving licence. The third was that they must successfully qualify the D & M course.

9.3 It was pointed out by this Court in *Constable Karan Singh v. Union of India* (supra) that the last requirement viz., the successful completion of the D & M course related to qualification and not to an upper age limit. It was noted by the Court that "It is an accepted and admitted case that for a direct recruit, the age eligibility would be considered as on cut-off date as mentioned in the advertisement and not when the candidate successfully completes the basic training or D&M Course." It was accepted by the Respondents that the direct recruits also have to undergo the D&M Course for direct recruitment. The Court logically extended the above proposition, to departmental candidates who underwent the D & M course for being re- mustered as Constable (Drivers). In other words, "Government servants entitled to apply as direct recruits and those who apply re-mustering are treated alike and equally." The Court was of the view that

"It would lead to absurdity if we accept the stand of the respondents that government servants who are working in other departments would be eligible if they are less than 30 years of age as on the cut-off date but the departmental candidates who are considered for remuster, would be over aged as their age on the date when they complete the D&M Course or the basic training is the deciding factor/criteria. Age eligibility has to be with reference to a fixed point in time. There should not be any scope of introducing uncertainty on account Of variable factors. This would bring hardship and injustice by eliminating some of those who are eligible. We would prefer an interpretation which ensures clarity and certainty."

10. The Court sees no reason why the benefit of the judgment of this Court in *Constable Karan Singh v. Union of India* (supra) should not be extended to each of the present Petitioners all of whom were admittedly below 30 years of age on the date they applied for re-mustering as Constable (Drivers). It did not matter that they may have crossed the age of 30 when they qualified in the D & M course which is the basic training course. The 44 weeks' course is subsequent to

the D & M course. The dates on which they qualify in these courses might be after they cross 30 years of age. However, in terms of the legal position explained this Court in Constable Karan Singh v. Union of India (supra), they will not stand disqualified on that ground alone.

11. The decision in Constable Amit Kumar v. Union of India (supra) was concerned with the validity of the removal of age relaxation. That is not an issue that arises in the present case since none of the Petitioners here are claiming any such age relaxation. At the time of applying for the D&M course, whether the 34th or 35th course, each of them was admittedly below 30 years. Each of them, therefore, satisfies the age requirement for applying to be re-mustered as Constable (Driver).

12. It is not disputed by the Respondent that each of the Petitioners has successfully completed the basic D & M course (Sl. No. 34 or 35 as the case may be). This Court accordingly directs the Respondents to allow each of these Petitioners, if they were below 30 years on the date they applied for being re-mustered as Constable (Driver) to be forthwith sent for the remaining basic training as and where applicable. It is further directed that on successful completion of such basic training each of them will be re-mustered as Constable (Driver) as per the rules. Subject to their successful completion of all the training courses, their seniority in the re-mustered cadre will be fixed along with their batchmates and the notional date of their re-musteration will be relevant for all other consequential reliefs. They, however, will not be entitled to any arrears of pay.

13. The petitions are accordingly allowed but in the circumstances with no order as to costs.