

(2018) 12 CAT CK 0134

In the Central Administrative Tribunal

Case No : Original Application No. 2235 Of 2018, Miscellaneous Application No. 2484, 3487 2018

Prashant Kumar And Ors

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 18-12-2018

Acts Referred:

Delhi Police (Appointment And Recruitment) Rules, 1980 — Rule 7, 27A
Constitution Of India, 1950 — Article 14, 16, 309

Citation : (2018) 12 CAT CK 0134

Hon'ble Judges : V. Ajay Kumar, J;A.K. Bishnoi, Member (A)

Bench : Division Bench

Advocate : Ajesh Luthra

Final Decision : Dismissed

Judgement

A.K. Bishnoi, Member (A)

1. MA No.2484/2018 filed by the applicants for joining together in a single application is allowed.

2. The applicants have filed the present OA seeking the following relief and interim relief:-

Relief:

"a) Quash and set aside the impugned addendum dated 02/04/2018 (Annexure A/1) whereby the respondents have added 68 vacancies pertaining to the departmental quota for the year 2017 to the subsequent year i.e. 2018 as backlog vacancies, even though the recruitment process of the year 2017 is still going on and is yet to be finalized and

b) Direct the respondents to allot the 68 departmental quota vacancies pertaining to the year 2017 towards the ongoing recruitment process for the year 2017 itself and

- c) Further consider and appoint the applicants against the departmental quota vacancies pursuant to their participation in the recruitment process of the year 2017 in accordance with their merit position under the departmental quota.
- d) Accord all consequential benefits.
- e) Award costs of the proceedings; and
- f) Pass any order/relief/direction(s) as this Hon"ble Tribunal may deem fit and proper in the interests of justice in favour of the applicants.

Interim Relief:

Pending decision in OA, this Hon"ble Tribunal may graciously be pleased to direct the respondents to stay the operation of impugned order/addendum dated 02.04.2018 to the extent it relates to the departmental quota vacancies of the year 2017 and further direct the respondents to reserve one vacancy for each of the applicant, by way of an ex-parte ad-interim order."

2.1 The applicants had also filed MA No.3487/2018 in which they had sought to stay the operation of impugned addendum with a direction to the respondents to reserve one vacancy of Sub-Inspector for each of the applicants, by way of an ex-parte ad-interim order. However, on 24.09.2018, learned counsels for both the sides agree that the main OA itself can be disposed of along with the MA.

3. Briefly the facts of the case, as submitted by the applicants, are as follows:-

3.1 The applicants are working as Constables in Delhi Police and are aspirants to the post of Sub-Inspectors (SIs) in Delhi Police. As per Rule-7 of Delhi Police (Appointment & Recruitment) Rules, 1980, 50% of the posts of SIs (Exe) are to be filled through direct recruitment and the remaining 50% by way of promotion. Out of 50% of the posts that are to be filled up by way of direct recruitment, 10% of the posts are to be filled by Limited Departmental Competitive Examination (LDCE) from amongst Constables, Head Constables and Assistant Sub-Inspectors with minimum three years of continuous service.

3.2 The applicants applied for selection to the post of SIs in Delhi Police in response to the Notification for the year 2017 issued by the Staff Selection Commission (SSC). The respondents, however, failed to provide 10% departmental quota in the said selection process.

3.3 The respondents have not provided the departmental quota to the departmental candidates since the year 2013. Till the year, 2013, 10% quota was provided by the respondents in the direct recruitment process. In support of the same, the applicants placed reliance on record the 2013 SSC Notification with regard to recruitment of SIs in Delhi Police etc.

3.4 The applicants have referred to the decision of the Hon"ble High Court of Delhi in Karamvir Vs. GNCT of Delhi & Ors., [CWP No. 2788/2012 decided on 22.05.2013], where the Hon"ble High Court of Delhi while dismissing the claim of

the departmental candidates observed that in future Delhi Police should be careful while making appointments and lest there be any confusion it would be advisable to make appointments by way of direct recruitment quota and by Limited Departmental Competitive Examinations through separate examinations. However confusion prevailed and for the years 2014, 2015 and 2016, though the selection processes have been initiated and completed, the 10% departmental quota for the departmental candidates was not included. The same is the case in the instant selection process. Vide Notification dated 03.03.2018 as modified by way of addendum dated 02.04.2018, the backlog departmental quota vacancies for the years 2014 to 2017 have been included in the process of 2018. The applicants through representation dated 22.03.2018 sought for the inclusion of vacancies pertaining to departmental quota in the examination process for the year 2017 but the same has not been accepted by the respondents and they have replied that vacancies arising as backlog have been included in the process for the Examination-2018.

3.5 The applicants have further submitted that Examination - 2017 process is still going on and 68 vacancies pertaining to the year 2017 should be given to the Examination - 2017 process itself and ought not to be treated as backlog vacancies to be filled by way of 2018 Examination. They contend that administrative hiccups and indecisiveness amongst the respondents towards modalities in holding the LDCE has grossly prejudiced the applicants and thus the impugned action is violative of Articles 14,16 and 309 of the Constitution of India.

4. The respondents in their reply have submitted that it was decided that from the year 2012, SSC would exclusively conduct the recruitment of SI (Exe.) in Delhi Police. From the year 2013, SSC decided that recruitment of SI (Exe.) in Delhi Police would be a part of that for SI in CAPF Exam, 2013. This was approved by the Ministry of Home Affairs (MHA) and Delhi Police was directed to amend the Recruitment Rules of SI (exe.) in Delhi Police to match the specifications of SIs in CAPFs, as they were differences between the two regarding age, education, physical standards.

4.1 The Recruitment Rule-7 and Rule 27-A of Delhi Police (Appointment & Recruitment) Rules, 1980 were amended by the Govt. of NCT of Delhi vide Notification dated 13.03.2013 with the approval of the competent authority. Standing Order regarding Physical Endurance, Measurement Tests & age etc. was also revised.

4.2 Some departmental candidates filed certain OAs (OANo.1650/2013 & batch-Shri Subodh Kumar & Ors. etc.etc. vs. Commissioner of Police) before this Tribunal against reduction in the upper age limit of the departmental candidates which were disposed of on 18.07.2014 with a direction to re-examine the impugned amendment in the Recruitment Rules for the post of SI (Exe) in Delhi Police and to complete the examination within 12 weeks and any follow up action if required within four weeks thereafter.

4.3 In compliance of the said order, the matter was discussed in a Committee in the MHA in which it was decided that the contentions raised by the applicants did not have any merit and the applicants would be informed accordingly.

4.4 Thereafter, in the year 2015, some of the applicants in the aforementioned OAs approached the Hon"ble High Court of Delhi byfiling Writ Petitions (Civil) No.2034/2015-Subodh Kumar and Others vs. Commissioner of Police and Others & 2952/2015- Kapil Dev and Others vs. Commissioner of Police and Ors., against the order of this Tribunal dated 18.07.2014, which were dismissed by the common order dated 20.04.2017. Some departmental candidates separately approached the Hon"ble High Court of Delhi through Writ Petition (C) No.4216/2017 titled Surrender & Ors. Vs. Union of India & Ors. with a grievance that the respondents had not undertaken the process for recruitment to fill up 10% departmental vacancies of SI (Exe.). The said Writ Petition was disposed of by the Hon"ble High Court of Delhi vide order dated 22.05.2017 with directions that 10% vacancies reserved for the departmental candidates for the post of SI (Exe.) should be filled up as early as possible and preferably in the next four months.

4.5 In compliance of the said order, MHA was requested by the Delhi Police vide order dated 03.08.2017 to ask the SSC to conduct an exam for filling up the said vacancies. The SSC expressed its inability to conduct the said Examination and advised Delhi Police to explore other options. The MHA vide letter dated 20.10.2017 gave approval to the Delhi Police to conduct the said examination itself. Meanwhile, a communication was received from SSC asking Delhi Police to convey the vacancies of SI (Exe.) for the Examination-2018. Vide letter dated 09.02.2018 Delhi Police conveyed the number of vacancies including 123 departmental vacancies for the years 2014 to 2018. It is averred by the respondents that the matter relating to prescribing upper age limit for departmental candidates was under challenge and pending adjudication before this Tribunal and the Hon"ble High Court of Delhi hence the 10% vacancies reserved for departmental candidates could not be notified from the years 2014 to 2017. As such the delay cannot be attributed to them. They have contended that it is not reasonable to consider the departmental candidates who participated in the Examination, 2017 against the backlog departmental vacancies of the year 2017, as the same were not notified in the Examination - 2017.

5. Heard Shri Ajesh Luthra, learned counsel for the applicants and Shri Amit Anand and Shri Shailendra Tiwari, learned counsel for the respondents at length.

6. During the course of arguments it was revealed that the process for the Examination-2017 has been completed on 31.10.2017. The main contention of the learned counsel for the applicants is that there was no difficulty or legal bar on the respondents against giving 10% departmental quota in the Examination-2017. Writ Petitions in the case of Subodh Kumar & Ors. (supra) and Kapil Dev and Others (supra) filed before the Hon"ble High Court of Delhi

were dismissed on 20.04.2017 whereas the notification for the Examination-2017 was issued on 22.04.2017 and the last date of submission of applications was May 15, 2017. Since the matter had already been decided by the Hon"ble High Court of Delhi, before the issuance of the notification, the respondents were not prohibited by any Court order and they were specifically required by the rules in existence to allot the 10% quota reserved for the departmental candidates. By this act of the respondents, the applicants have been put to irreparable loss because if the 10% vacancies were available they would have a better chance of clearing the Examination-2017. As regards their appearance in the Examination-2018, one, it cannot be a substitute for having the same facility in the Examination-2017, as they have a reduced number of opportunities having lost one year, and, secondly, even if they succeed in the Examination-2018, they would still be losing seniority.

7. The learned counsel for the respondents on the other hand submits that the order in the Writ Petition no.4216/2017 (supra) by the Hon"ble High Court of Delhi was passed on 22.05.2017 whereas the last date for submission of the application forms for the Examination-2017 was over on May 15, 2017. In compliance of the said order, they took further action for holding the Examination for filling up the departmental vacancies with the SSC in which SSC expressed its inability to do so in time. The alternatives were being discussed and the time lines being very compressed, it was decided to leave the departmental vacancies to be filled up through the Examination - 2018 conducted by the SSC. The learned counsel for the respondents also argued that the process for the Examination - 2017 has already been completed and this being so the vacancies for the departmental candidates i.e. 10% quota cannot now be added to the vacancies for Examination-2017. In this context, he has referred to a decision of the Hon"ble Supreme Court in the case of Secretary, A.P. Public Service Commission v. B. Swapna and Ors., [Appeal (Civil) No.1775 of 2005, decided on 16.03.2005] where the Hon"ble Supreme Court held as under:

"According to the applicant during the period of wait list the competent authority again notified 14 vacancies on 14.4.1997 and these vacancies ought to have been filled up by the candidates from the wait list. She claimed that she was entitled for appointment. The applicant moved the Tribunal by filing an Original Application.

The same was disposed of with the following direction:-

"In the circumstances after hearing both sides and on perusal of the material placed on record, the 1st respondent is directed to send the list of the candidates selected in Zone-IV to the Government, as indicated in the letter No.5088/Amn.1-3/98 dated 11.5.1998 a copy of which has been marked to the Secretary, A.P. Public Service Commission without any further delay to the 3rd respondent at any rank within one week from the date of receipt of this order. The 3rd respondent thereupon should examine the same and take a decision on the appointment of the applicant respectively. The Ist respondent should examine

the list to be sent relating to Zone IV of the candidates selected to the post of Assistant Public Relations Officer within a period of 3 weeks from the date of receipt of this order. The O.A. is disposed of accordingly with the above directions at the admission stage. No costs."

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"There are two principles in service laws which are indisputable. Firstly, there cannot be appointment beyond the advertised number and secondly norms of selection cannot be altered after the selection process has started. In the instant case 15 posts were to be filled up.

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The legal position so far as the case of existing vacancies, notified vacancies and future vacancies has been set out by this Court in several decisions. In *Prem Singh and Ors. v. Haryana State Electricity Board and Ors.* (1996 (4) SCC 319), in paragraphs 25 and 26 it was laid down as follows:

"25. From the above discussion of the case-law it becomes clear that the selection process by way of requisition and advertisement can be started for clear vacancies and also for anticipated vacancies but not for future vacancies. If the requisition and advertisement are for a certain number of posts only the State cannot make more appointments than the number of posts advertised, even though it might have prepared a select list of more candidates. The State can deviate from the advertisement and make appointments on posts falling vacant thereafter in exceptional circumstances only or in an emergent situation and that too by taking a policy decision in that behalf. Even when filling up of more posts than advertised is challenged the court may not, while exercising its extraordinary jurisdiction, invalidate the excess appointments and may mould the relief in such a manner as to strike a just balance between the interest of the State and the interest of persons seeking public employment. What relief should be granted in such cases would depend upon the facts and circumstances of each case."

8. The learned counsel further relied on the decision of Hon"ble Supreme Court in the case of *Mohd. Sohrab Khan v. Aligarh Muslim University & Ors.*, [Civil Appeal No.1130/2009, arising out of SLP (C) No.17481 of 2006, decided on 22.02.2009], wherein the Hon"ble Apex Court held as follows:

22. In *Secy., A.P. Public Service Commission v. B. Swapna*, [(2005) 4 SCC 154] at para 14 it was held by this Court that norms of selection cannot be altered after commencement of selection process and the rules regarding qualification for appointment, if amended, during continuation of the process of selection do not affect the same. Further at para 15 it was held that the power to relax the eligibility condition, if any, to the selection must be clearly spelt out and cannot be otherwise exercised. The said observations are extracted herein below:

"14. The High Court has committed an error in holding that the amended rule

was operative. As has been fairly conceded by learned counsel for Respondent 1 applicant it was the unamended rule which was applicable. Once a process of selection starts, the prescribed selection criteria cannot be changed. The logic behind the same is based on fair play. A person who did not apply because a certain criterion e.g. minimum percentage of marks can make a legitimate grievance, in case the same is lowered, that he could have applied because he possessed the said percentage. Rules regarding qualification for appointment if amended during continuance of the process of selection do not affect the same. That is because every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the rules showing the intention to affect existing rights the rule must be held to be prospective. If the rule is expressed in a language which is fairly capable of either interpretation it ought to be considered as prospective only. (See *P. Mahendran v. State of Karnataka* (1990) 1 SCC 411 and *Gopal Krushna Rath v. M.A.A. Baig* (1999) 1 SCC 544.)"

9. We have carefully gone through the pleadings on file and given careful consideration to the arguments advanced by the learned counsel for both the parties. The important fact in the present matter is that the process for the Examination-2017 has been initiated and taken to its conclusion. It is not pertinent for us to go into the sequence of events that happened prior to this and so we find it a futile exercise to make any observation and comment in that regard. Since the process of Examination-2017 has been conducted on a certain methodology, we cannot now make any alterations to the same without complicating the issue and creating the possibilities of other claims and counter-claims being put-forward. As of now, there is uniformity in the dispensation towards departmental candidates but if any intervention is made, the applicants in the present OA would stand on a different footing compared to several others and since the process of selection is already over, such an intervention would not be in the interest of justice.

10. The orders of the Hon"ble Supreme Court in *Secretary, A.P. Public Service Commission* (supra) and in *Mohd. Sohrab Khan* (supra) cited above have sufficiently established this point of law.

11. In the circumstances and for the reasons given above, the OA is dismissed. Consequently, MA No. 3487/2018 is also dismissed. No order as to costs.