

**(2013) 01 DEL CK 0128**  
**In the Delhi High Court**  
**Case No : Writ Petition (C) 8080 of 2012**

Rajeev Kumar

APPELLANT

Vs

Delhi Police and Others

RESPONDENT

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**Date of Decision :** 16-01-2013

**Acts Referred:**

**Citation :** (2013) 01 DEL CK 0128

**Hon'ble Judges :** Veena Birbal, J;Pradeep Nandrajog, J

**Bench :** Division Bench

**Advocate :** K. Venkatraman, for the Appellant; Richa Kaushal, Advocate, Mr. Dhanesh Relan, Advocate for R-1 and 2 and Ms. Inderjeet Sidhu, Advocate for R-3, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Pradeep Nandrajog, J.—It is settled law that an advertisement which fouts a statutory standing order cannot prevail over the statutory standing order. The subject of physical standards to be achieved for being recruited as Constable (Driver) in Delhi Police is governed by Standing Order No. 208/2010 as per which departmental candidates and ex-servicemen have to qualify 1600 metre race in 7 minutes if they are up to the age of 30 years; in 8 minutes if they are above the age of 30 years and up to 40 years; and in 9 minutes if they are above 40 years; all other have to qualify, irrespective of the age, in 7 minutes.

2. While issuing the advertisement inviting applications to apply for temporary posts of Constable (Driver) this distinction between departmental and ex-servicemen category and General category candidates was not kept in mind and it was indicated in the advertisement that for everybody different time to qualify 1600 metre i.e. 7 minutes up to the age of 30 years, 8 minutes above age of 30 and up to 40 years, and 9 minutes for all those above 40 years would apply.

3. The Physical Endurance Test had to commence on October 08, 2012. On said day the error was noted i.e. the advertisement being not in conformity with the

Standing Order and thus those candidates who had reached the venue for Physical Endurance Test were informed that all those who were neither departmental candidates nor ex-servicemen had to qualify the race in 7 minutes and probably for the reason persons above the age of 30 years had practiced on a timing of 8 minutes, it was indicated to them that since the Physical Endurance Test would continue till October 18, 2012 they could go home and practice and enhance their endurance and take the test on October 18, 2012.

4. The petitioner, who is neither a departmental candidate nor an ex-serviceman and aged 34 years took his chance and did not qualify.

5. We note that on October 09, 2012 and October 10, 2012 in 13 leading newspapers corrigendum were issued informing candidates who have yet to undergo endurance tests that the qualifying norm would be as per the Standing Order.

6. Challenge by the petitioner to his not being treated as qualified on the qualifying time of 8 minutes since petitioner is aged 34 years has failed before the Tribunal which has noted that being neither a departmental candidate nor an ex-serviceman, the petitioner had to qualify the endurance test in 7 minutes, which he did not.

7. Learned counsel for the petitioner states that it is settled law that once a recruitment process commences as per an advertisement the rule of the games cannot be changed midstream, a sweeping argument rejected by us for the reason the law is that once a selection processes commences as per a Rule, the rules of the game cannot be changed midstream. If an advertisement does not conform to a Rule; and a Standing Order would be a Rule, corrective action can be taken at any stage.

8. The petitioner has a second string to his bow. It is urged that the criteria of more time being made available to persons to run 1600 metre has to be made applicable across the board inasmuch as the rationale behind it is as one ages, the stamina decreases. Thus, it would be discriminatory to apply a different yardstick to departmental candidates and ex-servicemen vis-a-vis the others.

9. Now, the argument is very strong and logical but we give no relief to the petitioner for the reason he never raised this plea before the Tribunal, a fact conceded to by learned counsel for the petitioner.

10. As noted by us above, the recruitment process came to an end somewhere in November 2012. If we were to change the criteria by striking down the Standing Order in question we would have to direct that the selection process be re-conducted since there were many such persons. This would cause inconvenience to the department.

11. Thus, notwithstanding the plea being purely legal and permissible to be raised for the first time in a writ proceeding, we are not entertaining the plea for the reason the consequence of the petitioner not urging the same before the

Fora of first adjudication is the selection process being completed and if interdicted a prejudice being caused to the department. The writ petition is dismissed but without any order as to costs.