

(2012) 03 DEL CK 0630
In the Delhi High Court
Case No : Writ Petition (C) 1649 of 2012

Sanjeev Panwar

APPELLANT

Vs

Commissioner of Police and Others

RESPONDENT

Date of Decision : 23-03-2012

Acts Referred:

Citation : (2012) 03 DEL CK 0630

Hon'ble Judges : V.K. Jain, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : R.V. Sinha with Mr. R.N. Singh, for the Appellant;

Final Decision : Dismissed

Judgement

Badar Durrez Ahmed, J.—By way of this writ petition the order dated 04.07.2011 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in Original Application 3911/2010 is under challenge. The point raised by the petitioner is that he ought to be given seniority with effect from 2002 and not with effect from his actual date of appointment/joining, which is 11.06.2007. The facts of the case are that the petitioner, in pursuance of the advertisement published in newspapers on 29.03.2002 and in the Employment News on 13.04.2002 issued by the respondents, had applied for the post of Constable Executive (Male) in the Delhi Police under the OBC category. The petitioner had cleared all the prescribed tests and had been provisionally selected as Constable Executive (Male) in the Delhi Police under the OBC category and he had even been offered appointment on 09.01.2003. However, the petitioner was not permitted to join the service when he reported, as it was found that the petitioner did not belong to the OBC category at all. The petitioner claimed that he was a "Jaat" and that in Uttar Pradesh it was recognized as an OBC category. However, in Delhi that caste was not recognized as an OBC. Consequently, the petitioner had not been permitted to join.

2. Being aggrieved, the petitioner filed an Original Application, being OA No.

484/2003, before the Tribunal, wherein the petitioner raised essentially two contentions. The first contention was that he should be considered as an OBC because the caste "Jaat" in Uttar Pradesh is recognized as an OBC and secondly that certain Jaats of Delhi have also been taken in Delhi Police under the OBC category, as a result of which he ought not to be discriminated.

3. By an order dated 22.10.2003, the Tribunal rejected the contentions raised by the petitioner and dismissed the said OA 484/2003.

4. Thereafter, the petitioner filed a writ petition, being WP(C) 15779/2004, before this Court. In that writ petition certain directions were given on 03.10.2006. Ultimately, the writ petition was disposed of on 31.10.2006 by the following order:

Mr. Rohit Madan has produced in Court letter bearing No. XII-B(75)/06/15253-54/R.Cell(R-I)/4th Bn.DAP dated 30th October, 2006 informing that respondents have decided to treat the candidature of the petitioner Sanjeev Panwar as an outstanding sportsman by giving age relaxation subject to verification of sports certificates for the post of Constable (Exe.) Male in Delhi Police.

This is a case where the petitioner's OBC certificate being from U.P., was not accepted and the petitioner had secured 66% marks being an OBC candidate while the cut off for general category was 57%. In view of the directions given in our order dated 3.10.2006, we are happy to note that the respondents have responded in a constructive manner to the directions given. Let the petitioner produce his certificates with regard to his participating in national level competitions of Kayaking and Canoeing within a week from today for processing his case or appointment.

Writ petition stands disposed of.

5. Thereafter, the petitioner was given an appointment under the general category and the relevant letter dated 01.12.2006 is as under:

MOST IMMEDIATE/OUT AT ONCE

OFFICE OF THE COMMISSIONER OF POLICE: DELHI

Sub: CWP No. 15779/04 -Sanjeev Panwar Vs UOI & Ors.-reg.

Reference your office memo. No. 15448/R.cell/4th Bn. DAP dated 06.11.06 and 17883/R.Cell/4th Bn. DAP dated 17.11.06 on the subject cited above.

In compliance to orders dated 31.10.2006 passed by the Hon'ble High Court of Delhi in CWP No. 15779/2004 Sanjeev Panwar Vs. UOI & Ors., it has been decided to consider the candidature of Sanjeev Panwar for the post of Constable (Exe.) in Delhi Police by allowing him age relaxation as a general candidate of outstanding sports performance subject to verification of sports certificates and other usual formalities i.e. verification of character and antecedents and medical examination etc. The sports certificates received vide your office memo. under

reference are returned herewith, which may kindly be acknowledged.

This may be treated as MOST URGENT.

Sd/-

(H.M. MEENA)

DY. COMMISSIONER OF POLICE:

ESTABLISHMENT:DELHI

DCP/4th Bn. DAP

Encls: As above.

No. XII/28(48)/04/34810/SIP (PHQ)

Dated 1.12.06

6. After the petitioner joined as a Constable Executive (Male), pursuant to the said letter of appointment, the petitioner filed OA No. 3911/2010, in which, he, inter alia, sought a direction that the petitioner be granted seniority in the order of merit of selection of the year 2002 and also sought directions for issuance of appropriate consequential orders of seniority, pay fixation etc., by treating him as a recruit of the year 2002.

7. The only question that arose before the Tribunal in this round of litigation was whether the petitioner should be granted seniority with effect from 2002 or with effect from 2007, that is, from the date of his joining on 11.06.2007. It was contended on behalf of the petitioner before the Tribunal as well as before us that since the petitioner was ultimately appointed against the vacancies which were advertised in 2002, he ought to be given seniority with effect from 2002 and not from 2007.

8. We do not agree with this contention raised on behalf of the petitioner. The Tribunal was right in rejecting the petitioner's OA No. 3911/2010, by virtue of the impugned order dated 04.07.2011, by holding that the petitioner had not been appointed on the basis of a selection process pursuant to the advertisement issued in 2002, but that the petitioner had been granted a concession by the High Court by virtue of the order dated 31.10.2006. The most crucial aspect of the matter is that had the High Court not passed the order dated 31.10.2006, the petitioner was not otherwise eligible for the appointment in terms of the post advertised in 2002 and particularly in respect of the OBC category, in which alone he had applied. Thus, had it not been for the High Court order, the petitioner would not have been in employment at all. Now, if we examine the order passed by the High Court on 31.10.2006, we find that the High Court has granted a concession to the petitioner by not only directing that his candidature be treated as against the general category and as an outstanding sportsman, but by also giving him the benefit of age relaxation. It is only pursuant to these directions that the petitioner was able to get the appointment as a Constable Executive

(Male) with the Delhi Police. Therefore, the petitioner's appointment cannot be construed as an appointment pursuant to the selection process which was initiated by the advertisement of 2002. On the contrary, the petitioner's appointment was pursuant to the specific directions given by the High Court by virtue of its order dated 31.10.2006. Since he was offered appointment pursuant thereto and he joined only on 11.06.2007, his seniority has to be considered from that date and not from 2002. Consequently, the Tribunal's decision in this regard cannot be faulted. The writ petition is dismissed. There shall be no order as to costs.