
(1988) 01 CAL CK 0015
In the Calcutta High Court
Case No : F.M.A.T. 1849 of 1986

Tapan Kumar Mitra and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 18-01-1988

Acts Referred:

Citation : 92 CWN 897

Hon'ble Judges : Khwaja Mohommad Yusuf, J; Ganendra Narayan Ray, J

Bench : Division Bench

Advocate : Ramapati Roy, for the Appellant; A.N. Banerjee and Mr. Sekhar Mustafi, for the Respondent

Final Decision : Allowed

Judgement

G.N. Ray, J.—This appeal is directed against an order passed on 1st April, 1986 by the learned Trial Judge dismissing the writ petition made by the appellants.

2. It appears that pursuant to a circular issued on or about 10th May, 1985 by the Assistant Inspector General of Police (S.R.), Government of West Bengal for filling up vacancies of 15 posts of constables by the members of the National Volunteer Force, the appellants made applications for being recruited to the post of Constables. The appellants appeared in the interview on 29th May, 1985 and they were successful in such interview and they were directed to appear for medical examination at the unit headquarters at Mangal Pandey Udyan on 5.8.85. It is the case of the appellants that they also appeared for the medical examination and they ascertained from the respondent No. 5 that they were also found medically fit.

3. It is the further case of the appellants that in the aforesaid circumstances that they reasonably expected to get the appointment to the post of constables, but unfortunately such appointment was not given to them and later on they ascertained by enquiry that since the upper age limit for recruitment of the police constables was changed to 25 years and the relaxation which was made available

to the members of the National Volunteer Force was withdrawn, such appointment had not been given to them.

4. It is the case of the appellants that on 8th April, 1985 the Assistant Inspector General of Police issued a memo to the effect that 15% quota meant for absorbing the members of the West Bengal National Volunteer Force would be filled up from among the members of such Force whose age limit should not exceed 35 years.

5. Accordingly, at the time of appearing at the recruitment test and also at the time of medical examination the appellants were eligible to be appointed to the post of constables. The learned Counsel for the State has produced a Memo, dated 17th September, 1985 issued by the Finance Department, Government of West Bengal, Audit Branch, inter alia, to the effect that there has been an amendment in the West Bengal Services (Raising Age Limit) Rules, 1981 and by such amendment it was directed that nothing in the said rules would apply to the recruitment of the police personnel age limit for whom has been prescribed by the Police Regulation, Bengal and Police Regulation, Calcutta. As under the Police Regulation, Bengal and Calcutta, the upper age limit for recruitment of the police constable is 25 years and the same is relaxable ordinarily upto 35 years for the ex-soldiers, the appellants were not eligible to be recruited to the post of constables.

6. We are afraid, such contention on behalf of the State Government cannot be accepted for the simple reason that at the relevant time there was no such amendment of the West Bengal Services (Raising of Age Limit) Rules, 1981 and at the relevant time the members of the National Volunteer Force whose upper age limit did not exceed 35 years, were entitled to be recruited. If such appointment had been made without unreasonable delay, the question of applying the said amendment effected on 17th September, 1985 could not and did not arise.

7. That apart, it also appears to us that the upper age limit for recruitment of the police constables, both in Calcutta and in the West Bengal Police, has been fixed at 25 years and although it has been provided that for ex-Indian Soldiers, the same could be relaxed upto 35 years, there is no express bar for the State Government in relaxing such upper age limits in the case of the members of the National Volunteer Force and if on principle, the State Government decided that the 15% of the vacancies should be filled up from among the members of the National Volunteer Force whose upper age limit had not exceeded 35 years, we do not think that the Police Regulation, Bengal and/or Police Regulation, Calcutta will stand in the way of making such appointment.

8. Be that as it may, we have indicated that in the instant case even such amendment had not been effected when they were found eligible. In the aforesaid circumstances, the appeal is allowed and the respondents are directed to give appointment to the appellants to the post of police constables in the West

Bengal Police Force if they are found otherwise fit on police verification. Since they were found eligible and should have been appointed sometime in August, 1985, it is directed that in the event of their final absorption on satisfactory police verification, they will be given seniority with effect from September, 1985.

9. The appeal is, thus, allowed treating the same as on day's list. No further order need be passed in the application for interim order which is also disposed of.

10. There will be no order as to costs.

K.M. Yusuf, J.

11. I agree.