

(2008) 01 DEL CK 0069

In the Delhi High Court

Case No : Writ Petition (C) No. 394 of 2008 and CM No. 777 of 2008

The Commissioner of Police and Others

APPELLANT

Vs

H.C. Durgesh Kumar

RESPONDENT

Date of Decision : 16-01-2008

Acts Referred:

Citation : (2008) 147 DLT 42 : (2008) 2 ILR Delhi 459 : (2008) 3 SLJ 78

Hon'ble Judges : Veena Birbal, J; Manmohan Sarin, J

Bench : Division Bench

Advocate : Anjum Javed, for the Appellant; Anil Singal, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Sarin, J.—Learned counsel for petitioners Union of India and Commissioner of Police assails the order dated 12.9.2007 passed in O.A. 88/2007 by the Central Administrative Tribunal, Principal Bench, Delhi. For a proper appreciation of the matter in controversy the facts in brief may be noted:

2. Durgesh Kumar, respondent was appointed as Constable in Delhi Police on 3rd October, 1980. He got promoted to the post of Head Constable on 19th June, 1990. It is the admitted case of parties that the respondent had been appointed as a Constable on 3rd October, 1980 being an OBC candidate. In fact, the respondent had submitted an OBC certificate issued by the Additional Magistrate Ghaziabad, at the time of his appointment. Respondent continued to serve as a Constable. A promotional exam to the post of Head Constable was held in the year 1987. The respondent had duly appeared in the same and after successfully passing the examination and the training, his name was brought in the list "B" vide order dated 10.6.1990 and was promoted to the rank of Head Constable with effect from the same date. The precise contention of the petitioners before the Court is that, in fact, the respondent had been treated as a SC/ST candidate and on that basis he got preferential treatment and got selected. His promotion to the rank of Head Constable was a result of the same. It is the petitioners'

case that as an OBC candidate the respondent was liable to be considered as a General candidate without any preferential treatment and in which case he would not have been promoted to the post of the Head Constable in the year 1990.

3. Unfortunately, in October, 2001, on scrutiny of the service particulars of the Head Constables (Executive) for admission of his name along with others to promotion list "D-1" (Executive), it was discovered that the caste category shown for the respondent as SC in the seniority list was erroneous and, in fact, he belonged to "Gadaria" caste which would fall in OBC. After obtaining requisite clarification, the petitioners reached the conclusion that the respondent being an OBC was to be treated as a General category candidate and could not have been promoted as a Head Constable in the year 1987. This happened at a juncture when the respondent had already served for over ten years as a Constable. Thereafter, show cause notice dated 22.2.2006 was issued upon respondent calling upon him to explain as to why his promotion as Head Constable be not cancelled and he be reverted to Constable. There is no Explanation in the petition before this Court as well as before Tribunal as to why there was delay of five years in issuance of show cause notice.

4. We have perused the judgment of the Tribunal. The Tribunal has carefully noted the factual position and the respective contentions. It has reached the conclusion that there was no fault with the respondent as he did not make any false representation with regard to his caste and has bona fide declared himself as "Gadaria". The mistake occurred at the end of the petitioners who treated him as an ST candidate and gave him preferential treatment for promotion to the post of Head Constable. It is contended by learned counsel for petitioner that the list which was taken out of the successful candidates to the post of Head Constable showed the respondent as a ST candidate but he failed to point out the truth. It is contended that respondent deliberately derived the said benefit which he was otherwise not entitled and intentionally did not inform the department. The short answer to the same given by learned counsel for respondent Mr. Anil Singhal is that the respondent being Constable had not noticed this aspect and was unaware of the same as the list was never circulated. Hence there was no question of the respondent having concealed any information deliberately or not having informed the petitioner as is alleged. Nothing contrary is pointed out by counsel for petitioner.

5. The Tribunal has also noted and duly considered the fact that in this particular case, it was not feasible to give effect to F.R. 31-A and the instructions therein as it was not possible to restore the respondent to the original position. In practical terms it means that on discovery of the mistake if the respondent was to be relegated back to the position of a Constable in which he was in the year 1987, apart from causing grave prejudice and injustice to him there was no way to compensate the respondent for the lost opportunities over the three examinations which were held subsequently after his promotion. The Tribunal then took recourse to a precedent which the Petitioners themselves had followed

in the case of Asha Ram. A reference may usefully be made to para 14 of the judgment of the Tribunal which is reproduced for facility of reference:

Having given our thoughtful consideration to the issue, we find the solution to the problem would lie in giving same treatment to the applicant as was thought proper even by the department in an absolutely identical case. That being so, while setting aside the impugned orders, we would order that the applicant be treated to have passed the examination required for promotion to the post Head Constable held immediately after the examination in which the applicant had appeared and passed the examination in the said year, and his seniority be accordingly fixed. The applicant shall also be entitled to consequential reliefs that may accrue to him on account of fixation of his seniority in the manner referred to above. In view of the peculiar facts of this case, costs are made easy.

6. Having noticed the factual matrix and the legal position and the factors which impelled the Tribunal to adopt the course by following the precedent of the petitioners themselves, we are of the view that the decision of the Tribunal has worked to subserve the ends of justice and cannot be faulted with. In any case, it is not a fit case to call for interference of this Court under Article 226 of the Constitution. Writ petition is dismissed.