

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: May 20, 2013*
Judgment Delivered on: May 22, 2013

+ **W.P.(C) 2788/2012**

KARAMVIR Petitioner

Represented by: Mr.Anil Singal, Advocate

versus

GOVT. OF NCT OF DELHI AND ANR Respondents

Represented by: Mr.Anjum Javed, Advocate with
Mr.N.A.Khan, Advocate

W.P.(C) 5033/2012

SATISH KUMAR Petitioner

Represented by: Mr.Anil Singal, Advocate

versus

GNCT OF DELHI AND ANR Respondents

Represented by: Mr.Satvik Varma, Advocate

W.P.(C) 5084/2012

ANJANI KUMAR SINGH Petitioner

Represented by: Mr.Anil Singal, Advocate

versus

GNCT OF DELHI AND ANR Respondents

Represented by: Mr.Satvik Varma, Advocate

W.P.(C) 5220/2012

RAJENDER SINGH Petitioner

Represented by: Mr.Anil Singal, Advocate

versus

GOVT. OF NCT OF DELHI & ANR Respondents
Represented by: Mr.Sachin Chopra, Advocate with
Mr.Anuj Tyagi, Advocate for R-1 &
R-2

W.P.(C) 5226/2012

RAJBIR YADAV Petitioner
Represented by: Mr.Anil Singal, Advocate

versus

GOVT OF NCT OF DELHI & ANR Respondents
Represented by: Mr.Sachin Chopra, Advocate with
Mr.Anuj Tyagi, Advocate for R-1 &
R-2

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE V. KAMESWAR RAO

PRADEEP NANDRAJOG, J.

1. To fill up 400 vacant posts of Sub-Inspector (Executive) – Male, in Delhi Police, applications were invited by February 18, 2009, indicating that the break-up of the 400 posts proposed to be filled up are as under:-

	<i>UR</i>	<i>OBC</i>	<i>SC</i>	<i>ST</i>	<i>Total</i>
<i>Open</i>	<i>172</i>	<i>68</i>	<i>55</i>	<i>25</i>	<i>320</i>
<i>Departmental</i>	<i>21</i>	<i>09</i>	<i>07</i>	<i>03</i>	<i>40</i>
<i>Ex-servicemen</i>	<i>21</i>	<i>09</i>	<i>07</i>	<i>03</i>	<i>40</i>

2. The eligibility conditions notified were as under:-

“ELIGIBILITY CONDITIONS

a. NATIONALITY:

Applicant should be a bona fide citizen of INDIA.

b. EDUCATIONAL QUALIFICATION:

The minimum educational qualification required is a Bachelor's degree from a recognized university.

c. AGE:

20 to 25 years as on 01.01.2009, i.e. those born not earlier than 02.01.1984 and not later than 01.01.1989 will be eligible. The upper age limit as prescribed above will be relaxable only in the following cases:-

i. Upto a maximum of 05 years, if a candidate belongs to a Scheduled Caste or a Scheduled Tribe category

ii. Upto a maximum of 3 years, if a candidate belongs to an OBC category. This relaxation is admissible for those castes notified in the Central List and the List issued by the Govt. of NCT of Delhi. No other certificate will be accepted as sufficient proof.

iii. Age concession to Ex-Servicemen will be allowed in accordance with the orders issued by the government from time to time. They will be permitted to deduct the period served in the armed forces from their actual age and the resultant age, so derived, should not exceed the prescribed age limit by more than three years. It is further clarified that an 'Ex-Servicemen' means a person, who has served in any rank whether as a combatant or non-combatant in Army, Navy or Air Force of the Indian Union and who retired from such service after earning his pension.

iv. Relaxation in the upper age limit is admissible upto 40 years (43 years for OBC, 45 years for SCs/STs) for departmental candidates of Delhi Police.

A 'departmental candidate' means a Constable, Head Constable or a Asstt. Sub-Inspector enlisted in Delhi Police

with a minimum of 5 years service and who otherwise fulfils all other qualifications.”

3. Another advertisement was issued inviting applications by December 26, 2009 to fill up 380 vacant posts of Sub-Inspector (Executive) – Male and 82 vacant posts of Sub-Inspector (Executive) – Women in Delhi Police; indicating the break-up as under:-

<i>SUB-INSPECTOR (EXE.)-MALE</i>					
	<i>General</i>	<i>OBC</i>	<i>SC</i>	<i>ST</i>	<i>Total</i>
<i>Open</i>	<i>155</i>	<i>61</i>	<i>56</i>	<i>32</i>	<i>304</i>
<i>Departmental</i>	<i>19</i>	<i>08</i>	<i>07</i>	<i>04</i>	<i>38</i>
<i>Ex-servicemen</i>	<i>19</i>	<i>08</i>	<i>07</i>	<i>04</i>	<i>38</i>
<i>WOMAN SUB-INSPECTOR (EXE.)</i>					
	<i>Genl.</i>	<i>OBC</i>	<i>SC</i>	<i>ST</i>	<i>Total</i>
	<i>43</i>	<i>22</i>	<i>13</i>	<i>04</i>	<i>82</i>

4. Since the above captioned writ petitions concern only male candidates, we note the eligibility conditions notified pertaining to the males. The same are as under:-

“ELIGIBILITY CONDITIONS

a. NATIONALITY:

Applicant should be a bona fide citizen of INDIA.

b. EDUCATIONAL QUALIFICATION:

Should have a Bachelor’s degree from a recognized university at the time of filling up of application form.

c.(I) AGE (MALE CANDIDATE):

20 to 25 years as on 01.07.2009, i.e. those born not earlier than 02.07.1984 and not later than 01.07.1989 will be eligible. The

upper age limit as prescribed above will be relaxable only in the following cases:-

- i. Upto a maximum of 05 years, if a candidate belongs to a Scheduled Caste or a Scheduled Tribe category*
- ii. Upto a maximum of 3 years, if a candidate belongs to an OBC category. This relaxation is admissible for those castes notified in the Central List and the List issued by the Govt. of NCT of Delhi. No other certificate will be accepted as sufficient proof.*
- iii. Age concession to Ex-Servicemen will be allowed in accordance with the orders issued by the government from time to time. They will be permitted to deduct the period served in the armed forces from their actual age and the resultant age, so derived, should not exceed the prescribed age limit by more than three years. It is further clarified that an ‘**Ex-Servicemen**’ means a person, who has served in any rank whether as a combatant or non-combatant in Army, Navy or Air Force of the Indian Union and who retired from such service after earning his pension.*
- iv. Relaxation in the upper age limit is admissible upto 40 years (43 years for OBC, 45 years for SCs/STs) for departmental candidates of Delhi Police.*

*A ‘**departmental candidate**’ means a Constable, Head Constable or a Asstt. Sub-Inspector enlisted in Delhi Police with a minimum of 5 years service and who otherwise fulfils all other qualifications.”*

5. In the application forms columns were provided, requiring the eligible applicants to ‘tick’ the applicable column; for example, to ‘tick’ if the candidate was an OBC against the column ‘OBC’. Since the posts advertised were indicated separately for departmental candidates as also those who were competing under the category ‘Open’, the application form had a column where the relevant category had to be ticked.

6. The five captioned writ petitioners who are working in the Delhi Police in posts lower to the post of Sub-Inspector and are all males were desirous to participate in the selection process. They filled up the application forms and indicated therein that they would be competing as departmental candidates. Two of them, Karamvir and Rajbir further indicated that as a departmental candidate the former would be competing as an SC candidate and the latter indicated that he is an OBC. The other three indicated that as departmental candidates they would be competing in the unreserved category.

7. Subjecting all candidates i.e. those who competed in the open category and departmental category, the five writ petitioners found that their merit position was lower in the merit panel of the departmental candidates and thus they could not earn an appointment to the post of Sub-Inspector, but with reference to the merit position in the open category, they found that marks obtained by them were more than the last selected candidate in the open category. They started raising an issue.

8. The issue raised was that all of them were entitled to even participate in the open category and raised the grievance that they could not be compelled to opt to compete either in the open category or in the departmental category. They claimed that both channels were open to them and since merit of participants who swam in both channels was tested with respect to the same examination, they staked a claim to be promoted in the open category.

9. The response of the department was that having opted to compete in the departmental quota category, the five could not stake a claim to be promoted in the open category, and vide decisions impugned in the writ petitions, the verdict of the Central Administrative Tribunal is in favour

of Delhi Police and against the petitioners. The reason given by the Tribunal is that having opted to compete in the departmental category quota, the petitioners cannot claim any right to be promoted in the open category. As per the respondents, the upper age limit was 25 years, relaxable for 5 years for candidates belonging to the SC/ST category and 3 years for OBC candidates, as per condition c(i)(ii) of the two advertisements, and since the petitioners were above said age, they availed the benefit of upper age relaxation limit admissible to departmental candidates of Delhi Police and thus it was urged that the petitioners could not compete in the open category.

10. During hearing of the writ petitions, when attention of the learned counsel for the parties was drawn to the Delhi Police (Appointment & Recruitment) Rules, 1980, learned counsel for the respondents, short of expressly conceding that the entire selection process was under a misapprehension and in any case a wrong understanding of the law, simply urged that since the persons appointed in the open category having marks less than the writ petitioners were not impleaded either before the Tribunal or before this Court, and thus the writ petitions should be dismissed for non-impleadment of necessary parties.

11. Since the pleadings of the parties are at variance with the legal position, we would be constrained to decide the writ petitions applying the correct law to the admitted facts.

12. Appointment and recruitment in Delhi Police is governed by the '*Delhi Police (Appointment & Recruitment) Rules, 1980*'. Rule 7 thereof provides for recruitment to the post of Sub-Inspector (Executive). It reads as under:-

“7. Rule of Sub-inspectors (Executive) –
Fifty percent of vacancies in the rank of Sub-Inspector (Executive) shall be filled by direct recruitment and 50% by

promotion out of 50% direct quota, 10% of the post shall be filled by limited department competitive test from amongst constables, Head constables, and Asstt. Sub-Inspectors with minimum 5 years of service who shall not be more than 35 years (40 years for Scheduled Castes/Scheduled Tribes candidates) of age on the first day of January of the year if the examination is held in the first half of the year and on the first day of July of the year if the examination is held in the later half of the year. The educational qualifications and other physical standards for the test shall be the same as prescribed in the Rules for direct recruitment to such posts. The unfilled vacancies reserved for the departmental candidates will be carried forward for 3 recruitment years as in the case of vacancies for the scheduled tribe candidate whereafter the unfilled vacancies will be filled by direct recruitment.”

13. A perusal of the Rule would evidence that 50% vacancies to the post of Sub-Inspector have to be filled by direct recruitment out of which 10% have to be filled by Limited Departmental Competitive Examination from amongst Constables, Head Constables and Assistant Sub-Inspectors with minimum 5 years service who shall not be more than 35 years (40) for SC/ST of age.

14. Further, Rule 27-A of the ‘Delhi Police (Appointment & Recruitment) Rules, 1980’ reads as under:-

“27-A Relaxation of upper age limit for departmental candidate. Relaxation of upper age limit of all departmental candidates for direct recruitment against Group ‘C’ and ‘D’ posts of Police Department shall be as follows:-

35 years in the case of general candidate and 40 years in the case of candidates belonging to Scheduled Caste/Scheduled Tribes Candidates.”

15. From a perusal of Rule 27-A would reveal that for direct recruitment against Group ‘C’ and Group ‘D’ posts departmental candidates are entitled to an age relaxation.

16. Delhi Police is totally oblivious to the fact that as per Rule 27-A, Delhi Police personnel who compete for direct recruitment posts are entitled to age relaxation and thus for the post in question, which is a Group 'C' post, whenever appointment is to be made by direct recruitment all personnel of Delhi Police who are otherwise eligible can compete taking benefit of age relaxation as contemplated by Rule 27-A. Delhi Police is under a mistaken notion that only for the Limited Departmental Competitive Test benefit of age relaxation, provided by Rule 7 is available.

17. We highlight that age limit prescribed in Rule 7 pertains to when appointment is being made through the Limited Departmental Competitive Test and Rule 27-A pertains to when Delhi Police personnel compete when direct recruitment is effective in Group 'C' and Group 'D' post.

18. In other words, be it when appointment is to be made by direct recruitment or through a Limited Departmental Competitive Test, Delhi Police personnel would be entitled to age relaxation contemplated by Rule 7 (for LDCE) and Rule 27-A (for direct recruitment). Further, these candidates would have a right to compete at both levels and Delhi Police cannot conduct a unified selection process restricting option to only one.

19. There is no concept under the Rules of open category and departmental category. Delhi Police has given a layman's colour to the legal colour of the method of recruitment. Direct recruitment has been given the layman's colour 'open recruitment' and appointment by promotion through a Limited Departmental Competitive Examination has been given the layman's colour 'departmental' category. We re-emphasize. Rule 7 prescribes 3 methods of appointment to the post of Sub-Inspector: (i) by promotion; (ii) by direct recruitment; and (iii) appointment through Limited

Departmental Competitive Examination. When appointment is by promotion, it is apparent that the same shall be from amongst the eligible Assistant Sub-Inspectors who form the feeder cadre. When appointment is by direct recruitment, all eligible candidates can appear which would include those who are serving in Delhi Police. When appointment is by Limited Departmental Competitive Examination, only Constables, Head Constables and Assistant Sub-Inspectors working in Delhi Police would be eligible. On the subject of age limit, when appointment is by direct recruitment, eligible candidates who are not working in Delhi Police have to be within the age as per Rule 7, which is up to the age of 25 years relaxable for 5 years for SC/ST candidates and 3 years for OBC candidates. But for those who are already working in Delhi Police, the benefit of Rule 27-A would be available, meaning thereby General category candidates would be 35 years and for SC/ST and OBC candidates the same would be 40 years.

20. It may be possible for Delhi Police to have a common test while making appointment by direct recruitment and through the Limited Departmental Competitive Examination, but this one factual examination has to be conceptually two i.e. one relating to direct recruitment and the other relating to appointment through Limited Departmental Competitive Examination; of necessity, if Delhi Police were to hold a common test, those who would be entitled to compete in both categories would have to be given a right to compete in both categories. Their option cannot be curtailed.

21. For the petitioners, it would be a case of operation successful, patient dead. The reason is that when they were given the application forms which compelled them to mark an option whether they would compete for the direct recruitment posts or for the posts available to be filled through the Limited Departmental Competitive Examination (loosely called

Departmental Posts), they ought to have approached the Court seeking a direction against Delhi Police not to compel them to opt to compete in only one category. For if a person has a right to compete in two categories as conferred by law, no executive decision can curtail the same. Had they done so, a remedial direction would have been issued. But what has happened is that an examination conducted in the year 2009 and another examination conducted in year 2010 has resulted in candidates being appointed in the direct recruitment appointment category; exhausting all notified vacancies, none of whom has been impleaded before the Tribunal or in the instant writ petitions. These candidates have joined, the first batch in the year 2009 and the second batch in the year 2010. No directions can be issued in their absence which would adversely affect them. The writ petitioners ought to have been vigilant when they were confronted with a situation to make an option thereby curtailing their right.

22. While dismissing the writ petitions we would only observe that for the future, Delhi Police should be careful while making appointments and lest there be any confusion it would be advisable to make appointments by selection in the direct recruitment quota by a separate examination and selection by Limited Departmental Competitive Examination through a separate examination. Further, Delhi Police should not confuse age relaxation stipulated under Rule 7, which pertains to Limited Departmental Competitive Examination with age relaxation stipulated in Rule 27-A pertaining to appointment by direct recruitment.

23. We would also be failing not to note a vague attempt made by learned counsel for the respondents to urge that lower/different physical endurance standards were prescribed for departmental candidates and that the petitioners competed with reference to said lower/different physical

endurance standards. But the argument holds no water because we find that the lower/different endurance standards were not prescribed for departmental candidates. They were provided for candidates in the higher age bracket. The misconceived argument was the extension of the misconceived idea that those who were given benefit of age relaxation could not compete in the so-called open category, which in fact is the category of appointment by direct recruitment.

24. The writ petitions are dismissed but without any orders as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(V.KAMESWAR RAO)
JUDGE

MAY 22, 2013
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