

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

% *Judgment Reserved On: May 22, 2013*
Judgment Delivered On: May 30, 2013

+ **W.P.(C) 5464/2012**

SATYA DEV LAL Petitioner

Represented by: Mr.Anil Singal, Advocate

versus

L.G. DELHI & ANR. Respondents

Represented by: Mr.Sumit Chander, Advocate for R-1
& R-2

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE V. KAMESWAR RAO

PRADEEP NANDRAJOG, J.

1. Rule 28 of the Delhi Police (Appointment & Recruitment) Rules, 1980, till it was amended when notification dated April 22, 2008 was issued, reads as under:-

“28. Enlistment of ex-soldiers, ex-policemen and reservists.-

(1) Re-enlistment shall be permissible only in the rank of constable and past service will count for pension as per provisions of rules 18 and 19 of the CCS (Pension) Rules, 1972:-

(a) Ex-servicemen and ex-members of all Police forces of States of Union Territory, who were paid from the Central/State revenues may be re-enlisted as constables at the discretion of the appointing authority if their discharge certificate shows previous service as Good or of higher classification, provided that (a) they present themselves within two years of their previous discharge, (b) they conform to the physical and educational standards laid down for recruits from open market,

(c) they are medically fit for police service according to the standards prescribed for recruits and (d) their age on the date of re-enlistment is below 30 years. The age limit prescribed in the para may, in special cases, be relaxed upto 40 years by the Commissioner of Police.

(b) Cavalry and infantry reservists of the Indian Army, below the age of 30 years, may be enrolled, provided that their military service record shows good conduct, and they are exempted from annual military training by the Defence authorities.

(c) Reservists of other branches of the Indian Army may also be enlisted in the Police; provided that the conditions of their reserve service and periodical training do not interfere with their police duties.

(d) The total number of all classes of reservists shall not exceed five percent of the sanctioned strength of constables. They shall be released from employment as soon as mobilization is ordered so as to enable them to rejoin the colours.

(2) The service rendered by ex-servicemen in the Army who are re-enlisted in the Police Department, shall count towards civil pension, if the conditions laid down in Rule 19 of CCS (Pension) Rules, 1972 are fulfilled.”

2. Clause (a) of Sub-Rule 1 was substituted, vide notification dated April 22, 2008, as under:-

“Ex-servicemen who are paid from Central revenues may be re-enlisted as constable at the discretion of the appointing authority if their discharge certificate shows previous service as good or of higher classification:

Provided that-

- (i) They present themselves within two years of previous discharge;*
- (ii) They conform to the educational standards laid down for recruits from open market and such endurance/efficiency*

- as prescribed by the Commissioner of Police from time to time by issuing necessary standing orders;*
- (iii) They are medically fit for police service according to standards prescribed for recruits, and*
 - (iv) Age concession shall be allowed to them in accordance with the orders/instructions on the subject issued by the Central Government from time to time.”*

3. Issue which arises for consideration is whether petitioner has a right to be considered for enlistment as a constable under Rule 28 as it existed prior to the amendment notification dated April 22, 2008.

4. Petitioner, Ms.Satya Dev Lal joined Delhi Police as an Assistant Sub-Inspector (Woman) in the year 1994. Unfortunately for her, she married a Constable in Delhi Police in the year 1995. Being two ranks junior to his wife, petitioner's husband, had ego issues. By mutual consent the couple obtained a divorce in the year 1998. Petitioner re-married the next year, but unfortunately her husband and in-laws had a problem of her working and compelled her to submit a resignation in the year 2002 which was not accepted as she was counselled by her senior officers not to resign and at least serve to earn a pension. Family circumstances in the house of the in-laws compelled her to submit a resignation for a second time in the year 2004 which again was rejected and seniors counselling her to serve at least to earn a pension. Situation in the house reached a nadir compelling petitioner to submit a resignation for the third time on November 07, 2005 which was accepted by the Competent Authority and acceptance was communicated to the petitioner on January 06, 2006.

5. On May 09, 2006 the petitioner submitted a representation to withdraw the resignation which was rejected as per order dated July 14, 2006. The petitioner left the issue at that.

6. On May 03, 2007 she submitted a representation praying that she be enlisted as a Constable in Delhi Police because Rule 28(1)(a) permits enlistment in the rank of constables those who are ex-servicemen and ex-members of Police Forces. They are also entitled to age relaxation up to age of 40 years. The request was neither accepted nor rejected compelling petitioner to file OA No.126/2009 which was dismissed by the Tribunal on January 19, 2009 observing that the petitioner had not made out a good case to be granted the relief prayed for but observed that she would be entitled to make a fresh representation if she could make out a better case. Thereafter on September 15, 2009 petitioner submitted a representation to the Lt.Governor requesting that he should exercise his discretionary and compassionate power to re-appoint her, but did not receive a response compelling her to file a second Original Application before the Tribunal registered as OA No.1137/2010 which was disposed of by the Tribunal vide order dated April 09, 2010 directing the competent authority to decide the representation of the petitioner. Thereafter, the Commissioner of Police rejected petitioner's request as per order dated May 03, 2010. Petitioner approached the Lt.Governor who rejected the request as per order dated September 18, 2010 which reads as under:-

"I have observed that she was appointed as W/ASI in Delhi police in 1994. She offered her resignation from service in the year 2002 and 2004 and both the resignations were rejected by the Commissioner of Police. She offered her resignation third time in 2005 which was accepted in 2006. Now she seeks withdrawal of her resignation and re-appointment in service. Her request was rejected by the Commissioner of Police on 03.05.2010, thereafter, she approached to Central Administrative Tribunal vide OA No. 1137 wherein the tribunal has directed that the respondent player be considered by the Lt. Governor and the Commissioner of Police.

I have noted that there is no provision in the rules to reappoint a person whose resignation has been accepted and under the circumstances the appeal filed by Mrs. Satya Dev Lal for re-appointment in service is hereby rejected”

7. Aggrieved, petitioner approached the Tribunal for a 3rd time when she filed OA No.762/2011 urging that Rule 30 of the Delhi Police (Appointment & Recruitment) Rules, 1980 vests a power in the Lt.Governor to relax the Rules. The Original Application was dismissed by the Tribunal vide order dated February 25, 2011 relying upon the decision of the Supreme Court reported as (1987) 1 SCC 631 Yogender Pal Singh & Ors. Vs. Union of India. The Tribunal held that in the absence of a Rule permitting re-employment, the question of relaxing any Rule to open the gate for petitioner's appointment did not arise.

8. In the instant writ petition, only contention urged is that Rule 28 of the Delhi Police (Appointment & Recruitment) Rules, 1980 empowers the competent authority to enlist ex-police officers as Constables.

9. In spite of our sympathy for the petitioner, we are afraid, no relief can be granted to her for the reason Rule 28 as it existed till it was amended on April 22, 2008 merely conferred a power on the Commissioner of Police to enlist ex-soldiers, ex-policemen and reservists as Constables in Delhi Police but subject to 5% of the sanctioned strength of constables. The Rule does not mandate that 5% posts of constables in Delhi Police shall be filled up from amongst ex-soldiers, ex-policemen and reservists.

10. It is true that everybody who meets the eligibility norms has a right to be considered to be appointed to a public post whenever appointment is made to a public post. But nobody has a right to claim that a discretionary power authorizing a competent authority to make appointments from amongst a particular category be exercised as a matter of obligation to

the members of a particular category. We clarify. The Rule in question does not mandate that 5% posts of constables shall be filled up from amongst ex-servicemen, ex-policemen and reservists. It only says that 5% posts of constables may be filled up from amongst members of said category.

11. A vested right is a right which can be enforced by law. It means a right which has been acquired and not a right which is created by a judicial verdict or by an executive action pursuant to a discretionary power.

12. Under the circumstances, Rule 28 as originally enacted does not create any right in favour of the petitioner. That apart, post amendment with effect from April 22, 2008, the discretionary power excludes enlistment of ex-policemen and thus merely because petitioner's application was filed prior to April 22, 2008 would make no difference because with respect to a discretionary power, once the power is whittled down, pending applicants would be subject to the whittling down of the power.

13. Agreeing with the conclusion arrived at by the Tribunal, we dismiss the writ petition but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(V.KAMESWAR RAO)
JUDGE

MAY 30, 2013
mamta