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IN THE HIGH COURT OF DELHI AT NEW DELHI

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WRIT PETITION (CIVIL) NO. 2034/2015

Reserved on : 2nd February, 2017

Date of decision: 20th April, 2017

SUBODH KUMAR AND OTHERS

..... Petitioners

Through Ms. Jyoti Singh, Sr. Advocate with Ms.
Tinu Bajwa, Mr. Amandeep Joshi, Mr. Sameer
Sharma and Mr. Himanshu Gautam, Advocates.

Versus

COMMISSIONER OF POLICE AND OTHERS Respondents

Through Mr. Satyakam, ASC for respondent Nos.
1, 2 and 4.

Mr. Arun Bhardwaj, CGSC for SSC.

WRIT PETITION (CIVIL) NO. 2952/2015

KAPIL DEV AND OTHERS

..... Petitioners

Through Ms. Jyoti Singh, Sr. Advocate with Ms.
Tinu Bajwa, Mr. Amandeep Joshi, Mr. Sameer
Sharma and Mr. Himanshu Gautam, Advocates.

Versus

COMMISSIONER OF POLICE AND OTHERS Respondents

Through Mr. Anuj Aggarwal, ASC for
respondent Nos. 1, 2 and 4.

Mr. Arun Bhardwaj, CGSC for SSC.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J.:

These writ petitions impugn the order dated 18th July, 2014 passed

by the Principal Bench of the Central Administrative Tribunal (Tribunal, for short) dismissing Original Application No. 1650/2013, *Subodh Kumar and Others versus Commissioner of Police and Others* and Original Application No. 2033/2013, *Kapil Dev and Others versus Commissioner of Police and Others*.

2. The petitioners are male police personnel in the Delhi Police in the rank of Constables and Head Constables. In the present Writ Petitions, we are not dealing with appointment to the post of Sub-Inspector (Female). The next posts in the hierarchy are those of Assistant Sub-Inspector and then Sub-Inspector. Recruitment to the posts of Sub-Inspectors in the Delhi Police is regulated by Rules 7 and 27A of the Delhi Police (Appointment & Recruitment) Rules, 1980 (Rules, for short).

3. Rules 7 and 27A, of the Rules as in force prior to 13th March, 2013 were as under:-

"7. Recruitment of Sub-Inspectors (Executives).-

Fifty per cent 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 tests from amongst constables, Head Constable, and Asstt. Sub-Inspectors with minimum 5 years of service who shall not be more than 35 years (40 years of 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 department candidates will be carried forward for 3 recruitment years as in the case of vacancies for the scheduled tribe candidates whether the unfilled vacancies will be filled by direct recruitment.

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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:-

40 years in the case of general candidate and 45 years in the case of candidates belonging to Scheduled Caste/Scheduled Tribes Candidates.

4. Rules 7 and 27-A post the amendments effective 13th March, 2013, read:-

"7. Recruitment of Sub-Inspectors (Executive)-Male.-

50% of vacancies in the rank of Sub-Inspector (Exe.)-Male shall be filled by direct recruitment and 50% by promotion. Out of 50% direct quota, 10% of the post shall be filled from amongst serving Constables, Head Constables, and Asstt. Sub-Inspectors enlisted in Delhi Police with a minimum of 3 years continuous service, who shall not be more than 30 years (33 years of OBC and 35 years for SC/ST 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 August of that year, if the examination is held in the later half of the year. The educational qualifications, physical standards and other requirements for the post shall be the same as prescribed in the rules for direct recruitments to such posts.

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27-A. Relaxation of upper age limit for all departmental candidates: Relaxation of upper age limit of all departmental candidates for direct recruitment against Group 'C' and Multi Tasking Staff (Formerly group 'D' employees) enlisted in Delhi Police with a minimum of 3 years continuous service shall be as follows:-

30 years for general category candidates, 33 years for OBC category candidates and 35 years in case of candidates belonging to Scheduled Castes/Scheduled Tribes. ”

5. The amended Rules had made four important and significant changes. First, the words “limited departmental competitive test” for 10% reserved posts for departmental candidates under the 50% direct recruitment quota were deleted. Secondly, it was stipulated that in addition to the educational qualifications and physical standards, “other requirements” as prescribed for direct recruits shall be fulfilled by the departmental candidates. Thirdly, qualifying years of service for departmental candidates under the direct recruitment 10% quota were reduced from five years to three years. The fourth change was that the upper age limits were reduced to 30 years for General, 33 years for Other Backward Class, and 35 years for Scheduled Caste and Scheduled Tribe candidates. The pre-amended Rules had prescribed maximum age limit for departmental candidates seeking promotion in the direct recruitment quota as 40 years for General Category, 43 years for Other Backward Classes and

45 years for Scheduled Caste and Scheduled Tribe candidates, with at least 5 years experience in service.

6. The petitioners in the aforesaid OAs had challenged the reduction in the maximum permissible age for departmental candidates and the corrigendum issued on 9th April, 2013 to the employment notification for selection to the posts of Sub-Inspectors (Executive) under the direct recruitment quota pursuant to the aforesaid amendments.

7. The impugned order dated 18th July, 2014 passed by the Tribunal rejects the challenge holding that it was not for the Courts or Tribunal to interfere with the amendment and modifications made to the Recruitment Rules by the executive or legislature in their wisdom unless the same were unconstitutional or shockingly arbitrary. The authorities were entitled to prescribe and fix age limits and also to what extent relaxation should be granted. The petitioner's contention that the amendments to the Recruitment Rules were made after the selection process had already been set in motion was rejected, pointing out that the amendments to the Recruitment Rules were notified on 13th March, 2013 and notice/advertisement for recruitment to the said posts was published on 16th March, 2013, i.e., post the amendment of the Rules. The challenge to the corrigendum dated 9th April, 2013, revising the advertisement in conformity with the terms of the amended Rules, was rejected as no vested right had accrued to the departmental candidates under the pre-amended

Rules. The Tribunal also rejected the petitioners' contention that amended Rules could not be applied to already existing vacancies, for it was the conscious decision of the Government of NCT of Delhi not to fill up the existing vacancies as per the pre-amended Rules. The amended Rules would apply to the vacancies created on 16.10.2012 and advertised on 16.3.2013. The Government has deliberately and intentionally applied the amended Rules. The challenge on the ground of alleged violation of Section 147 of the Delhi Police Act was repulsed.

8. The Tribunal thereafter for the reasons recorded gave the following directions:-

“31. Though Mrs. Avnish Ahlawat, learned counsel has given a list of different feeder categories, which are eligible against departmental quota for the post of Sub Inspector (Executive) in Delhi Police, but the categories do not include the Head Constables and Assistant Sub Inspectors (Executive). There is also no material available on record to show that while amending the rules, the concerned Committee could take into account the G.I., Department of Personnel & Training, O.M. No.15012/1/88-Estt. (D) dated 20.5.1988 and 30.1.1990 (Annexure A-5) and the amendment carried in Delhi Police (Appointment and Recruitment) Rules, 1980 vide notification No.F.3/58/95-H (P)/5099 dated 1.9.1998, which reads as under:-

“Govt. of NCT of Delhi's Notification No.F/3/58/95-H (P)/5099 dated 1.9.1998 from Dy. Secretary (Home), Govt. of NCT of Delhi to the Addl. C.P. (HQ), Delhi etc. etc.

In exercise of the powers conferred by Sub-Section (1) & (2) of Section 147 of the Delhi Police Act, 1978,

the Lt. Governor of the National Capital Territory of Delhi is pleased to make the following rules, further to amend the Delhi Police (Appointment and Recruitment) Rules, 1980, namely:-

1.	Short title and commencement	1.	(1) Those rules may be called the Delhi Police (Appointment and Recruitment) (Amendment) Rules-1998 (2) They shall come into force with effect from the date of their publication in the Delhi Gazette.
2.	Amendment of Rule 27-A	2.	In the Delhi Police (Appointment and Recruitment) Rules, 1980, for rule 27-A, the following shall be substituted, namely:-
		“27-A	Relaxation of Upper age limit for departmental candidates. . 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:- 40 years in the case of general category candidates and 45 years in the case of candidates belonging to scheduled Castes/ Scheduled Tribes.

32. Besides, we are unable to appreciate that how in the absence of the amendment in Rule 8 of Delhi Police (Appointment and Recruitment) Rules, 1980, the relaxed age standard available to sports persons could be done away, thus we are of the considered view that these aspects need to be taken into account by the concerned Committee.

33. In view of the aforementioned, we dispose of the present Original Applications with the following directions:

The Committee, which made final decision on 21.2.2013, to follow the same requirement for the recruitment to the post of Sub Inspector (Executive) in Delhi Police as followed in Central Armed Police Forces Examination 2013 would reexamine the impugned amendment in the Recruitment Rules for the post of Sub Inspector (Executive) in Delhi Police, keeping in view the chances of Head Constable (Executive) in Delhi Police to participate in the selection are reduced to minimal and the Assistant Sub Inspector (Executive) in Delhi Police are virtually debarred from participating in selection against 10% quota, though kept eligible for the post of Sub Inspector (Executive) in Delhi Police against said quota; by way of reduction in age relaxation, the field of choice is reduced drastically; once for Assistant Sub Inspector and Sub Inspector in Central Armed Police Forces there can be common examination, how for the other posts to be filled up by following different Recruitment Rules, there cannot be the common examination; when there is no amendment in Rule 5 of the Delhi Police (Appointment and Recruitment) Rules, 1980, how the age relaxation admissible to sports persons in the matter of promotion to the post of Sub Inspector (Executive) in Delhi Police under departmental quota / direct recruitment is done away with; whether the alignment of the examination for direct recruitment / departmental examination in Delhi Police and Central Armed Police Forces can be a sufficient ground to amend the Recruitment Rules; and when before amendment in the Rules the Committee kept in view that the post at Sub

Inspector in CAPF is Group 'B' post, while the same in Delhi Police is Group 'C' post. The examination would be completed within 12 weeks and follow up action, if any required, would be taken within further four weeks thereafter.

In the meantime, the appointment, if any made on the basis of selection set in motion vide notice dated 16.3.2013 corrected vide corrigendum dated 9.4.2013 would remain subject to outcome of the aforesaid examination.”

9. The petitioners are not satisfied with the said observations¹. The contention is that reduction of age for direct recruitment for departmental candidates as per the amended Rule 7 is unconstitutional as they have been excluded from the recruitment process inspite of extreme stagnation and lack of vacancies in the promotional hierarchy. The amendments are arbitrary and perverse for they adversely affect the petitioners' right for consideration and eligibility to compete in the direct recruitment process as Sub-Inspector (Executive). Constables appointed in 1988 were promoted as Head Constables after about 28 years of service in 2016. Candidates in the age of 18 to 21 are recruited to the post of Constable. For promotion to the next post in the hierarchy- that of Head Constables- qualifying service is five years. Another five years service thereafter is necessary for promotion as Assistant Sub-Inspector. Reduction of the upper age limit to 30 years

¹ In the counter affidavit filed by the respondents, they have stated that pursuant to the impugned judgment, a meeting of the Committee was held on 18th December, 2014 under the Chairmanship of the Joint Secretary (Union Territories- Ministry of Home Affairs) with Officers of the Delhi Police and the Staff Selection Commission. After examining all aspects, the Committee was of the view that the age limit as modified was rational and should be continued. Increasing the age limit would have an adverse impact on account of shortage of young officers at the level of Sub-Inspectors. Departmental Candidates were getting adequate opportunities in the promotion quota.

denies and infringes the right of Head Constables and Assistant Sub-Inspectors to be considered for promotion. Accordingly, the reduction of age from 40 to 30 years in Rule 7 and 27A is arbitrary and illogical. It was submitted that pre-amended Rule 7 had conferred a vested right to Head Constables and Assistant Sub-Inspectors to aspire and qualify under the 10% quota.

10. The petitioners submit that the 10% reservation granted to departmental personnel in the 50% direct recruitment category for the post of Sub-Inspectors is akin to and should be treated as a Limited Departmental Competitive test or Examination (LDCE). The quota is nothing but promotion and cannot be equated with direct recruitment. Accordingly, the submission is that the respondents have acted illogically and arbitrarily by reducing the upper age limit for departmental candidates for 10% reserved quota in the direct recruitment category from 40 years to 30 years. This age reduction is *ex facie* unjust and capricious as it virtually excludes the petitioners from being considered for promotion under the direct recruitment quota.

11. The petitioners had drawn our attention to judgment dated 22nd May, 2013 in Writ Petition (C) No. 2788/2012, ***Karamvir versus Government of NCT of Delhi***, wherein the Division Bench of the Delhi High Court has held that the pre-amended Rule had prescribed three modes of appointment of departmental candidates to the posts of Sub-Inspector; (i) by promotion;

(ii) by direct recruitment and (iii) by appointment through the LDCE. Benefit of age relaxation would entitle the departmental candidates to appear in the LDCE and compete with the direct recruits in the open category. In other words, Rule 7 read with Rule 27A had postulated the LDCE in the nature of promotion and not direct recruitment. Deletion or alteration of few words, would not make any difference for Rule 7 still postulates promotion through LDCE for departmental candidates to the extent of 10% in the direct recruitment quota. This 10% quota is in the nature of fast track promotion of departmental candidates as was held by the Delhi High Court in the judgment dated 21st December, 2012, ***Man Singh versus Union of India and Others***, Writ Petition (C) No. 2887/2012. This judgment was followed in the case of ***Ajay Pandey versus Union of India***, W.P. (C) No. 1938/2011 and ***Satvir Singh versus Union of India***, W.P. (C) No. 1315/2015.

12. The petitioners had also relied upon DOP&T's OM dated 30th January, 1990 on the question of relaxation of upper age limit from 35 years to 40 years for departmental candidates to Group C and D posts. It is submitted that this OM is applicable to Delhi Police, who are under the Ministry of Home Affairs. The Delhi Police vide notification dated 17th December, 1980 clarifies that in case of a conflict between the Rules framed under the Delhi Police Act and the Central Government Rules adopted under the said notification, the Rules framed under the Delhi

Police Act would prevail, is of no consequence as OM dated 30th January, 1990 is not mentioned therein. Specific Central Government Rules mentioned in the OM dated 17th December, 1980 would no way affect or curtail the scope of the DOP&T's OM dated 30th January, 1990. Lastly, it is submitted that the amendments to Rules 7 and 27A was with the idea to align them with the Recruitment Rules of the Central Armed Police Force (CAPF). However, an error was made, for the upper age limit of departmental candidates under CAPF service is 32 years and not 30 years.

13. The amendment to the Rules was made is in exercise of statutory power conferred on the respondents under Section 147 of the Delhi Police Act read with proviso to Article 309 of the Constitution. The Executive has been conferred the said power to enact, modify, omit or amend the Recruitment Rules by way of delegated legislation. The exercise of power to amend the Rules is a legislative and not an administrative act. Acts, which are legislative in character, have to be contrasted from an administrative or quasi judicial functions. Legislative acts do not normally require compliance with principles of natural justice. There is a presumption in favour of constitutionality and validity of a subordinate legislation and the burden is on the person who attacks it. A subordinate legislation can be challenged on the ground of lack of legislative competence, violation of fundamental rights or other provisions of the Constitution, violation of statute under which it is made i.e. it fails to

conform to the statute or exceeds the limits of the subordinate authority to which it is delegated. Subordinate legislation can be also challenged if it is repugnant to the higher legislation, i.e. any enactment, by or under which the subordinate legislation is created. Lastly, the challenge can be made on the basis of manifest arbitrariness or unreasonableness on the ground that the Court might well opine that the legislature never intended to give authority to make such rule. In *State of Tamil Nadu & Anr. v. P. Krishnamurthy & Ors.*, (2006) 4 SCC 517, several other earlier decisions were referred to hold that the delegated legislation can be declared invalid if it is so manifestly unjust, oppressive or outrageous, or is declared to be unauthorized or violates general principles of law of the land, or so vague that what is prohibited cannot be predicted with certainty, or so unreasonable that it cannot be attributed to the power delegated, or otherwise discloses bad faith. The present contention in the instant case that amendments were made because the Chairman, Staff Selection Commission had suggested that Delhi Police should explore possibility of conducting a common recruitment/test with CAPFs and subsequently, the matter was discussed with the Union Home Secretary and the Joint Secretary, Union Territories and it was decided to make necessary amendments in the Recruitment Rules to match with the standards of CAPF, relates to matters within the executive domain and should not be commented upon in the judicial verdict, directly. This, we would observe, is beyond the scope and

ambit of judicial review. As already stated above, this would not bar or prohibit the Court from examining the validity of the amendments with reference to the Constitution, statutory guarantees and other grounds. While examining the said aspects the Respondents can justify and give explanation why the amendments were made. Delegated legislation being neither an administrative or quasi judicial order, the validity thereof has to be examined and considered on parameters stated above.

14. We have considered and examined the file noting dated 22nd February, 2013. The noting refers to the meeting of the Commissioner of Police with the Chairman, Staff Selection Commission, to discuss recruitment against 330 vacant posts of Inspector (Executive) for the years 2012 and 2013. The Staff Selection Commission had expressed their inability to conduct separate recruitment and had suggested recruitment along with recruitment for similar posts in the Central Armed Police Forces. Thereafter, the meetings called by the Chairman, Staff Selection Commission, were attended by officers from the Delhi Police and the Ministry of Home Affairs. There was discussion regarding standards/requirements of Delhi Police and possibility of conducting common recruitment test with Central Armed Police Forces. Suggestions were given and exchanged. The issues raised were discussed with the Union Home Secretary and others and it was decided to carry out necessary amendments in the Recruitment Rules of Delhi Police. Subsequently, the

matter was discussed with the Lieutenant Governor, who approved the changes proposed by the Commissioner of Police.

15. The Supreme Court in *P.U. Joshi & Ors. Vs. Accountant General, Ahmadabad & Ors. (2003) 2 SCC 632* on the question of pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotion and criteria to be fulfilled had observed as under:-

“10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction (sic.) the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing the existing cadres/posts and creating new cadres/posts. There is no

right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.”

The aforesaid quotation is a complete answer to the contention of the petitioners that a vested right had accrued to the petitioners, who under the pre-amended Rules were eligible for promotion through the LDCE as Sub-Inspectors till they attained the age of 40 years. There is no right in any employee to claim that rules governing conditions of service should forever remain the same. The only right he has is for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time. This right does not extend and include the right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service. Argument of vested right, therefore, would fail.

16. In *Nilangshu Bhusan Basu Vs. Deb K. Sinha & Ors.* (2001) 8 SCC 119, reference was made to the *State of Andhra Pradesh Vs. V. Sadanandam*, AIR 1989 SC 2064, to highlight the mode of recruitment and the category from which the recruitment to service should be made are of matters which are exclusively in domain of the executive, and judicial bodies should not sit in judgment over the wisdom of the executive.

Judiciary should not decide the category from which recruitment should be made, re-writing or overruling the Rules.

17. In the *State of Tripura Vs. Nikhil Ranjan Chakraborty* (2017) 1 SCALE 599, the Supreme Court referred to the settled proposition of law that a candidate has a right to be considered in light of the existing rules, which implies “rule in force” on the date consideration took place. Reference was made to the decision in the case of *Deepak Aggarwal and Anr. Vs. State of Uttar Pradesh & Ors.* (2011) 6 SCC 725 to hold that there is no rule of universal or absolute application that vacancies are to be filled up invariably by the law existing on the date when the vacancies arose, for the requirement of filling existing vacancies under pre-amended rules is interlinked with the acquired right of the candidate to be considered for promotion. Therefore, unless the rule prescribes the particular time frame within which selection process is to be completed such right may not accrue.

18. Pertinent, would also be reference to the decision of the Supreme Court in (2015) 6 SCC 727, *Dhole Govind Sahebrao & Ors. v. Union of India & Ors.*, which states that chances of promotions do not constitute conditions of service. The promotional avenues can undergo changes and alterations from time to time.

19. In *Union of India & Ors. Vs. Shivbachan Rai* (2001) 9 SCC 356, it

was held that the Rules prescribing age limit and the extent to which relaxation could be granted were a matter of policy. The Supreme Court held that such Rules could not be termed as arbitrary or unreasonable. In the said case there were additional avenues of promotions, which were not partially or totally closed.

20. The petitioners are correct in their submission that appointment to a higher post through LDCE as per judicial decisions is a method of promotion and not appointment as a direct recruit. Under the pre-amended Rules, the 10% quota reserved for officers of the Delhi Police who qualify the LDCE, was a method of promotion. It was fast track promotion. However, this would not help the case set up by the petitioners any further as the amended Rule does not postulate LDCE. The amendment has done away with the concept of fast track promotion by LDCE. The amended Rule gives equal opportunity to the in service candidates, who are eligible to compete with the open candidates in the 50% direct recruitment quota for appointment in the cadre of Sub-Inspectors. In addition there is a stipulation of 10% reservation of posts for the eligible in-service officers. The appointments under the 10% quota under the 50% direct recruitment quota cannot be treated as appointment by way of promotion. This is appointment by way of direct recruitment. The eligible in-service officers participate in the same examination as open candidates. Selection is made

through the common process and examination. The eligible in-service officers appointed as direct recruits cannot claim parity and be equated with those who were/are promoted and vice versa.

21. The amended Rule is not a way and method of fact track promotion, but it gives an opportunity to the eligible in-service officers, who can compete with open candidates. They have also got the benefit of 10% quota or reservation.

22. In the present case the recruitment was by way of direct recruitment. Earlier there was stipulation of LDCE or test for filling up 10% of the direct recruitment quota posts. LDCE/tests were earlier held in 2004, 2007 and twice in 2009. While discussing the process whether or not to hold LDCE/test and whether the same should be held by the Staff Selection Commission, the question of amendment to the Rules was taken up. A conscious and deliberate decision was taken to amend the rules and thereafter, fill up the direct recruitment quota vacancies, 10% quota for in service police officers in direct recruitment was retained but the provision relating to LDCE/test was deleted. Amendments were made to reduce the upper age limit, and bring them at par with the age limit for direct recruits. The intention was to conduct a common examination for the direct recruits and the departmental candidates under the 50% direct recruitment quota.

23. The petitioners have placed reliance upon the DoP&T's OM dated 30th January, 1990. This OM relates to relaxation of upper age limit for

departmental candidates to Group C and D posts and states that departmental candidates from the General Category may be allowed to compete along with candidates from the open market up to the age of 40 years in Group C posts and 45 years in the case of Scheduled Caste and Scheduled Tribe candidates. The OM dated 30th January, 1990 is by way of executive instructions. The Recruitment Rules are statutory in nature. The Rules will override if there is conflict between the said Recruitment Rules and the DoP&T's OM dated 30th January, 1990. The Delhi Police notification dated 17th December, 1980 stipulates that in case there is a conflict between the rules framed under the Delhi Police Act and the Central Government rules adopted by the same notification, the rules framed under the Delhi Police Act will prevail. The said notification had made a number of Central Government rules applicable to Delhi Police. We find grave difficulty in accepting the petitioners' contention that the said notification does not include DoP&T OMs and therefore by implication and inference the OMs will prevail over the Rules framed under the Delhi Police Act. This is certainly not the legally correct position and the contention has to be rejected. The statutory Rules will prevail over the OM dated 30th January, 1990.

24. We must deal with other contentions raised by the petitioners primarily on the ground that reduction in age in case of in-service candidates is discriminatory, arbitrary and deprives fair and equitable

opportunity to the in-service candidates. The submission is that recruitment in Delhi Police at the post of Constable in the case of male candidates is between the ages of 18 to 21 years. Constables are promoted, after five years, as Head Constables and after five years as Head Constables, as Assistant Sub-Inspectors. Assistant Sub-Inspectors, it is submitted, are also eligible to appear under the 10% direct recruitment quota. They would now be barred because of the age restriction, for most of them were appointed after attaining the age of 31 years. Further, there is acute stagnation in the lower hierarchy. Consequently, reduction of the upper age limit is wholly arbitrary and inequitable. It is pointed out that the upper age limit was extended/increased to 40-45 years in view of the aforesaid stagnation.

25. We find these contentions are fallacious and unsound. The recruitment age of Constables (Male) is between 18 to 21 years. A Constable would, therefore, normally get several opportunities to appear and get selected vide direct recruitment for the post of Sub-Inspector by the time he attains the age of 30. There is no direct recruitment in the cadre of Head Constable and Assistant Sub-Inspectors, which are entirely promotional posts. At best, the lowering of the upper age limit for in-service officers means that the number of chances to qualify stand reduced. By no stretch can this reduction in maximum permissible age be regarded as arbitrary or unconstitutional when the recruitment in the cadre of

Constable is between the ages of 18 to 21 years. The argument of acute stagnation is misconceived for the reason that the 10% quota for in-service police officers has not been reduced. In addition, the in-service police officers also compete with direct recruits and can be appointed against 40% of the balance posts under the direct recruitment quota. Lastly, the eligible Assistant Sub-Inspectors are entitled to promotion under the 50% promotional quota.

26. The last contention raised by the petitioners was with reference to different upper age limits prescribed in the Border Security Force, Central Industrial Security Force etc. There can be variation in the upper age limits, as recruitment rules for different forces as per requirements, can vary. In several forces, there is a separate limited LDCE quota, in addition to promotion quota and direct recruitment quota. The upper age limit prescribed as 30 years for general categories for the cadre of Sub-Inspector (Executive) in the Delhi Police cannot be struck down for this reason. Induction at the initial stage at the cadre of Constables, is for candidates between the age group of 18-21 groups. The upper age limit of 30 years for in-service departmental candidates is reasonable and fair and cannot be termed as arbitrary. The age gap is 9 years or more. In-service police candidates would get sufficient opportunities to compete and appear for selection as Sub-Inspectors (Executive) in the 10% quota out of 50% direct recruitment quota, before becoming ineligible due to the amended age

criteria. The challenge fails and should be rejected.

27. For the aforesaid reasons, we do not find any merit in the writ petition. The petition is dismissed without any order as to costs.

(SANJIV KHANNA)
JUDGE

(CHANDER SHEKHAR)
JUDGE

APRIL 20th, 2017
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