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

+ **W.P.(C) 2331/2017**

COMMISSIONER OF POLICE & ORS Petitioner

Through: **Mr.Anuj Aggarwal, Advocate**

versus

ADESH KUMAR

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

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15.03.2017

This writ petition impugns the order dated 18th October, 2016 whereby OA No.978/2013 filed by Constable Adesh Kumar has been allowed with the direction that he be given one additional mark for driving licence and accordingly he would be considered for promotion to the post of head constable.

The contention of the petitioner is that the respondent had not indicated and stated that he was holder of a driving licence issued to him prior to March, 2010. This factum was not recorded in the service book and was not intimated to the authorities before the cut-off date.

However, the fact that the respondent has a valid and genuine driving licence issued to him before the cut-off date is undisputed and unchallenged.

Similar controversy was raised and decided by this Bench vide order dated 17th January, 2017 in WP(C)386/2017 '*Govt. of NCT of Delhi and Ors. Vs. Tahar Singh*' in the following words:

“The impugned order dated 12th August, 2016 passed by the Principal Bench of the Central Administrative Tribunal (Tribunal, for short) allows OA No. 1314/2014 filed by Constable Tahar Singh.

2. Tahar Singh was appointed as a Constable in the Delhi Police in 1993. He was eligible and had appeared for List A examination, 2013. Tahar Singh secured 122 marks, one mark less than the cut off of 123 marks.

3. Tahar Singh being holder of a driving licence, was entitled to one additional mark on account of the driving licence and should have secured 123 marks. This crucial one mark was denied because of Tahar Singh's error, possibly on account of a mistake for there is no reason why a person would mark the wrong column in the application form and deny himself an additional mark.

4. The driving licence is genuine. This is undisputed and accepted.

5. The Tribunal in the impugned order has taken a holistic and fair view of the matter in granting relief to Tahar Singh. This is not a case of open examination or a case where a large number of applications received online were scrutinized and the eligible candidates as per information furnished were

shortlisted. Ignoring error or mistakes made in such cases, on balance of convenience and for obvious practical reasons, would not merit acceptance. The Rules, therefore, expressly bar any correction and validation. No such arduous difficulty is urged. A mistake of this nature should not be allowed to cripple and wash away the promotional prospects of the respondent. A right balance between the mistake, and the administrative difficulties and consequences has to be maintained. The mistake or error made in the present factual matrix does not merit harsh consequences. A more reasonable and justice oriented approach would be fair and equitable.

6. The Tribunal on the said aspect has relied upon a decision of this Court in ***Deepak Kumar Singh and Others versus Union of India and Others*** and other connected matters, decided on 14th July, 2014. This was again a case wherein the Court noticed that candidates, who had applied for selection as Constables, had committed some mistakes by not correctly filling up column 17 of the application form relating to preference, etc. Relief was granted.

7. Learned counsel for the petitioners-Government of NCT of Delhi has submitted that Tahar Singh's service record do not indicate that he had a driving licence. That may be so, but would not be a good reason to deny benefit of one additional mark when Tahar Singh is a holder of a driving licence, which he had acquired in 2000, 7 years after he was inducted into Delhi Police. The argument as raised, would indicate that the information furnished in the application form was not sacrosanct, and could be revalidated.

8. Counsel for the petitioners has submitted that several others who have secured more marks than Tahar Singh, who would be affected. We do not find any merit in the said submission. Constables, who have secured cut off mark, are included in list A. Thereafter, on successfully undergoing a course, their names are included in list B. The Constables in

this list get appointed as Head Constable as and when vacancies arise. Tahar Singh having secured the minimum required, i.e., 123 marks would be included in list A and on successful completion of the course, his name will be included in list of constables eligible for promotion. His appointment as Head Constable will take place at a future date as and when there is vacancy in the cadre of Head Constable.

9. In view of the aforesaid, we are not inclined to interfere with the impugned order passed by the Tribunal. The writ petition is accordingly dismissed.”

The present writ petition is dismissed in terms of the aforesaid observations and directions. In case respondent has any difficulty, he would be at liberty to file an application before this court.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

MARCH 15, 2017

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