

\$~5 (2021)

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

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Decision delivered on: 16.08.2021

+ **W.P.(C) 9189/2020, CM 26190/2021**

VINOD KUMAR

..... Petitioner

Through: Mr. Ankur Chhibber with Mr. Keshav
Sehgal, Advs.

versus

STAFF SELECTION COMMISSION & ANR.

..... Respondents

Through: Mr. Jitesh Vikram Srivastava, Adv. for
R-1.

Mrs Avnish Ahlawat Standing
Counsel with Mr Nitesh Kumar Singh,
Mrs Tania Ahlawat, Ms Palak
Rohmetra Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

RAJIV SHAKDHER, J. (ORAL):

[Court hearing convened via video-conferencing on account of COVID-19]

1. We have heard the learned counsel for the parties and perused the record.

2. What emerges from the record is, as follows: -

2.1. The petitioner was appointed as Constable (Executive) in Delhi Police on 09.01.2010.

2.2. Pursuant to an advertisement issued on 16.03.2013 [hereafter referred as '2013 advertisement'], the petitioner applied, *inter alia*, for the post of Sub-Inspector (SI) in Delhi Police, and Central Industrial Security Force

(CISF), indicating thereby, the former as his first preference and the latter as his third. The said advertisement was issued by respondent no. 1 i.e., Staff Selection Commission (SSC) for appointment of SIs, not only in the Delhi Police but also, *inter alia*, in CISF.

2.3. The record shows that, the total number of vacancies, which were put out qua SI in Delhi Police, in the 2013 advertisement, were 330. The record also shows that, the breakup of 330 vacancies was as follows: -

- (i) The total number of vacancies, in open category, which included appointment by direct recruitment, was 264;
- (ii) Qua appointment through Limited Departmental Competitive examination (in short 'LDCE'), the total number of vacancies available, were 33;
- (iii) Lastly, the number of vacancies available for appointment of Ex-Servicemen, were also 33.

2.4. The aforementioned vacancies were categorised into: Unreserved (UR), Other Backward Class (OBC), Schedule Caste (SC) and Schedule Tribe (ST).

3. What was important from the point of view of the petitioner was, that the minimum period of experience that was required for an applicant to apply under the LDCE category [as set out in the 2013 advertisement], was 5 years of continuous service in Delhi Police, as on the closing date of the application.

4. The aforesaid period of service, stipulated qua the subject post in the 2013 advertisement, was admittedly contrary to the Delhi Police (Appointment and Recruitment) (Amendment) Rules, 2013 [hereafter referred as '2013 Amendment Rules'] and the Standing Order No. 321/2013 titled as "*STANDING ORDER FOR THE SELECTION OF CANDIDATES FOR APPOINTMENT AS SUB-INSPECTOR (EXECUTIVE)-MALE IN*

DELHI POLICE” [hereafter referred as ‘2013 SO’], issued by respondent no.2 i.e. Commissioner of the Delhi Police, dated 14.03.2013.

4.1. As a matter of fact, three days before the issuance of the 2013 advertisement, the 2013 Amendment Rules were notified by the Government of National Capital Territory of Delhi (GNCTD), i.e., on 13.03.2013, which resulted in the relaxation of the eligibility period concerning experience [vis-a-vis departmental candidates who were striving for recruitment as SI (Ex.) in Delhi Police], via amendment in Rule 7 and Rule 27-A of the Delhi Police (Appointment and Recruitment) Rules, 1980. The relevant part of that notification is extracted hereafter: -

“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.

27-A Relaxation of upper age limit for departmental candidates: Relaxation of upper age limit for 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”. ”

4.2. Likewise, in the 2013 SO, relaxation was granted vis-a-vis departmental candidates qua minimum period of service for recruitment to the

post of SI (Ex.)-Male from 5 years to minimum 3 years of service under the head 'Reservation Policy' and 'Essential Requirement'.

5. Respondent no. 1, having realised that a mistake had been committed, issued corrigendum dated 09.04.2013, in respect of the 2013 advertisement, and thus, incorporated the relaxed norm qua minimum period of service for 'departmental candidates' for the subject post i.e., SI in Delhi Police.

6. Pertinently, in the meanwhile, on 04.04.2013, the petitioner had already applied against the subject post, notified in the 2013 advertisement, under the 'Open (UR)' category, understandably, under the impression that he was ineligible to sit in the LDCE.

7. It is averred by the petitioner that, another set of applicants had challenged, *inter alia*, the reduction in the qualifying years of service for departmental candidates under the direct recruitment quota, via corrigendum dated 09.04.2013, by approaching the Central Administrative Tribunal (in short "the Tribunal"). This application was numbered as OA No. 1650/2013.

7.1. The aforesaid OA, was, however, dismissed by the Tribunal on 18.07.2014. Aggrieved by this, the petitioners had approached this Court by way of a writ petition, bearing no. W.P.(C.) No.2034/2015. Initially, an interim order was passed by the Division bench on 02.03.2015. *Via* the said interim order, the result of the candidates, who took the LDCE, was stayed. However, the said interim order was modified by the Division Bench by its order dated 28.01.2016; whereby, permission was given to declare the result of those candidates, who had taken the LDCE.

7.2. Ultimately, via judgement dated 20.04.2017, the said writ petition was dismissed. The Special Leave Petition (SLP) preferred against the judgement dated 20.04.2017, was also dismissed on 17.03.2020.

8. The important aspect, which requires mentioning, at this juncture, is

that the appointment process which was carried out pursuant to the 2013 advertisement, concluded only on 16.11.2018. The result revealed that, the petitioner was not selected for the subject post i.e. SI in Delhi Police, but instead qualified for the post of SI in CISF.

9. The petitioner before us, in the interregnum, took recourse to the Right to Information (in short 'RTI') route - which is, when he discovered on 17.01.2019 that, he had not been considered for appointment to the subject post against departmental quota only on account of the fact that his application form did not refer to this aspect of the matter [i.e., the petitioner had not applied as a departmental candidate].

10. It is on account of this discovery that, the petitioner approached the Tribunal, via OA No.398/2019.

11. The Tribunal dismissed the aforesaid petitioner's original application, via order dated 05.10.2020. It is important to note that, in the meanwhile i.e., before the dismissal of the petitioner's application [i.e., OA No. 398/2019], the Tribunal had condoned the delay in filing the said OA, via order dated 17.02.2020, on the ground that this was a matter concerning petitioner's appointment.

12. The record shows that, on the previous date i.e. 28.07.2021, a clarification was sought by us from the respondents as to, whether or not any vacant post against the appointment process, which was undertaken under the 2013 advertisement, were available. This direction was issued on account of the contradictory stands taken by the respondent no. 2; one which was reflected in paragraph 22 of the counter-affidavit filed before us and the other in the affidavit, which was filed by the respondents in another proceedings; this affidavit has been appended with the petitioner's common rejoinder.

13. Ms. Avnish Ahlawat, who appears for respondent no. 2, has filed a

fresh affidavit dated 14.08.2021, wherein it is, now, accepted that two [2] vacancies are available under Departmental (UR) category, against the 2013 advertisement.

14. It also requires mentioning that, the cut off for the candidates under the UR category, who took LDCE, was 239 marks, whereas the petitioner had obtained 254.25 marks. The petitioner is, clearly, above the cut off mark.

15. Both Ms. Ahlawat, who appears for respondent no.2, and Mr. Jitesh Vikram Srivastava, who appears for the respondent no.1/SSC, have taken the position that, the fault lies squarely with the petitioner, having not applied in the correct category; an aspect which, cannot, now be rectified.

15. We are of the view that, there should be no impediment in the respondents considering the petitioner for the post of SI in Delhi Police for the following reasons: -

15.1. When the application form was filed on 04.04.2013, the corrigendum concerning 2013 advertisement was not issued, which was issued only subsequently i.e., on 09.04.2013.

15.2. The final result concerning the appointments made, pursuant to the 2013 advertisement, was declared only on 16.11.2018. Thus, when the petitioner had approached the Tribunal, via OA No.398/2019, the Tribunal, vide order dated 17.02.2020, condoned the delay in filing the same. Therefore, delay cannot be the reason for denying the petitioner relief in the matter.

15.3. In this connection, it is also important to note that, in W.P.(C.) 2034/2015, as noticed above, the stay with regard to the declaration of the result, concerning candidates who had applied for LDCE, was lifted by the Division Bench only on 28.01.2016. The said writ petition was dismissed on 20.04.2017. The SLP, preferred against the said dismissal, also met the same

fate, albeit, on 17.03.2020.

15.4. Lastly, as indicated above, there are 2 vacancies available under the Departmental (UR) category, against the 2013 advertisement, and admittedly, the petitioner has received 254.25 marks, which is above the cut off for departmental candidates under UR category, which is 239 marks.

15.5. More importantly, on being queried, we were told that, the examination held for appointment against the 2013 advertisement for the applicants, who sat for selection in the direct recruitment quota, and for those, who sat for departmental quota, was common.

16. Therefore, for the foregoing reasons, we see no difficulty in the petitioner being considered for appointment to the post of SI in Delhi Police, especially in the circumstance that, even though he qualified for being considered for appointment to the post of SI in CISF, he has chosen not to take the said appointment and continues to be employed with the Delhi Police.

17. We must indicate herein that, both Mr. Srivastava and Ms. Ahlawat have taken the position that, once the corrigendum dated 09.04.2013 was issued and the closing date for application under the 2013 advertisement was extended, it was implicit that the petitioner needed to reapply.

17.1. On the other hand, Mr. Ankur Chhibber, who appears for the petitioner, has taken the position that, the corrigendum dated 09.04.2013 issued qua the 2013 advertisement, did not say that, the candidates who had already filled their application forms, before the corrigendum was issued, needed to re-apply.

17.2. As a matter of fact, Mr. Chhibber has relied upon an addendum dated 02.04.2018, issued *vis-à-vis* another advertisement by respondent no. 1, which is dated 03.03.2018, wherein one of the aspects, which has been

highlighted/clarified, is the aspect concerning clarification being given vis-a-vis re-application by candidates, who had already applied before the issuance of the said addendum. [See: Serial no. 6 of the addendum dated 02.04.2018]. It is, thus, emphasised, no such clarification was given, as regards the corrigendum dated 09.04.2013.

18. To our minds, in view of the fact that the examination was common, as noticed above, respondent no.1/SSC was clearly aware that, this candidate could also be considered under the LDCE category. Absent the clarification, it cannot be concluded that fault lay solely with the petitioner.

19. On a pointed query being put to Mr. Srivastava, he said that, had the application being made by the writ petitioner under the LDCE category, then, given the marks that he had obtained and the cut off marks for the relevant category, he would have been considered for the post of SI in Delhi Police.

20. According to us, the objections raised by the respondents are not tenable.

21. The writ petition is, accordingly, allowed, and the impugned order of the Tribunal is set aside.

22. Respondents are, thus, directed to consider the candidature of the petitioner for appointment to the post of SI in Delhi Police.

23. The writ petition and the pending application(s) are disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

TALWANT SINGH, J

AUGUST 16, 2021/nk

Click here to check corrigendum, if any