



2023-DWC-5054-D3



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

% Date of decision: November 07, 2023

+ W.P.(C) 14022/2023

AMANT KUMAR AND ORS Petitioners

Through: Mr. Anurag Tiwary and
Mr. Debadutta Kanungo, Advs.

versus

THE COMMISSIONER OF POLICE AND ORS. Respondents

Through: Mrs. Avnish Ahlawat, SC, GNCTD
(Services) with Mrs. Taniya Ahlawat,
Mr. Nitesh Kumar Singh,
Ms. Laavanya Kaushik, Ms. Aliza
Alam and Mr. Mohnish Sehrawat,
Advs.
Mr. Chiranjiv Kumar, Mr. Mahamaya
and Mr. Jitesh Talwani, Advs. for
UOI
Ms. Archana Gaur, SPC with
Ms. Ridhima Gaur, Advs. for UOI

AND

+ W.P.(C) 14024/2023

PUNIT KUMAR AND OTHERS Petitioners

Through: Mr. Anurag Tiwary and
Mr. Debadutta Kanungo, Advs.

versus

THE COMMISSIONER OF POLICE
AND ORS.

..... Respondents



2023-DWC-5054-D3



Through: Mrs. Avnish Ahlawat, SC, GNCTD
(Services) with Mrs. Taniya Ahlawat,
Mr. Nitesh Kumar Singh,
Ms. Laavanya Kaushik, Ms. Aliza
Alam and Mr. Mohnish Sehrawat,
Advs.
Mr. Chiranjiv Kumar, Mr. Mahamaya
and Mr. Jitesh Talwani, Advs. for
UOI
Ms. Avshreya Pratap Singh Rudy,
SPC for UOI

AND

+ W.P.(C) 14040/2023
K.M DIXIT & ORS.

..... Petitioners

Through: Mr. Anurag Tiwary and
Mr. Debadutta Kanungo, Advs.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mrs. Avnish Ahlawat, SC, GNCTD
(Services) with Mrs. Taniya Ahlawat,
Mr. Nitesh Kumar Singh,
Ms. Laavanya Kaushik, Ms. Aliza
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Advs.
Mr. Chiranjiv Kumar, Mr. Mahamaya
and Mr. Jitesh Talwani, Advs. for
UOI
Ms. Mahamaya Chatterjee, GP for
UOI
Ms. Avshreya Pratap Singh Rudy,
SPC for UOI
Ms. Archana Gaur, SPC for UOI



CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J. (ORAL)

1. The captioned writ petitions have been filed by the petitioners impugning an order dated September 26, 2023 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal', hereinafter) in the Original Applications ('OA', for short) 2834/2023, 2904/2023 and 2850/2023 whereby the Tribunal has dismissed the prayers of the applicants before it seeking interim relief to appear in the examination for recruitment to the post of Constable (Executive) in Delhi Police.
2. At the outset, we may narrate the brief facts as pleaded by the petitioners leading up to the present petitions. The respondent No.1 issued an advertisement on August 1, 2020 for filling up of 5846 vacancies to the post of Constable (Executive). Despite the legal mandate to conduct the said exam twice a year, no such exam has been conducted in 2021, 2022 though advertisement is issued on September 01, 2023 rendering the petitioners and many others over-aged.
3. The respondent No. 4 issued a tentative calendar of examinations for the year 2021 – 2022 for recruitment of Constable (Executive) Male / Female, Delhi Police Examination to be conducted through advertisement to be issued on January 9, 2023 with a closing date of February 12, 2023 and the examination to be do conducted in



May, 2023. Thereafter, the respondent No. 4 issued another tentative calendar of examinations for the year 2022 – 2023 to be carried out through advertisement to be issued on March 2, 2023 with the exam to be conducted in April – May, 2023. The case of the petitioners is that have the respondents carried out the recruitment to the said post , the petitioners would not have become over-aged and ineligible to participate in the selection process.

4. Thereafter, the respondent No.1 through its tentative calendar of examinations for the year 2023 – 2024 dated December 30, 2022 decided that the recruitment of Constable (Executive) will be conducted by the Delhi Police.

5. It is only on September 1, 2023, i.e., after a period of about 3 years of the last advertisement that the present advertisement for filling up vacancies to the said post was issued. Further, the age limit of candidates as described for the post of Constable (Executive), Delhi Police is from 18 – 25 years as on July 1, 2023, i.e., the candidate should not have been born before July 2, 1998 and after July 1, 2005. But, since no recruitment was conducted over the three years, the petitioners have crossed the maximum prescribed age limit fixed by the respondents. Though the petitioners otherwise fulfill all the other eligibility criteria for appearing in the examination, they are not able to fill the online application for the said examination on account of the above fact.

6. Mr. Anurag Tiwary, learned counsel appearing for the petitioners in all the three petitions would state that despite the fact that there were thousands of vacancies for the post of Constable (Executive)



in the years 2021- 2022, the respondents failed to conduct the recruitment drive to the said post, possibly on account of practical difficulties, logistical problems due to the COVID-19 Pandemic. Had the examination been conducted between 2021 & 2022, the petitioners could have been below the prescribed age limit and as such could have appeared in the said examination.

7. His contention is that the respondents have arbitrarily failed to post the said vacancies in the National Career Service Portal in 2021 and 2022, though the Department of Personnel & Training ('DoPT', for short) vide its Office Memoranda dated June 13, 2016, June 23, 2016, November 2, 2016 and December 23, 2016 had made it mandatory for all government departments / organizations to post the vacancies on the portal. Reliance is also placed on an Office Memorandum dated January 21, 2020, issued by the DoPT wherein, all the Ministries / Departments were directed to take advance action for reporting vacancy position with respect to direct recruitment posts to the concerned recruitment agencies for filling up the vacancies in a timely manner. He has also referred to a meeting of the Cabinet Committee on Investment and Growth held on December 23, 2019, wherein directions were given to take time bound action to fill up existing vacancies. The respondents in not notifying the vacancies for the post of Constable (Executive) for the last two years have ignored the obligations cast upon them by the above executive orders.

8. He has challenged the order of the Tribunal stating that the petitioners are entitled to the grant of age relaxation as per the Delhi Police (Appointment & Recruitment) Rules, 1980 ('Rules' hereinafter)



wherein Rule 9 mandates that the recruitment of Constable shall be conducted every year in the month of January and as per Rule 30 which grants the Administrator the power to relax the Rules when it is necessary or expedient to do so. Rules 9 & 30 of the Rules are reproduced as under:

“9. Recruitment of Constables. –

(i) Delhi being a cosmopolitan city, it is imperative to attract candidates from all parts of the country.

(ii) The recruitment of constables shall be done twice a year in the months of January and July by the Board to be nominated by Commissioner of Police as per Rule 8.

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30. Power to relax. - When the Administrator is of the opinion that it is necessary or expedient so to do, he may, by order, for reasons to be recorded in writing, relax any of the provisions of these Rules with respect to any class, category of persons or posts or, in an individual case.”

9. He submitted that the respondents and several other State Governments have often used their statutory and also extraordinary powers to relax the rules in several recruitment drives in view of their failure to conduct the said examinations due to COVID-19 and other institutional / administrative reasons. A reference to such instances has been made by Mr. Tiwary in his written submissions.

10. Reliance has also been placed on the following judgments wherein, according to Mr. Tiwary age relaxation has been granted in similar circumstances:

1. *Sachin and Ors. v. CRPF and Ors., 2023 SCC OnLine Del 1545*



**2. *Nitish Kumar and Ors. v. Union of India and Ors.*,
2023 SCC OnLine Del 1542**

3. *Santram Patel v. CRPF*, 2023 SCC OnLine Del 1991

**4. *Nagen Bhoi & Ors. v. State of Orissa and Ors.*, 2023
SCC OnLine Ori 172**

11. He seeks relief on parity based on the above.

12. He has also referred to the judgment of a Three Judge Bench of the Supreme Court in ***High Court of Delhi v. Devina Sharma*, (2002) 4 SCC 643.**

13. He seeks the prayer as made in the petitions.

14. Per contra Mrs. Avnish Ahlawat, learned Standing Counsel appearing for the respondent (s) would submit that the Delhi Police comes under the Ministry of Home Affairs, Govt. of India and have been conducting the examination for appointment to the post of Constable (Executive) by itself in 2013, since it was restricted area in Delhi and the catchment area of New Delhi. However, vide letter dated January 10, 2013, the Govt. of India directed the Commissioner of Police that the recruitment should be on a pan-India basis and that a permanent arrangement should be made whereby the selection of personnel are done by the Staff Selection Commission ('SSC', for short), i.e., respondent No.4 as in the case of Central Armed Police Force ('CAPF', short). Accordingly, the SSC prepared a memorandum of understanding for the same that was signed on June 23, 2016. Subsequently, SSC conducted the examination for the post of Constable (Executive) Male / Female for 7307 posts with age-limit set to 18 - 21



years on July 1, 2016. After the amendment in the Rules on October 22, 2018, the age limit was enhanced to 18 – 25 years.

15. Another memorandum of understanding dated May 29, 2020 was signed between the SSC and the Commissioner of Police whereby it was decided that apart from the list of provisionally selected candidates, the SSC would also prepare a reserved panel of 10% candidates according to their merit / category and the same will be provided to Delhi Police in a sealed cover not to be uploaded. The reserved panel may be valid for a period of two years or till the next recruitment is advertised, whichever is earlier. The contention of Mrs. Ahlawat is that as the reserve panel had a validity of two years, there was no requirement to conduct the examination for two years, lest the reserve panel become in-operational and void. After the enhancement of age limit to 18 – 25 years, the exam was conducted for vacancies calculated up to December 31, 2020.

16. In any case, vacancies were notified even during the COVID-19 period, i.e., in July, 2020. The examinations are being notified and conducted immediately after the earlier panel is exhausted. By June 22, 2023, 5069 candidates have joined and the waiting list / reserve panel has been operated. Immediately from July 1, 2023, 7547 vacancies have been notified which includes retirement, promotion etc. until December 31, 2024. Therefore, no relaxation can be granted to the petitioners either in equity or in law.

17. She submitted that as the exam is on a pan-India basis, the petitioners in all these years, must have appeared in all other examinations, conducted by the SSC with the same qualifications.



None of the petitioners have provided any particulars about themselves, their educational qualifications, how many competitive exams they have participated in and whether they participated in a selection process of exams conducted by the SSC for the post of Constable in 2016 / 2020, HC (Min.) in 2022, HC (AWO) / TPO in 2022, Constable (Driver) in 2022. If the petitioners had appeared in those examinations and had failed in those, they cannot seek a general age relaxation in the present examination.

18. That apart, even some of the present petitioners have participated in the selection process in 2020. As such, the petitioners have had other employment opportunities, which may or may not have utilized, and as such age relaxation cannot be granted to them on the concept of legitimate expectation.

19. In support of her submissions that the petitioners are not entitled to age relaxation even as a one-time measure, she has referred to the following judgments:

1. ***Ajay Kumar Yadav and Anr. v. Government of U.P., 2022 SCC OnLine All 547***
2. ***Vinod Kumar Mantoo v. Delhi High Court, W.P.(C) 13736/2009***
3. ***Samandeep Singh v. State of Punjab and Ors., Punjab and Haryana High Court, LPA 745/2021***
4. ***Rakesh Kr. Sharma v. State of NCT of Delhi, 2013 11 SCC 58***
5. ***Annu and Ors. v. GNCTD, W.P.(C) 11328/2017***



**6. Govt. of NCT of Delhi v. Anita Kataria and Ors.,
W.P.(C) 1445/2019**

**7. Sachin Gupta and Ors. v. DSSSB, 152 (2008) DLT
378 DB**

8. Raj Bala and Ors. v. GNCTD, W.P.(C) 7240/2018

20. She has sought the dismissal of the present petitions.

21. Having heard the learned counsel for the parties, the short issue which arises for consideration is whether the petitioners herein are entitled to interim relief, allowing them to appear in the examination for recruitment to the post of Constable (Executive) in Delhi Police. Before we deal with the submissions of the counsel for the petitioners, it is necessary to reproduce the relevant conclusion of the Tribunal as under:-

*“16. The judgments relied upon by the applicants have mainly referred the judgment of Hon'ble Apex Court in **High Court of Delhi Vs. Devina Sharma** (2022) 4 SCC 643. This judgment refers to appointment of District Judges and the Hon'ble Supreme Court in its order dated 14.03.2022 has stated that the only condition for appointment of the District Judges as per Article 223 of the Constitution of India is continuous practice of seven years as an advocate or a pleader in an appropriate Court. There is no mention of age limit for appointment of District Judges under the said Article of Constitution of India. The Constitution has prescribed a requirement to the effect that a person shall be eligible for appointment as a District Judge only if he or she has been an advocate or a pleader for at least seven years. The Hon'ble Apex Court in para 29 of the said judgment have ruled as under:-*



“29. In order to obviate any further litigation and uncertainty, we permit the High Court as a one-time measure to allow those candidates who were within the age cut-off of 45 years during the recruitment years 2020 and 2021 to participate in the ensuing DHJS examinations.”

17. As the said judgment is a one-time measure and specific to that particular case, that cannot be treated as a judgment in rem and applicable for all the special cases for recruitment where there is specific mention of the age as well as the relevant Recruitment Rules. In view of this, the judgment quoted by the applicants will not come to their rescue.

18. We are of the considered opinion that if the interim prayer as pleaded by the applicants is granted, it will create a separate category/class of applicants with vested right for age relaxation which is not the intention of the framers of the Recruitment Rules. Granting of interim relief will create a situation where the potential applicants, who could not come to the Tribunal, will be deprived of such an opportunity. Creating such type of class and vested right in favour of the present applicants would be in violation of Articles 14 and 16 of the Constitution because it will discriminate other potential candidates who would have applied had they known that such relaxation will be granted.

19. The second issue is whether the applicants have been deprived of a chance to get appointment in government serviced because of the failure on the part of the respondents to conduct the recruitment regularly as provided in the Delhi Police (Appointment & Recruitment) Rules, 1980. It is a fact that the examination would be taken twice a year. Rule 9 of the Delhi Police (Appointment & Recruitment) Rules, 1980



clearly states that the recruitment of the Constables shall be done twice a year in the months of January and July by the Board to be nominated by the Commissioner of Police. However, this is a model recruitment calendar. It is also mentioned that at any time, if there are sufficient number of vacancies and the panels prepared earlier have been exhausted, special recruitment may be ordered. In the case of earlier process of recruitment which started in 2020, offers of appointment are yet to be extended. Therefore, for administrative exigencies, as explained by the respondents, the regular recruitment for the post under reference could not be taken place. In view of this, the applicants cannot claim vested right to get age relaxation because the respondents could not hold regular recruitment drives to recruit police constables.

20. In view of the above, the Interim Relief, as prayed by the applicants cannot be granted and accordingly the same is declined.”

22. Suffice to state, as noted from the above, the advertisement was issued on September 01, 2023, the last of date of submitting the applications was September 30, 2023 and the exam is scheduled to be held from November 14, 2023. The petitioners could not apply to the post as they have become over-age. At the outset, it may be stated that, the petitioners have not averred in the petitions, whether they belong to General Category, OBC, SC/ST etc. Such details/information are / is important to be stated because the recruitment rules / advertisement prescribes the age limit for General Category as 18-25 years, whereas, age relaxation has been given to all other categories in the following



manner:-

5.1 Permissible relaxations in upper age limit for different categories are as under:

Code No	Category	Age relaxation permissible beyond the upper age limit
01	SC/ ST	5 years
02	OBC	3 years
20	Sportsperson of distinction who have represented a State at the National Level or the Country at International level in sports during preceding three years from the closing date of receipt of online applications (List of Games/ Sports at Annexure-VIII)	5 years
21	Sportsperson of distinction who have represented a State at the National Level or the Country at International level in sports during preceding three years from the closing date of receipt of online applications (SC/ ST) (List of Games/ Sports at Annexure-VIII)	10 years
22	Departmental candidate of Delhi Police (UR)	Up to 40 years
23	Departmental candidate of Delhi Police (OBC)	Up to 43 years
24	Departmental candidate of Delhi Police (SC/ ST)	Up to 45 years
25	Sons and daughters of serving, retired or deceased Delhi Police personnel/ Multi-Tasking Staff of Delhi Police.	Up to 29 years
26	Ex-Servicemen (UR/ EWS)	03 years after deduction of the military service rendered from the actual age as on the date of reckoning.

27	Ex-Servicemen (OBC)	06 years (3 years + 3 years) after deduction of the military service rendered from the actual age as on the date of reckoning.
28	Ex-Servicemen (SC/ ST)	08 years (3 years + 5 years) after deduction of the military service rendered from the actual age as on the date of reckoning.
29	Widows, divorced and judicially separated women who have not re-married. (The crucial date for such claim will be the closing date for receipt of online applications.)	5 years



23. It is noted, it is only in the case of general candidates that the maximum age limit is 25 years. In all other cases, age relaxation is available. In fact, we find that the petitioners in these petitions also include persons belonging to General / SC / OBC / EWS, who have attained the age of 25-35 years. In some cases, the petitioners though belonging to SC / ST / OBC / EWS categories, appears to have crossed the age relaxation granted in the advertisement to them. There is no challenge made to the said stipulation of age relaxation in the Rules/advertisement. Any order as sought by the petitioners shall mean, the relaxation shall be over and above relaxation already prescribed in the Rules/advertisement.

24. It is a conceded position that some of the applicants have appeared in the examination held in the year 2020, but they could not qualify the same. We note, the petitioners do not state, in how many competitive examinations, they have participated and whether they have participated in examination to the post of Constable (Executive) held in the years 2016 and 2020. Such information is relevant because, there may be cases, where persons being eligible have applied in 2016 and / or 2020, and were unsuccessful.

25. According to counsel for the petitioners, the examination could not be held despite a tentative examination calendar having been prepared in the year 2021-2022 as per which advertisement had to be issued on January 9, 2023 and March 2, 2023, but the advertisement



was only issued on September 1, 2023 and as such they could not apply against the same, having become over-age.

26. Reliance placed by the counsel for the petitioners was primarily on Rules 9 and 30 of the Rules. Rule 9 contemplates that the recruitment to the post of Constable (Executive) needs to be held every year in the month of January and Rule 30 grants power to the Administrator to relax the Rules when it is necessary or expedient to do so. Suffice to state, *prima facie*, this submission is appealing, but any interpretation of the said Rules needs to be considered and decided by the Tribunal at the time of final determination of the OA's.

27. In any case, the submission of the counsel for the petitioners is that he is not seeking age relaxation as a general proposition, but considering the fact that the selection / appointments were not conducted in 2021 and 2022 due to COVID-19 reasons, the age relaxation need to be granted to the petitioners as a one-time measure and they should be allowed to sit in the examination. If the recruitment had taken place as per Rules, the petitioners would not have become over-age.

28. The argument looks appealing on a first blush, but on a deeper consideration, we may state the COVID-19 reason, is not applicable to the petitioners for the reasons stated in paragraphs 23 and 24 above. That apart, when the earlier advertisement was issued in the month of August 2020 for filling up 5846 vacancies of Constable (Executive), some of the petitioners had appeared, but were not successful. The selection process that commenced in 2020 continued till August, 2023, as it was the contention of Mrs. Ahlawat that many of the successful



candidates therein were given posting from the panel. So, there was no occasion for the respondents to notify the fresh recruitment process before August 2023.

29. Mrs. Ahlawat has laid stress on the fact that an advertisement has been issued for filling up 7547 number of vacancies, against which 33,07,256 candidates have applied and 32,46,264 applications have been found to be complete. The examination on November 14, 2023 is being conducted in 9 regions in a phased manner. It is her submission that the above examination is a pan-India and most of the petitioners, in all these years must have appeared in all the examinations conducted by SSC with same qualification or other examining bodies, and since having failed, cannot ask for a relaxation due to COVID-19 reasons. The figures which have been highlighted, including the number of applications received by the Delhi Police / SSC as indicated by Mrs. Ahlawat shows the large scale on which the examination is being conducted, that too in 9 regions. The petitioners had approached the Tribunal on September 15, 2023 which decided the OAs on September 26, 2023 and we have heard the learned counsel for the parties on October 31, 2023. Any order passed thereafter, surely would have an effect on the selection process which has already been initiated.

30. That apart, what is important is that though reliance has been placed upon Rule 9 of the Rules to contend that Delhi Police should have held the examination in 2021 and 2022, but nothing precluded them to approach this Court seeking a mandamus against Delhi Police / SSC for advertising the posts, enabling them to apply when they were within the age limit.



31. That apart, if the prayer as sought for by the petitioners is granted, then the benefit of the same would also be claimed by persons, who have already been granted age relaxation up to 45 years by virtue of the rules and the advertisement. It may so happen that the said persons may have appeared in the last selections, at least, in the years 2013, 2016 and 2020.

32. We are of the view that in the peculiar facts of this case, no interim order can be granted.

33. In so far as the judgment relied upon by the learned counsel for the petitioners in the case of **Devina Sharma (supra)**, the Supreme Court was concerned with the examination for recruitment to the Delhi Judicial Services held in the year 2022. No recruitment was held in the years 2020 and 2021. The Supreme Court, noting the decision taken by this Court on the administrative side to grant relaxation to the candidates, allowed the same.

34. Similarly in the case of **Sachin and Ors. (supra)** on which reliance has been placed by the counsel for the petitioner are concerned, there the examination was not held between the years 2018-2021 for a period of almost 4 years. In the factual situation, this Court had granted age relaxation in respect of the petitioners therein seeking selection to the post of Head Constable (Ministerial), CRPF.

35. In the case of **Nitish Kumar (supra)**, the petitioners were aspirants for recruitment to the post of Sepoy (Pharma) have become over-aged as no recruitment drive was conducted by the respondents Indian Army after the year 2019. Though an advertisement was notified on February 01, 2021 for recruitment against which the petitioners had



applied, the same was later cancelled by the respondents. Another advertisement was issued on July 14, 2021, but the said recruitment process was postponed and no selection process was undertaken. The stand of respondents was that the said recruitment drive could not be conducted due to the COVID-19 Pandemic. This Court following the judgments in **Devina Sharma (supra)** and **Sachin (supra)**, held that the petitioners are similarly situated and declared the age relaxation of two years as a one-time measure.

36. Similar is the position with respect to the judgment in the case of **Santram Patel (supra)**, wherein examination could not be held in the years 2018, 2019, 2021 and 2022, even though there were about 8000 to 9000 vacancies. The Court following the Judgment in **Sachin (supra)** and **Nitish Kumar (supra)** relax the age limit of the petitioners enabling them to apply to the said post.

37. In **Nagen Bhoi (supra)**, the petitioners, who are aspirants for the post of Constable (Civil) in the Establishments of Orissa Police prayed for a direction to the respondents to relax the upper age limit from 23 to 32 in terms of the Orissa Civil Service (Fixation of Upper Age Limit) Rules, 1989, which was amended on November 7, 2022, stating '*provide further that for advertisement made during calendar years 2021, 2022 and 2023, the said upper age limit shall be 30 years*'. The last recruitment to the said post was made in the year 2018. The High Court of Orissa noting that the factual background of the case is similar to **Devina Sharma (supra)** as no examination / recruitment was conducted in the years 2018, 2019, 2020, 2021 and 2022, due the onset of COVID-19 Pandemic from March 2020 till the middle of 2022, held



that it is not a case where the candidates have missed the opportunity for their own fault, granted age relaxation to the aspiring candidates as a one-time measure.

38. Insofar as the reliance placed by Mr. Tiwary on the order of the Supreme Court in the case titled *Reena Kumari & Ors. v. Jharkhand Public Service Commission & Ors., decided on September 22, 2021* is concerned, the same has no applicability to the facts of this case, as can be seen from the order. The last examination in that case was held in the year 2016. Thereafter, no further examination was conducted for five years and hence, relaxation of five years was given. Insofar as the instant case is concerned, the examination was held in 2016 and also in 2020. The examination of 2020 culminated only in the month of August, 2023, which was followed by advertisement dated September 01, 2023.

39. In view of the above discussion, we are of the view that in the facts of this case, the order of the Tribunal needs no interference. The petitions are without merit and are dismissed as such. No costs.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

NOVEMBER 07, 2023/jg