

**Sunder Dev Vs. Deputy Commissioner of Police and anr.**

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**Court :** Delhi

**Decided On :** Sep-20-1983

**Reported in :** AIR1984Delhi267; 24(1983)DLT374; 1984(6)DRJ81; 1984(1)SLJ693(Delhi)

**Judge :** A.B. Rohtagi, J.

**Appeal No. :** Contempt Civil Petition No. 44 of 1983

**Appellant :** Sunder Dev

**Respondent :** Deputy Commissioner of Police and anr.

**Advocate for Pet/Ap. :** S.A.K. Dhar,; A.K. Dhar and; Y.K. Sabharwal, Advs

**Judgement :**

**Avadh Behari Rohatgi, J.**

(1) This is a contempt petition against the Deputy Commissioner of Police and Additional Commissioner of Police for not sending the petitioner for training for the post of Sub-Inspector (Executive).

(2) These are the facts. The petitioner is a constable in the Delhi Police. As a departmental candidate he appeared at an examination held by the Staff Selection Commission for the post of S.I. (Executive). He passed the written test. But he was not allowed to take the personality test because he did not possess the

minimum height required under the rules. So he came to this Court in a Writ Petition. I held that the petitioner's disqualification on the ground of minimum height was invalid and that he was entitled to appear at the personality test. So the petitioner appeared at the personality test. He was found fit. He asked for an appointment letter. This was refused to him. The ground for refusal was that he was considered by the Staff Selection Commission as a schedule caste candidate and there is no reservation for schedule castes and therefore he cannot be given the appointment letter.

(3) What the Police department did was this. 50 percent posts of the Sub-Inspectors were to be given by promotion. 50 per cent posts were for direct recruitment. Out of 50 per cent posts of direct recruitment, 15 per posts was to go to the schedule castes, 7' per cent to the schedule tribes

(4) The petitioner was a departmental candidate. He applied under the 10 per cent quota meant for departmental candidates. In his application he mentioned in explicit terms that he wanted to be considered as a 'general candidate'. He did not want to be considered as a schedule caste candidate. Though it is not so stated it is quite clear from his application where he pointedly says : 'Please consider me as a general candidate'. In the 'Employment News' where the advertisement of the Staff Selection Commission appeared on 10th October, 1981 there is no mention of reservation for schedule castes and schedule tribes for the posts allotted to the departmental candidates which were 15 in number. There is a reservation for schedule castes (21 in number) and schedule tribes (11 in number) in the unreserved seats which were 72 in number. So it would appear from the 'Employment News' as well as the application of the petitioner that he was to be considered as a 'general candidate'. But the department considered him as a schedule caste candidate. This is what the Staff Selection Commission has said in reply.

(5) There is a history behind it. The department was making reservation for the schedule castes and schedule tribes even in the limited quota of 10 per cent meant for departmental candidates. So the schedule castes and schedule tribes were enjoying double reservations-(1) 15 per cent and 7' per cent respectively in

the general quota of 50 per cent and (2) in the quota of 10 per cent which was in fact a part of 50 per cent. This double reservation was impugned in this Court in a writ petition by one Raj Kumar (See Raj Kumar v. Union of India. Decided on 26-5-82). The Division Bench. held that there cannot be a double reservation in favor of schedule castes and scheduled tribes. So they struck down this reservation in the departmental quota of 10 per cent. The matter went to the Supreme Court. The Slp (No. 8735/82) filed by the department was dismissed on 30-3-1983. But the department even now is clinging to its old ways. In a characteristically pertinacious way the department is arguing that as the reservation in the 10 per cent quota for schedule castes and schedule tribes has gone, so the right of the petitioner to appoint as S.I. (Executive) has also gone.

(6) I am Surprised at this argument. The petitioner says that in the 'Employment News' advertisement there is no reservation at all in favor of schedule castes and schedule tribes candidates in the quota of departmental candidates. Then he has referred me to his own application where he requested that he be considered as 'a general candidate'. Then he has relied upon the judgment of the Division Bench of this Court in Raj Kumar which squarely held that the department cannot make any reservation in the quota of 10 per cent schedule castes and schedule tribes. This view of the Division Bench was confirmed by the Supreme Court. So there cannot be any consideration by the Staff Selection Commission of the petitioner as a schedule caste candidate which is the stand taken by the department in this petition. I cannot see how the Staff Selection Commission can consider the petitioner as a schedule caste candidate when he was prepared to stand in competition with all others. It is true that the petitioner is a member of schedule caste but he never wanted any special favor to be shown to him as a schedule castes candidate.

(7) Mr. Y.K.Sabharwal on behalf of the department has raised four points before me. Firstly, he says that the petitioner paid only Rs. 7.00 as fee prescribed for a scheduled caste candidate and did not pay Rs. 28.00 prescribed for general candidates. This, according to him, shows that he was a schedule castes candidate. I do not agree. Mere payment of Rs. 7.00 does not show that he was claiming that he be considered as a schedule caste candidate. There is no

reservation for schedule caste candidates in the 10 per cent quota. This is now finally settled. The Division Bench had decided this point before he was considered by the Staff Selection Commission. The writ petition was also filed by the petitioner before me after the Division Bench had made the authoritative pronouncement.

(8) Mr. Sabharwal in the second place argued that the question of selection by the Staff Selection Commission is not in issue before us because that was not in issue in the earlier petition decided by me. This is neither here nor there. The point is that the Staff Selection Commission under the law cannot consider a candidate such as the petitioner as a schedule caste candidate when there is no reservation for schedule caste in the 10 per cent quota. If the Staff Selection Commission goes against the law it is the duty of this court to set them right. The Division Bench has said this. The Supreme Court has said this. I must follow the Supreme Court. It is my duty to apply the correct law to the facts of this case.

(9) Thirdly, Mr. Sabharwal says that the petitioner did not qualify as a general candidate before the Staff Selection Commission in the merit list. He was approved only as a schedule caste candidate by them, he says. My answer to this argument is the same as I have given above. They, namely, the Staff Selection Commission, were entirely wrong in considering the petitioner as a schedule caste candidate when the law does not authorise them to do so.

(10) Lastly, Mr. Sabharwal said that there is no vacant post now and therefore, no appointment letter can be issued to the petitioner. The posts have been carried forward to the next year, he said. In all, there were 17 posts for departmental candidates in the 1 per cent quota. Admittedly 11 have been filled in. 6 are vacant. It is the case of the department that five of them have been carried forward to the next year. I cannot accept this. There is no provision for carry forward so far as the petitioner is concerned. It is said that the rules were amended in December 1981 authorising the Commission to carry forward the posts to the next year. The petitioner was a candidate in 1981. He applied in answer to the 'Employment News' advertisement dated 10th October, 1981. The amended rules of December 1981 obviously cannot apply to him. He cannot be met by the answer that the posts

have been carried forward to the next year and his right is gone. Mr. Dar, counsel for the petitioner says that the posts cannot be carried forward according to the Office Memorandum dt. 8th February, 1982. I need not go into this question. When the petitioner brought the writ petition this court made an order that one post be kept vacant for him so that in the event of his success he gets the job.

(11) It seems plain to me that when the petitioner has been found fit for appointment as S.I. (Executive) it does not lie in the mouth of department to say that they wrongly considered him as a schedule caste candidate, and that he is not entitled to the appointment letter. When the petitioner has succeeded in the written test and has passed the personality test. there is nothing else which can stand in his way. Law is on his side. Justice is on his side. I am not impressed by the argument that I should leave this question undecided and thereby promote further litigation in this case. This was Mr. Sabharwal's main argument. It has not appealed to me.

(12) Mr. Dar has referred me to two cases : Shri Charan Dass Chadha v. The State of Punjab and another, 1980 (3) S.L.R. 702 and Shri Surjit Singh Superintendent, Public Relations Department, Punjab v. Shri Som Dutt and others 1973 (1) S.L.R. 452. These authorities decide that if the Government does not pass the correct order according to the rules, the Govt. servant cannot be made to suffer. The Government is not entitled to take advantage of its own wrong. I respectfully agree with the view taken in these decisions. I see no justification for the stand taken by the department. The petitioner cannot be made to suffer if the Staff Selection Commission does not follow the law. The Division Bench has showed the way. But the department continues to follows the wrong way. By following the discarded method of reservation the department is denying to the petitioner equality of opportunity in public employment.

(13) Opportunity is the one prize a free society has offer. It assures the individual the scope with in which to make the most of his ability. The petitioner was prepared to face the competitive challenge. But the department would not give him the appointment. The department is even now restricting the opportunity open to him, though the division bench broadened the opportunity by abolishing the

reservation for schedule castes and schedule tribes in this limited quota of 10 per cent open to the petitioner as a departmental candidate. Opportunity must offer outlets to talents of every sort. This is what opportunity means. Our constitution guarantees freedom. Freedom, wrote Zechariah Chaffe, the legal scholar, is not safety but opportunity. And whatever diminishes one threatens the other. Equality of opportunity means opening the door to all which privilege, status, and establishment, had once closed to many. Equality of opportunity means that there will be no artificial inequalities by privilege.

(14) For these reasons, I direct the department to issue an appointment letter to the petitioner and send him for training. This to be done within five weeks. If this is not done, stern action will be taken against the respondents. No costs.

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