

Sunder Dev Vs. Union of India and ors.

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Court : Delhi

Decided On : Nov-18-1982

Reported in : 23(1983)DLT115; 1983LabIC1013; 1983RLR36; 1983(2)SLJ145(Delhi)

Judge : Avadh Behari Rohatgi, J.

Acts : Delhi Police (Appointment and Recruitment) Rules, 1980 - Rule 7

Appeal No. : Civil Writ Appeal No. 1730 of 1982

Appellant : Sunder Dev

Respondent : Union of India and ors.

Advocate for Pet/Ap. : S.A.K. Dhar,; C.L. Choudhry and; O.P. Sharma, Advs

Judgement :

Avadh Behari Rohatgi, J.

(1) These two writ petitions raise one question. It is about the height of a departmental candidate who wishes to appear in the competitive examination for the post of Sub-inspector (executive). The qualifications for recruitment of sub-inspectors (executive) are laid down in Rule 7 of Delhi Police (Appointment and Recruitment) Rules, 1980 (the Rules). Rule 7 says : 'Recruitment of Sub-Inspectorg (Executive) fifty per cent of vacancies in the rank of sub-inspectors

(Executive) shall be filled by direct recruitment and 50% by promotion. Out of 50% direct quota 10% of the posts shall be filled through the departmental candidates, viz., the constables, Head Constables and Assistant Sub-Inspectors, of not more than 30 years of age having the requisite qualifications and physical standards through the examination for departmental candidates by the Staff Selection Commission in accordance with the relevant rules. Education, Physical and other standards for the post of sub inspector (direct recruited) shall be as under :-

(1) Age 20-25 years Relaxable by 5 years only for Scheduled Castes/Scheduled Tribes & Departmental candidates.

(2) Height 170 centimeters. Relaxable by 4 centimeter only for residents of hill areas e.g. Garhwalis.

(3) Chest 81 centimeters. Relaxable by 2 centimeters for residents of hill areas.

(4) Educational Degree from a recognised No relaxation Qualifications. University.

(5) Physical standard Sound health free from No relaxation defect/deformity/disease both eyes vision 6/12 (without glasses) No colour blindness.

(6) Reservation

(1) For Scheduled Caste, Scheduled Tribes and Ex. Servicemen, etc. as per orders issued by Government from time to time

(2) For departmental candidates 10% of vacancies. These are the facts. In G.W.I 730 of 1982, the departmental candidate is Sunder Dev, petitioner. He was born on 7-2-1957. He took his B.A. degree in 1977. On 2nd.June, 1980, he was enlisted as a Constable in the Delhi Police Force. He had sound health and a broad chest. His height, however, was 165.7 cms. The minimum height at the time of his enrolment as prescribed by Rule 12.15 of Punjab Police Rules was 170 Cms. Under that Rule, the Deputy Inspector-General has the right to relax the requirement of minimum height. So he relaxed in the case of Sunder Dev. Now there was an 'employment news' published on 10-10-81 by the Staff Selection

Commission, Ministry of Home affairs. This news item said that there will be recruitment of Sub-Inspectors (Executives). According to the Rules a competitive examination was held on 11-1-1982. Sunder Dev appeared in that examination. The examination is in two parts:

(1) written test and

(2) personality test. Sunder Dev qualified at the written test. When he was to appear in the personality test he was told that he was disqualified by reason of the fact that he had only 165.7 Gms. as his height while Rule 7 required that the minimum height should be 170 Cms. So he was turned away. He came to Court. He filed this writ petition challenging his disqualification on the ground of height as invalid and illegal.

(2) The facts of the writ petitioner, Sheh Noor Khan, in C.W. 1856 of 1982 are very much similar. He was born on 10-10-55. He was appointed as a Constable on 7-11-74. He has robust health and broad shoulders. At the time of his appointment his height was 169.5 C.Ms. as against the minimum required height of 170 G.Ms. He too got a relaxation from the Deputy Inspector-General. In 1976 he passed his BA. examination. On 13-8-78, he was confirmed as a Constable. In answer to employment news he also appeared at the competitive examination for Sub Inspectors (Executive) on 11-1-1982 held by the Staff Selection Commission, Ministry of Home Affairs. He appeared at the written test. He was declared successful. At the stage of personality test he was rejected as he did not possess the minimum height of 170 G. Ms. His claim is the same. He says that his rejection on the ground of height is against the rules and ultra vires.

(3) This point is squarely covered by a division bench decision in Raj Kumar v. Union of India & Others, C.W. 2251 of 1981 decided by D.K Kapur and Charanjit Talwar, JJ. on 26-5-1982. The learned judges held that the relaxation once given to a Constable at the time of his appointment will ensure to his benefit for the post of Sub-Inspector. They said :-

'THAT relaxation would continue for appointment of the petitioner to the next rank of Sub-Inspector whether as a result of competitive test or by way of promotion.

The withholding of the appointment of the petitioner to the rank of Sub-Inspector on this ground is, therefore, entirely illegal.'

(4) On a true interpretation of Rule 7, which I have quoted above, it appears to me that these two petitioners must carry the benefit of relaxation with them to the post of Sub-Inspectors for which they are now competing. Relaxation once given cannot be taken away. This appears to me to be the intention of the Rule. The Rule says that 50 per cent of the vacancies for the post of Sub-inspector (Executive) shall be filled by direct recruitment and 50 per cent by promotion. Out of 50 per cent direct quota 10 per cent of the posts are to be filled through departmental candidates, namely, constables, head constables and assistant sub-inspectors. The Rule then goes on to say that for this direct quota of 10 per cent of the posts the qualifications are these: (i) the departmental candidate will not be more than 30 years of age; (ii) he shall have the requisite qualification, which means educational qualification, viz. a degree from a recognised university; (iii) physical standards, namely sound health, free from defect/deformity/ disease both eyes vision 6/12 without glasses, no colour blindness.

(5) As I read the rules, these are the only qualifications for departmental candidates. For the direct recruits, namely, the remaining 40 per cent, who are outsiders and not departmental candidates the qualifications are laid down in the later part of the Rule. The words '(direct recruited)' within brackets refer to outsiders i.e. who are not 'departmental candidates'. Now reading the qualifications for direct recruits from outside as contrasted with departmental candidates from within it would appear that the prescribed age of 20-25 years will not apply to the departmental candidates. The height requirement will not apply to them. Nor the requirement of chest. All that is required is that they must not be more than 30 years of age and must possess a degree from a recognised university and must have sound health according to the physical standard laid down in condition No. 5. Nothing more and nothing less. These are the only conditions which qualify the departmental candidates in the direct quota of 10 per cent to appear at the competitive examination.

(6) The reason for this rule is a sound one. The departmental candidate when he was taken into service was found fit with regard to height and chest both. As regards height it was relaxed in the case of these two petitioners. They cannot be disqualified on that ground now when they seek promotion through the avenue of a competitive examination to the post of Sub-inspectors. Once the authorities relaxed the standard of minimum height and enlisted the petitioners as constables in the Delhi Police this relaxation will hold good as long as they remain in the Delhi Police. It would be absurd to hold that the petitioners through the channel of promotion can go up to the post of a Sub-Inspector, though having a height of less than 170 G.Ms., but for the channel of competition they are disqualified. Such an interpretation is not only absurd but also unjust. The initial relaxation was validly given under Rule 12.15 of the Police Rules. This relaxation the petitioners can carry with them for appointment to the post of Sub-Inspector whether as a result of competitive examination or by way of promotion.

(7) For these reasons I hold that the petitioners' disqualification on the ground of minimum height is invalid. They will be entitled to appear at the personality test. The parties are left to bear their own costs. 8. At the time of the admission of the writ petitions the respondents are directed to keep at least one post of Sub-Inspectors (Executive) vacant for each of the petitioners in the event of their success in the writ petition. The petitioners have now succeeded. Their personality test must be held within one month from today so that they are not in any disadvantageous position as compared to others who appeared with them and are now undergoing a training.