



2020 INSC 301

**NON-REPORTABLE**

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO(S). 2047 OF 2020**  
**(ARISING OUT OF SLP(CIVIL) NO(S). 30192 OF 2017)**

**SUBODH KUMAR & ORS.**

**....APPELLANT(S)**

**VERSUS**

**COMMISSIONER OF POLICE & ORS.**

**....RESPONDENT(S)**

**J U D G M E N T**

**Ajay Rastogi, J.**

1. The appellants are the Constables/Head Constables(Male) serving in Delhi Police and are members of the Delhi Police (Appointment & Recruitment) Rules, 1980 (hereinafter being referred to as Rules, 1980). Some of them later got promoted to the post of Assistant Sub-Inspector during pendency of the appeal.

2. The grievance of the appellants is that the amendments which has been made under Rule 7 and Rule 27A of the Rules, 1980 vide notification dated 13<sup>th</sup> March, 2013 have deprived and made them ineligible to participate against 10% out of the 50% quota reserved for direct recruitment to be filled up from the serving personnel(constables, head constables and ASI) is arbitrary and violative of Article 14 & 16 of the Constitution.

3. The controversy was raised in reference to the amendment made under Rule 7 and Rule 27A of the Rules, 1980 against 10% out of 50% quota reserved for direct recruitment to the post of Sub-Inspectors (Executive)-Male. Indisputedly, either of the appellant was not eligible to participate in the selection process which was initiated by the respondents pursuant to an advertisement dated 16<sup>th</sup> March, 2013 followed with Corrigendum dated 9<sup>th</sup> April, 2013 held for the post of Sub-Inspector(Executive) but few of them were permitted to participate under the interim order of the Tribunal.

4. Rule 7 and Rule 27A of the Rules, 1980 as in force prior to the amendment dated 13<sup>th</sup> March, 2013 are as under:-

**“7. Recruitment of Sub-Inspectors (Executives).**

- Fifty per cent of vacancies in the rank of Sub-Inspector (Executive) shall be filled by direct recruitment and 50% by promotion out of 50% direct quota, 10% of the post shall be filled by limited department competitive tests from amongst constables, Head Constable, and Asstt. Sub-Inspectors with minimum 5 years of service who shall not be more than 35 years (40 years of Scheduled Castes/Scheduled Tribes 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 July of the year if the examination is held in the later half of the year. The educational qualifications and other physical standards for the test shall be the same as prescribed in the Rules for direct recruitment to such posts. The unfilled vacancies reserved for the department candidates will be carried forward for 3 recruitment years as in the case of vacancies for the scheduled tribe candidates whether the unfilled vacancies will be filled by direct recruitment.

**27-A. Relaxation of upper age limit for departmental candidate-** Relaxation of upper age limit of all departmental candidates for direct recruitment against Group C and D posts of Police Department shall be as follows:-

40 years in the case of general candidate and 45 years in the case of candidates belonging to Scheduled Caste/Scheduled Tribes Candidates.”

5. Rule 7 and Rule 27A of the Rules, 1980 post amendment dated 13<sup>th</sup> March, 2013 are as under:-

**“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 all departmental candidates:** Relaxation of upper age limit of 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.”

6. The amended rules had made four significant changes which are referred to as under:-

(i) The words “Limited Departmental Competitive Test” (LDCE) for 10% reserved posts for departmental candidates under the 50% direct recruitment quota were deleted.

(ii) It was stipulated that in addition to the educational qualifications and physical standards, “other requirements” as prescribed for direct recruits shall be fulfilled by the serving personnel.

(iii) Qualifying years of service for serving personnel was reduced from 5 years to 3 years.

(iv) Upper age limit for appointment of Sub-Inspector (Executive) was reduced from 40 years to 30 years

for general candidates, for OBC from 43 years to 33 years and from 45 years to 35 years for SC/ST candidates.

7. Staff Selection Commission issued employment notification on behalf of Delhi Police to fill up various posts including the post of Sub-Inspector (Exe.) Male vide its advertisement dated 16<sup>th</sup> March, 2013. Thereafter, it revealed that the amendment which has come into force vide notification dated 13<sup>th</sup> March, 2013 remain unnoticed, a further Corrigendum came to be notified on 9<sup>th</sup> April, 2013 incorporating necessary changes giving effect to the amendment notification dated 13<sup>th</sup> March, 2013. It specifically notified the changes in the upper age limit for general, OBC and SC/ST serving candidates and provisions for relaxation towards physical test. The result of the aforesaid Corrigendum dated 9<sup>th</sup> April, 2013 was that the appellants stood excluded from consideration as they were indisputedly above the upper age limit from participating in the selection process.

8. This came to be challenged by the appellants by filing of an Original Application before the Central Administrative Tribunal(hereinafter being referred to as the "Tribunal") seeking

quashing of the notification dated 13<sup>th</sup> March, 2013 and advertisement dated 16<sup>th</sup> March, 2013 read with Corrigendum dated 9<sup>th</sup> April, 2013 and by an interim order dated 29<sup>th</sup> May, 2013 and 7<sup>th</sup> October, 2013, the Tribunal allowed the appellants to participate in the process of selection held pursuant to an advertisement dated 16<sup>th</sup> March, 2013.

9. The learned Tribunal on 18<sup>th</sup> July, 2014 disposed of the OA No. 1650/2013 filed by the appellants holding that it was not open for the Tribunal to interfere with the amendment and modifications made to the recruitment rules by the executive or legislature in their wisdom unless the same were unconstitutional or shockingly arbitrary. It further observed that it was for the recruiting authorities to prescribe and fix age limits and also to what extent relaxation should be granted. The appellants' contention that the amendments to the recruitment rules were made after the selection process had already been set into motion was rejected, pointing out that the amendments to the recruitment rules were notified on 13<sup>th</sup> March, 2013 and advertisement for recruitment to the said posts was published on 16<sup>th</sup> March, 2013, i.e., post amendment to the Rules, 1980. The

challenge to the corrigendum dated 9<sup>th</sup> April, 2013, revising the terms of advertisement being in conformity with the amendment rules was repelled holding that no vested right had accrued to the serving candidates under the pre-amended rules. While concluding, it directed the Delhi Administration to refer the matter to the Committee which was formed to re-examine the amendments keeping in view the grievances raised by the appellants. The Committee also in compliance of the Tribunal's order revisited the amendments made under the notification dated 13<sup>th</sup> March, 2013 which did not find favour. The conclusion of the minutes of the meeting held on 18<sup>th</sup> December, 2014 has been placed on record by the respondents along with the counter affidavit at page 76 of the paper book. The same are extracted hereunder:-

"1. The existing age limits as modified relating to the departmental candidates has due rationale and to remain and continue. Increase in age will lead to shortage of young officers at the level of Sub-Inspectors which is the dire need of the day where Police duties have become highly arduous and also because the departmental candidates are getting opportunity in promotion quota etc as explained by Delhi Police.

2. Keeping in view the recruitment policy of the Delhi Police, the Committee is of the opinion that the demand is not justified as existing changed policy is

working well for the promotion of sports and sports curricular/physical fitness in Delhi Police. Therefore, there seems to be no need to modify Rule-5 of Delhi Police (Appointment & Recruitment) Rules-1980 meant for implementing the direction of the Govt. relating to SC/ST, Ex-servicemen, outstanding sportsmen, departmental candidates, etc.

3. The issue of ground for amending the recruitment rules was examined by the Committee at length and it got emerged that it is not only the alignment of examination with CAPF but the major issue here is to have young officers at middle level of the force and also to have pan India representation in the Delhi Police force through SSC recruitment. It was also felt that since 50% of the total vacancies are already allocated to the promotee employees, there chance of promotion is nowhere compromised.

4. In view of the clarification provided by Delhi Police regarding the Post of Sub Inspector in CAPF being Group "B" while Sub Inspector (Exe.) in Delhi Police being Group "C" posts, the Committee is of the view that the contention of the applicants does not hold ground."

10. The order of the Tribunal came to be challenged by the appellants before the Division Bench of the High Court and that came to be dismissed vide judgment dated 20<sup>th</sup> April, 2017 which is a subject matter of challenge before us.

11. Mr. M.N. Rao, learned senior counsel for the appellants submits that the amendment which has been made under notification dated 13<sup>th</sup> March, 2013 practically is unworkable and arbitrary. When the serving personnel is promoted to the post of



ASI, he indeed by that time cross the age of 30 years and this is indirect way of elimination of serving Head Constable/ASI to participate against 10% quota reserved for serving personnel under the Rules, 1980 and to buttress further submits that there cannot be a rule which is impossible of compliance and is suggestive of arbitrariness and lack of application of mind of the authority in making such amendments under the notification dated 13<sup>th</sup> March, 2013 and is in violation of Article 14 and 16 of the Constitution and deserves to be interfered with by this Court.

12. Learned counsel further submits that an apparent error has been committed by the High Court in holding that the amended rules give equal opportunity to in-service candidates to compete with open market candidates against 50% of direct recruitment quota. According to the learned counsel, the High Court has completely misdirected both in facts and law. In-service candidates cannot compete with open market candidates for the reason that the upper age for open market direct recruits is 25 years whereas for in-service candidates, it is 30 years. It is not possible for serving Constables, Head Constables or ASI to compete for the direct recruitment quota before the age of 25

years. Both the categories are distinct and different. The amendment which has been made in the upper age limit for the candidates to participate for the post of Sub-Inspector (Exe.) Male under notification dated 13<sup>th</sup> March, 2013 is indirect way of elimination of the serving candidates in the process of selection. Such an amendment being irrational and has no nexus with the object to be achieved. The very purpose as projected attract meritorious persons in the rank of Constable, Head Constable and ASI's to shoulder higher responsibilities is not going to be achieved under the impugned amendment notification dated 13<sup>th</sup> March, 2013.

13. Ms. Madhavi Divan, learned ASG, appearing for the respondents, on the other hand, while supporting the judgment of the Tribunal confirmed by the High Court submits that it is a not a fast track promotion of the serving personnel to the post of Sub-Inspector(Executive). For serving personnel, 50% quota is reserved for promotion in their respective channel and after qualifying the minimum service as Assistant Sub-Inspector, one could be considered for promotion against 50% of promotion quota but so far as 50% quota reserved by direct recruitment is

concerned, it is an open selection and 10% out of 50% quota of direct recruitment is carved out for the serving personnel whose suitability has to be adjudged on the same standards and yardsticks prevalent for open selection under the scheme of Rules, 1980 and that is the reason for which an amendment has been made under notification dated 13<sup>th</sup> March, 2013. The upper age limit which has been modified relating to the departmental candidates has a reasonable nexus and pre-existing upper age limit would lead to shortage of young officers at the level of Sub-Inspectors which is dire need of the day where police duties have become highly arduous and also for the reason the departmental candidates are awaiting their opportunity in promotion quota and were desirous that selection under direct recruitment quota be brought not only in alignment with CAPF but the object was to have young officers at middle level of the force and also to have pan India representation in Delhi Police through SSC recruitment.

14. Learned counsel further submits that eligibility qualifications for recruitment or promotion in service are ordinarily the matters to be considered by the appropriate authority and not by the Courts. It is the employer who is best suited to decide the

requirements a candidate must possess according to the needs of the employer and the nature of work. Prescribing of any age limit for a given post, as also deciding the extent to which any relaxation given if an age limit is prescribed, are essentially matters of policy and as long as its competence in making such amendments would serve a public purpose, it is not open to be interfered with by this Court under limited scope of judicial review after it has been examined by the Tribunal and confirmed by the High Court.

15. It is a settled law that prescribing of any age limit for a given post, as also deciding the extent to which any relaxation can be given if an age limit is prescribed, are essentially the matters of policy. It is always open for the Government or the appointing authority while framing rules, to prescribe such age limits or to prescribe the extent to which any relaxation can be given. Prescription of such limit or the extent of relaxation to be given, cannot ordinarily be termed as arbitrary or unreasonable. Just because the amendment under notification dated 13<sup>th</sup> March, 2013 has curtailed the chances of the appellants to take part in

the selection process, it cannot lead to an inference that the rule is arbitrary or unreasonable as prayed for.

16. It is equally a settled proposition of law that a candidate has a right to be considered under the existing rules, which implies the 'rule in force' on the date the consideration took place. There is no rule of universal or absolute application that vacancies are to be filled invariably by the law existing on the date when the vacancy arises. The requirement of filling up earlier year vacancies under the old rules is interlinked with the candidate having acquired a right to be considered for promotion.

17. The four significant changes which have been made under the amendment notification dated 13<sup>th</sup> March, 2013 envisage that while giving due opportunity to the in-service candidates for participating against 10% out of the 50% quota reserved for direct recruitment to compete in the self-same selection process on the same standards and yardsticks except giving some advantage in relaxation of upper age limit for a fair consideration in the process of selection and scaling the upper age limit indeed may reduce the number of serving personnel holding the post of

Constable/Head Constable/ASI in competing with the candidates in the open selection but that in itself cannot be regarded as unconstitutional or arbitrary as prayed for by the appellants and at the same time, it may not be construed to be a fast track promotion to the serving personnel reserving right of in-service personnel for their promotion against 50% quota separately reserved under the scheme of Rules, 1980.

18. We find no reason to interfere with the impugned judgment. The appeal is accordingly dismissed. No costs.

19. Pending application(s), if any, stand disposed of.

.....J.  
**[Dr Dhananjaya Y Chandrachud]**

.....J.  
**[Ajay Rastogi]**

**New Delhi**  
**March 17, 2020**