

## **State Of M.P. And Ors vs Mahesh Kumar And Ors Etc. Etc on 29 April, 1997**

**Equivalent citations: AIR 1997 SUPREME COURT 2710, 1997 AIR SCW 2681, (1997) 2 LAB LN 1026, (1997) 2 CURLR 8, (1998) 1 SERVLJ 191, (1997) 76 FACLR 817, 1997 (6) SCC 95, 1997 SCC (L&S) 1260, (1997) 4 SERVLR 554, (1997) 3 SCR 1098 (SC), (1997) 5 SUPREME 321, (1997) 4 SCALE 289, (1998) 1 LABLJ 165, (1997) 3 SCT 109, (1998) 2 SCJ 170, (1997) 5 JT 524 (SC)**

**Bench: K. Ramaswamy, S. Saghir Ahmad**

CASE NO. :

Appeal (civil) 3573 of 1997

PETITIONER:

STATE OF M.P. AND ORS.

RESPONDENT:

MAHESH KUMAR AND ORS ETC. ETC.

DATE OF JUDGMENT: 29/04/1997

BENCH:

K. RAMASWAMY & S. SAGHIR AHMAD & G.B. PATTANAIK

JUDGMENT:

JUDGMENT 1997(3) SCR 1098 The following Order of the Court was delivered :

Delay condoned.

Leave granted. We have heard learned counsel on both sides. These appeals, by special leave, arise from the orders of the Madhya Pradesh Administrative Tribunal, Jabalpur Bench, made on February 28, 1996 in O.A. No. 110/95 and batch.

The admitted facts are that the respondents are Head Constables. For promotion as Assistant-Sub-Inspectors, examinations were conducted on 29th and 30th December, 1993 throughout the State comprising of different zones. 50% of the total marks were prescribed as passing marks for general candidates and 40% for the reserved candidates belonging to Scheduled Castes and Schedule Tribes (for short, 'Dalits and Tribes' respectively). Only one Dalit candidate and three general candidates passed with the prescribed standard and the rest of the Head Constables in Jabalpur Zone failed. Consequently, the Inspector General of Police, Jabalpur Zone had suggested to the Director General of Police (D.G.P.) to award 15% grace marks to the general candidates and 10% grace marks to the reserved category. The D.G.P. agreed for the

same, As a consequence, 60 candidates belonging to the general category and 15 candidates belonging to the reserved category were declared passed. They were empanelled for appointment to the posts of Assistant Sub-Inspectors and were sent for training. Realising the mistake committed by the D.G.P., that relaxation could not be granted only in respect of one zone, the relaxation was withdrawn by proceedings dated December 2, 1994, The said order came to be challenged by the respondents in the the Tribunal. The Tribunal has held that since the empanelled candidates were not heard before withdrawing of the grant of further additional grace marks, it is violative of principles of natural justice; therefore, the order is bad in law and accordingly it allowed the O.As. Thus, these appeals by special leave.

The only question that arises for consideration is : whether the view taken by the Tribunal is correct in law? It is not in dispute that under Section 70 of the M.P, Police Regulations, power has been given to issue orders to be notified in the Gazette. It reads as under :

"70. The system of promotions in the subordinate executive ranks will be as laid down in the supplement to the Madhya Pradesh Police Gazette dated 5.10.1960."

Accordingly notification came to be made in the Gazette on October 5, 1960. Clause I(viii) indicates that "papers for the qualifying examination (as laid down in Central Provinces and Berar Police Regulation, 115) will be set by such of the Superintendents of the Constables Training Schools as may be nominated by the Inspector-General of Police."

The papers were directed to be set down in the order prescribed there- under, Clause (2) to (7) postulate thus :

"(2) Promotion to Head constables to Assistant-Sub- Inspectors (1) Eighty per cent (80%) of the posts of Assistant Sub-Inspectors will be filled in by promotion of Head Constables who qualify at an examination to be held each year. A Head Constable will be given three (3) chances to appear at the examination. The subjects and papers for the examination will be the same as for the Sub-Inspector cadets at the Madhya Pradesh Police Training College, Sagar. In order to qualify for the examination a Head Constable should have put in at least three (3) years' service as a Head Constable if he is a matriculate, and if not, he should have put in a minimum of five (5) years as Head Constable. Out of this, he should have worked for at least one (1) year at a police State, the C.I.D. or Special Branch experience being quoted to that at the Police Station.

(ii) Twenty per cent (20)% of the Posts will be filled in by nomination of Head Constables who have a minimum of fifteen (15) years' overall service at the time of promotion. For this, nominations will be submitted by the Superintendents of Police by 1st of May each year.

Records of Head Constables who qualify in the examination and those nominated by Superintendents of Police through the Deputy Inspectors- General of Police will be examined by a Com-mittee of the Deputy Inspectors-General of Police. The fit list will be prepared by 1st of June.

(iii) Head Constables brought on the fit list will be required to pass the Pre-promotion course to be held at the Constables Train-ing School of the Range. One extra chance will be given to the Head Constable who fails in the Pre-promotion course. The year of allotment will be the one in which the name is brought on the fit list.

(iv) Seniority of Head Constable brought on the fit list will be prepared by the Committee of the Deputy Inspectors- General of Police according to the rules of service.

(3) Promotion of Assistant Sub-Inspectors to Sub- Inspectors; (1) Superintendents of Police will be required to nominate deserving Assistant Sub-Inspectors who have put in a minimum of five (5) years' service as Assistant Sub-Inspector and the Deputy Inspec-tors-General of Police Committee will prepare the fit list by Scrutiny of records by the end of June each year. Nominations will be submitted by the Superintendent of Police through the Deputy Inspectors-General of Police by 1st May, each year and the Deputy Inspectors-General of Police Committee will prepare the list by the end of June. The fit list for a particular year will be according to seniority of service as Assistant Sub-Inspector.

(ii) Officers brought on the fit list will be required to pass a Pre- promotion course at the Constables Training School of the Range. Those failing at the course will be given one extra chance, without disturbing the year of nomination.

(4) Promotion of Sub-Inspectors in Circle Inspectors : (i) Super- intendents of Police will nominate deserving Sub- inspectors who have put in a minimum of eight years (8) if Directly appointed and five years (5) if promoted. The Committee of the Deputy Inspec-tors-General of Police will interview these Officers, scrutinise their record and prepare the fit list by the end of June. Fifty per cent (50%) of the marks will be reserved for interview and the remain-ing fifty per cent (50%) marks for records. Nominations will be submitted by the Superintendents of Police by 1st of May each year. According to standing orders, the name of a sub-Inspector who has put in 9 to 12 years' service but has not been nominated will be reported to the Range Deputy Inspector-General of Police together with reasons for not nominating him.

(ii) The names of officers nominated in a particular year will be arranged according to the length of service as Sub- Inspector. For this purpose, the length of service of a promotee will be counted from the date of confirmation as Sub-Inspector.

(iii) Officers brought on the fit list will be required to undergo a pre- promotion course at the Madhya Pradesh Police Training College, Sagar. One who fails in the course will be given one extra chance without disturbing his year of nomination.

(5) Promotion of Sub-Inspectors to Assistant Police Prosecutors : Fifteen per cent (15%) of the Assistant Police Prosecutors posts will be filled in by nomination of willing and suitable sub-Inspectors. Nominations will be submitted by the Superintendents of Police by 1st of May each year and the Committee of the Deputy Inspectors-General of Police will prepare the list by the end of June.

(6) Promotion of Sub-Inspectors of Platoon Commanders to Sub-edars :

Fifteen per cent (15%) of the Subedar's posts will be filled in by promotion of willing and suitable Sub-Inspectors or Platoon Commanders. Nominations will be submitted by the Superintendents/Commandants of Police by 1st of May each year and the Committee of the Deputy Inspector-General of Police will prepare the list by the End of June.

(7) Promotion of Assistant Police Prosecutor to Police Prosecutors : The system of promotion will be the same as for sub-Inspectors to the rank Circle Inspectors. A direct Assistant Police Prosecutor with a minimum service of eight years (8) and a promoted Assistant Police Prosecutor with Five years (5) service will normally be eligible for promotion as Police Prosecutor. Nominations will be submitted by Superintendent of Police through Deputy Inspectors-General of Police, list on 1st of May each year and the Committee of the Deputy Inspector-General of Police will prepare the list by the end of June. The Committee will also interview the officers in addition to scrutinising the records. Fifty per cent (50%) of the marks will be reserved for interview and fifty per cent (50%) marks will be for records. Seniority in the fit list will be by length of service."

In furtherance thereof, the examinations came to be conducted and the marks were relaxed to the extent to Dalits and Tribes by virtue of the Memorandum dated February 15, 1978 issued by the Government in respect for the reserved candidates relaxing 10% of the marks. This was in exercise of the power under Article 16(4) of the Constitution. As regards the general candidates, there is no power to grant relaxation. However, since the candidates were not available, a note had been put up for granting relaxation and the D.G.P. gave the relaxation as found in the note sheet thus :

"In pursuance of the personal discussion and telephonic conversation with you, I am enclosing with this note sheet, the result of examination of Head Constables to be promoted as Assistant Sub-Inspector from my zone. The SC and ST candidates have already been awarded 10% marks earlier. Out of the total 4 candidates declared successful only one candidate belongs to SC category. The maximum marks for the Regulation paper were 200 while that of law were 100. Both the papers were so tough that I do not know how the candidates in the other zones passed particularly when the whole of the previous year was full of law and order problems. Expecting Head Constables to study continuously for a long period is virtually impossible. If an additional 15% marks are granted to the entire zone, 61 candidates of the general category can be declared successful. In this manner total 76 candidates will be

declared successful by giving 10% additional marks, 15 SC candidates will be declared to successful by giving grace marks. Earlier in the year 1991, 1992, 175 and 44 candidates were declared passed successful respectively. It is, therefore, requested that permission to give additional 15% grace and 10% marks be given to general and SC category respectively."

Admittedly, this relaxation was only in relation to Jabalpur zone. In all other zones, no such relaxation had been given. Consequently, the question arises; whether the action taken by the DGP in granting relaxation to the Head Constables who appeared in the examinations held in Jabalpur zone is correct? In view of the fact that no uniform rule applicable to all the Head Constables throughout the State has been issued, obviously, realising the mistake committed by him, the DGP had withdrawn the relaxation granted earlier on February 9, 1994 by proceedings dated December 2, 1994. It is true that if any vested right is created in favour of a person, the same cannot be deprived of or denied without affording to him an opportunity of hearing on the principle of violation of audi alterem partem. In this case, the Head Constables, who had written the examination, but failed to secure 50% or 40% in the General category and reserved category respectively, had no vested right for further grant of 15% and 10% grace marks respectively. The reason being that if the DGP grants for only one zone, they would scale a march over others who are similarly situated, namely, who failed in other zones in the examination, but were not given the same relaxation. In view of the above situation, the D.G.P. realising the mistake, has rightly withdrawn that relaxation and the 51 Head Constables belonging to general candidates and 15 Head Constables belonging to reserved category had no vested right in that behalf. The power to relax would include the power to withdraw on valid grounds. Thereby, the principle of natural Justice was not violated. The Tribunal, therefore, was clearly in error in allowing the O.As. on the ground that it is violative of principles of natural justice.

Regulation 50-A of the Regulations reads thus :

"Assistant Sub-Inspectors shall be appointed by the Inspector-General by promoting Head Constables whose names find in the list of Head Constables fit for trial as Assistant Sub- Inspectors, to be prepared by a Committee of Deputy Inspector-General on the recommendation of the District Superintendents of Police."

It is brought to our notice that some of the respondents who had been put up in the fit list were sent up for training and after completion of the training they have been appointed as Assistant Sub-Inspectors. If any of the respondents in these cases happened to be promoted in that manner, since we are allowing the appeals, they are at liberty to sit in the examinations in the subsequent years. In the event of their passing the written examinations and coming into the fitment list, since they have already undergone the training, they would not be sent for fresh training and will be given promotions immediately after passing the examinations. They shall be promoted on the basis of the order of allotment, i.e., from the date for their immediate juniors in the respective years of allotment.

The appeals are accordingly allowed. No costs.