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

+ **W.P.(C) 10209/2024 & CM APPL. 41920/2024**

ABDUL ALEEMPetitioner
Through: Ms. Santosh, Adv.

versus

HIGH COURT OF DELHI AND ORSRespondents

Through: Dr. Amit George, Mr. Dushyant Kishan Kaul, Mr. Arkaneil Bhaumik, Mr. Adhishwar Suri, Ms. Rupam Jha, Ms. Medhavi Bhatia, Ms. Ibansara, Mr. Kartikey Sharma, Advs. for R-1
Mr. Man Mohan Goel, Adv. for R-3
Ms. Kiran Saini and Ms. Kusum Saini, Advs. for R-5
Ms. Alpana Pandey, Adv. for R-6

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

04.08.2025

C. HARI SHANKAR, J.

1. *Vide* advertisement dated 25 August 2023, this Court called for online applications from eligible candidates for appointment as Special Metropolitan Magistrate¹ under Section 18(1)² of the Code of

¹ "SMM" hereinafter

² 18. **Special Metropolitan Magistrates.** –

(1) The High Court may, if requested by the Central or State Government so to do, confer upon any person who holds or has held any post under the Government, all or any of the powers conferred or conferrable by or under this Code on a Metropolitan Magistrate, in respect to particular cases or to particular classes of cases, in any metropolitan area within its local jurisdiction:

Provided that no such power shall be conferred on a person unless he possesses such qualification or experience in relation to legal affairs as the High Court may, by rules, specify.



Criminal Procedure, 1973³. The qualifications required to be possessed by an aspirant to sought to apply under the advertisement for the post of SMM, as contained in Rule 3 of the Delhi Petty Offence (Trial by Special Metropolitan Magistrate) Rules, 1998⁴ were bodily incorporated into the advertisement, the second paragraph of which read thus:

“A candidate must possess the qualification as prescribed in Rule 3 of Delhi Petty Offences (Trial by Special Metropolitan Magistrate) Rules, 1998 which reads as under:-

“3. Qualification:- A person shall not be qualified for appointment as Special Metropolitan Magistrate unless he/she is a law graduate and:-

- (1) has been a District Magistrate or a Judicial Officer; or
- (2) has for a period of not less than one year exercised the powers of Sub Divisional Magistrate; or
- (3) has for a period of not less than two years exercised the powers of an Executive Magistrate; or
- (4) has held for a period of not less than five years a Group 'A' post on the Establishment of the High Court of Delhi or that of the Courts Subordinate thereto; or
- (5) has held, for a period of not less than five years, a Group 'A' post under the department of the Government of NCT of Delhi or the Central Government or State Government (Preference will be given to those persons who have been dealing with legal affairs or have been working in the department dealing with legal affairs); and
- (6) has not attained the age of 65 years on the date of conferment of power of Special Metropolitan Magistrate on him/her.

Explanation – For the purpose of these rules a "law graduate" is a person who is eligible to be enrolled as an advocate.”

³ “Cr PC” hereinafter

⁴ “the 1998 Rules” hereinafter



Thus, Rule 3(5) of the 1998 Rules specifically entitled any law graduate who “has held, for a period of not less than five years, a Group 'A' post under the department of the Government of NCT of Delhi or the Central Government or State Government” to apply for the post of SMM. The expression “has held” is in the present perfect tense. All that it required was that, on 23 September 2023, which was the cut-off date stipulated in the advertisement, the candidate must have had, to his credit, 5 years’ experience in a Group A post in the Central or State Government. The experience could be in the past, or *in praesenti*. The Clause covered all candidates with 5 years’ Group A experience to their credit, irrespective of whether, on the cut off date, they were still holding the post, or had already retired.

2. Section 18(1) of the Cr PC supports this interpretation. The High Court is empowered, under the said sub-section, to confer all or any of the powers conferred by the Cr PC on a Metropolitan Magistrate, “upon any person who holds or has held any post under the Government”. It is clear, therefore, that the post of SMM would be available to persons who *were holding*, or who *had held*, the post under the Government of the requisite rank.

3. Dr. Amit George, appearing for the High Court, has also drawn our attention, in this context, to Rule 4 of the 1998 Rules, which sets out the conditions of disqualification from appointment as SMM. Rule 4(1) reads thus:

“4. Disqualification: A person-

(1) *who does not hold or has not held* a post under the Govt./High Court of Delhi and the Courts subordinate thereto of the rank and status and does not possess the



qualification, if any, attached thereto, as mentioned in the just preceding Rule; or”

4. All these provisions make it clear that the post of SMM was not restricted to retired persons who had held Group A posts, but also extended to persons who were holding Group A posts on the cut-off date.

5. There were initially 34 posts covered by the advertisement. 9 anticipated vacancies were later included, increasing the number of posts to 43. We may note that, in the advertisement dated 25 August 2023 itself, it was stipulated thus:

“At present there are 34 vacancies and the appointments shall be made in respect of the existing and anticipated vacancies that may arise during the year.”

Of these 43 vacancies, 40 vacancies were filled and three vacancies have been re-advertised.

6. The petitioner had, by the cut off date, retired from the post of Director (Prosecution) in the Prosecution Department of the District Courts. Respondents 2 to 7, on the other hand, were serving on the post of Director (Prosecution) in the Prosecution Department of the Government of NCT of Delhi on the cut off date.

7. The petitioner, as luck would have it, could not secure selection as SMM, whereas Respondents 2 to 7, among others, were so selected.

8. The petitioner has, therefore, has launched a frontal attack on the selection of Respondents 2 to 7 as SMM. His contention is that



Respondents 2 to 7 were not eligible for being appointed as SMM as the post of SMM was available only to persons *who had retired* prior to the date of advertisement/cut off date.

9. The limited issue that arises for consideration is, therefore, whether the post of SMM, as advertised on 25 August 2023, against which Respondents 2 to 7 were appointed, was, or was not, available to persons such as Respondents 2 to 7, who was serving in Group A posts under the Central Government or the Government of NCT of Delhi on the cut off date of 23 September 2023.

10. We have heard Ms. Santosh, learned Counsel for the petitioner, Dr. Amit George, learned Counsel for the Delhi High Court, Mr. Man Mohan Goel, learned Counsel for Respondent 3, Ms. Kiran Saini learned Counsel for Respondent 5 and Ms. Alpana Pandey, learned Counsel for Respondent 6 respectively, at length.

11. The position as it emerges from Section 18(1) of the Cr PC and Rules 3 and 4 of the 1988 Rules, as we have already noted, is that (i) persons who were, on 23 September 2023, holding Group-A posts under the Government of NCT of Delhi or the Central Government, and had held such posts for five years, as well as (ii) persons who had retired from Group-A posts under the Central Government or Government of NCT of Delhi after having held such posts for five years, were both eligible to apply for appointment as SMM.

12. Ms. Santosh, however, places reliance on the actual application form which the candidates who applied for appointment as SMM



encountered on the website of this Court. The opening page of the application form contains the following “Important Note”:

“Important Note:

1. No application in physical form shall be entertained or taken into consideration and all such applications shall stand outrightly rejected without any intimation/notice to such candidates.
2. Please keep passport size colour photograph image having size between 10 KB & 30 KB ready before starting online application process.
3. Please keep copies of Date of Birth Certificate, LLB Degree *and Retirement Certificate*, attested by gazetted officer, ready in .pdf format having size less than 200 KB before starting online application process.”

(Emphasis supplied)

Ms. Santosh points out that Note 3 in the afore-extracted page from the application form specifically included, among the documents which a candidate was required to have ready before applying, the retirement certificate. This, according to her, indicated that only retirees could apply for appointment as SMM.

13. Ms. Santosh has further drawn our attention to the actual online application, in which the following columns figured:

- “1) Candidate’s Name*
- 2) Father’s Name*
- 3) Date of Birth*
- 4) Gender*
- 5) Educational Qualification*
- 6) Present Residential Address*
- 7) Email
- 8) Mobile No.
- 9) *Date of Retirement**
- 10) Details of department under which working at the time of retirement”



At the head of page, it was clarified that the insertion of an asterisk (*) indicated that the field was mandatory. Ms. Santosh's argument is, therefore, that it was mandatory to fill in the date of retirement, which indicated, again, that the post was available only to retired officers.

14. Ms. Santosh further places reliance on the user manual for candidates who desired to apply for the post of SMM, as uploaded online on the website of this Court. She further submits that the procedure for filling up the application as provided on the website of this Court in which, after filling in the preceding columns, a candidate countered the following screen:

Welcome: **DELHI HIGH COURT** Online Recruitment System

Dashboard Logout

* Mandatory Fields

Online Application for the post of
SPECIAL METROPOLITAN MAGISTRATE
<< STEP 5 of 6 >>
(Documents Upload)

Document 1 Upload
Date of Birth Certificate*
(File Size :200Kb max.
File Format : .pdf only)
Choose File Birth Certificate.pdf

Document 2 Upload
LL.B Degree*
(File Size :200Kb max.
File Format : .pdf only)
Choose File LL.B Degree.pdf

Document 3 Upload
Retirement Certificate*
(File Size :200Kb max.
File Format : .pdf only)
Choose File Retirement Certificate.pdf

<= Back || Save & go to next step >

Ms. Santosh's argument is that, here, again, it was indicated that the retirement certificate constituted a "mandatory field".



15. Ergo, submits Ms. Santosh, the uploading of the retirement certificate and the details of retirement were indispensable for a person to apply for the post of SMM. This clearly indicates, according to her, that serving Group A officers could not apply for the post.

16. Ms. Santosh further relies on the fact that the High Court, in its counter affidavit, appears to have stated that the insertion of the asterisk in the aforesaid pages was an error and that, in the actual online application form, which the candidate actually encountered and had to fill up, the said asterisk was absent.

17. Dr. George has, for this purpose, drawn our attention to the actual page which the candidate encountered, a screenshot of which may be provided thus:

Online Application for the post of
SPECIAL METROPOLITAN MAGISTRATE
<< STEP 5 of 6 >>
(Documents Upload)

Document 1 Upload
Date of Birth Certificate*

Document 2 Upload
LL.B Degree *

Document 3 Upload
Retirement Certificate

(File Size :200Kb max.
File Format : .pdf only)
Browse... No file selected.

(File Size :200Kb max.
File Format : .pdf only)
Browse... No file selected.

(File Size :200Kb max.
File Format : .pdf only)
Browse... No file selected.

Save & go to next step

Thus, Dr. George points out that no asterisk figured against



“Document 3” which was the retirement certificate, which indicated that the opportunity to apply for SMM was not available only to retirees.

18. Dr. George also places reliance on the judgment of the Supreme Court in *Ashish Kumar v State of Uttar Pradesh*⁵, particularly para 27 thereof, which reads thus:

“27. Any part of the advertisement which is contrary to the statutory rules has to give way to the statutory prescription. Thus, looking to the qualification prescribed in the statutory rules, the appellant fulfils the qualification and after being selected for the post denying appointment to him is arbitrary and illegal. It is well settled that when there is variance in the advertisement and in the statutory rules, it is the statutory rules which take precedence. In this context, reference is made in the judgment of this Court in *Malik Mazhar Sultan v U.P. Public Service Commission*⁶. Para 21 of the judgment lays down the above proposition which is to the following effect: (SCC p. 512)

"21. The present controversy has arisen as the advertisement issued by PSC stated that the candidates who were within the age on 1-7-2001 and 1-7-2002 shall be treated within age for the examination. Undoubtedly, the excluded candidates were of eligible age as per the advertisement but the recruitment to the service can only be made in accordance with the Rules and the error, if any, in the advertisement cannot override the Rules and create a right in favour of a candidate if otherwise not eligible according to the Rules. The relaxation of age can be granted only if permissible under the Rules and not on the basis of the advertisement. If the interpretation of the Rules by PSC when it issued the advertisement was erroneous, no right can accrue on basis thereof. Therefore, the answer to the question would turn upon the interpretation of the Rules."

19. Having considered the submissions of learned Counsel for both sides and perused the record, we are of the opinion that, in fact, there

⁵ (2018) 3 SCC 55

⁶ (2006) 9 SCC 507



was no real dissonance between the position as it emerged from Section 18(1) of the CrPC or the 1998 Rules, the Online Manual or the application form. The opportunity to apply, as per the 1998 Rules, and as per Section 18 (1) of the CrPC, was available both to serving as well as to retired officers. This is clear from the use of the words "has held" in Rule 3(4) as well as (5) of the 1998 Rules as well as the words "who *does not hold* or has not held" in Rule 4(1) of the 1998 Rules. It is also clear from Section 18(1) of the CrPC, which envelops officers who were holding or who had held Group A posts in the past.

20. *In that background, our understanding is that, even if there was an asterisk against the fields which dealt with retirement, indicating that those fields were mandatory, it only meant that retired officers, who applied, had to fill up those fields. It did not indicate that the opportunity to apply was restricted to retired officers.*

21. Ms. Santosh is, therefore, in our considered opinion, relying too much on a mere asterisk.

22. Though, therefore, we do not feel that there is any discordance between the advertisement or the manual vis-a-vis the Rules, nonetheless, even in a case where there does exist any such discrepancy, the law, as Dr. George has correctly pointed out, is that the Rule must prevail.

23. In any event, the online application which was encountered by the candidates, and which the candidates filled up in order to apply for the posts, did not contain any asterisk against the column "Document



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3" which read "upload retirement certificate", unlike Document 1 which read "upload date of birth certificate" and Document 2 which read "upload LLB degree", both of which were followed by an asterisk, indicating that those fields were mandatory. At the time of application, therefore, there was no confusion whatsoever.

24. In view of the aforesaid, we are unable to hold that Respondents 2 to 7 were ineligible for appointment as SMM, or to grant the prayer for setting aside their appointment as sought in the present petition.

25. The petition is accordingly devoid of merits and is dismissed.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

AUGUST 4, 2025

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