

(2009) 12 DEL CK 0115

In the Delhi High Court

Case No : Writ Petition (C) 8854 of 2009

H.C. (M) Jayanti Parihar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 04-12-2009

Acts Referred:

Citation : (2009) 12 DEL CK 0115

Hon'ble Judges : Suresh Kait, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Rekha Palli and Punam Singh, for the Appellant; Ashwani Bhardwaj and S.P. Sharma, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—Rule D.B.

2. Heard for disposal.

3. The petitioner joined service as a Mahila Constable under BSF on 21.02.1986 and earned promotion to the post of Head Constable in the year 1992.

4. On 01.01.1996 Standing Order No. 1/96 was issued as per which Mahila Head Constables with 4 years service from the date of promotion/enlistment as Head Constable were eligible for promotion to the post of Sub-Inspector (Mahila), provided the lady concerned had successfully undergone the Senior Under Officer Cadre Course (S.U.O.C.C.) having a duration of 12 weeks.

5. With reference to the seniority position of the Head Constable (Mahila) they were detailed to undertake the SUOCC course.

6. Seniority of the petitioner matured to undergo the course. She was deputed for the course from 20.04.1998 to 20.07.1998 and was declared successfully having passed the course on 14.10.1998.

7. In October, 1998 the CRPF Authorities promoted H.C. Meera Devi and H.C.

Leela Devi, both junior to the petitioner to the post of Sub-Inspector (Mahila). Since much turns on the averments made by the petitioner qua the promotion of H.C. Meera Devi and H.C. Leela Devi in para-5 of the writ petition, we note the averments made in para-5 of the writ petition.

The same reads as under:

That though after passing of the aforesaid S.U.O.C.C. Course, the petitioner become entitled to be promoted as S.I. (Mahila) as she had already completed all other promotional courses i.e. J.C.C., S.C.C., W.T., M.D., Q.M.W. and B.C.A.S. but before she could be physically promoted, the Respondents issued a fresh order No. 6/99 dated 19.03.99 laying down new conditions whereby it was made mandatory that for promotion to the rank of Sub-Inspector, a force personnel should have at least 5 years service as Havaldar and at least 18 years total service on 19.3.99, she was deprived of her rightful promotion to the rank of S.I. (Mahila). It is submitted that though the petitioner was not granted promotion inspite of passing the SUOC Course, her juniors H.C. Meera Devi and H.C. Leela Devi both of 101 Bn. were promoted in Oct., 1998 itself.

8. Representations made by the petitioner to be accorded promotion to post of Sub Inspector since persons junior to her were promoted, were not paid any heed to by the CRPF Authorities for the reason, on 19.03.1999 a fresh Standing Order No. 6/99 was promulgated mandating that for being promoted to the post of Sub-Inspector (Mahila) the person concerned should have rendered at least 18 years service in the Cadre.

9. Apparently, the CRPF Authorities lost sight of the fact that the Standing Order No. 6/99 was promulgated on 19.03.1999 and claims of a prior date which had matured into vested right could not be affected by the said Standing Order.

10. Be that as it may, while posted at Srinagar Airport, on 16.01.2001 and carrying a pregnancy, the petitioner was one of the many brave women Head Constables employed under CRPF who successfully resisted a terrorist attack at the Airport.

11. Unfortunately for the petitioner, she suffered grievous injuries in repelling the terrorist attack. She lost her baby in the womb. She was placed in low medical category.

12. The CRPF Authorities recommended the case of the petitioner to the Union Government for a Bravery Award pointing out the brave lady had fought with the terrorists at Srinagar Airport.

13. Unfortunately for her, the Union Government decided to give some monetary compensation to her but turned down the recommendation for a Gallantry Medal to be awarded.

14. Finding no relief being given to her and being permanently placed in a low medical category, the petitioner filed the instant writ petition inter-alia alleging

that having successfully cleared the SUOCC Course in October, 1998 there was no reason why she was not granted the promotion when H.C. Meera Devi and H.C. Leela Devi both junior to her were promoted in October, 1998.

15. The stand of the respondents that the order dated 19.03.1999 stands in her way was repelled by the petitioner by urging that the said order dated 19.03.1999 was much after she became entitled to be promoted and persons junior to her were promoted in October, 1998. The petitioner highlighted that as per the promotion policy, in the month of October, 1998 there is no requirement of having 18 years service in the Cadre.

16. It is in the aforesaid context that we have taken pains to reproduce the averments made by the petitioner in para-5 of the writ petition.

17. We may additionally note that the relatable ground to the averments made in para-5 of the writ petition is ground C. The same reads as under:

Because the petitioner was entitled for promotion as SI (Mahila) in 1998 itself after the completion of SUOCC Course in July 1998 but the respondents did not promote her due to the introduction of a new policy on 19.03.99 which policy could not be applied retrospectively and that too when her juniors H.C. Meera Devi and H.C. Leela Devi were promoted in Oct, 1998 itself. A true copy of Relieving Order dated 03.10.98 of H.C. Meera Devi and H.C. Leela Devi is annexed herewith as Annexure P-11.

18. Annexure P-11 is the Relieving Order dated 03.10.1998 pertaining to H.C. Meera Devi and H.C. Leela Devi on their promotion to the post of Sub-Inspector (Mahila).

19. Let us have a look to the response given by the respondents in the counter affidavit to the averments made in para-5 of the writ petition. The same reads as under:

5. That the contents of this para of this writ petition are wrong and denied. Further, due to passage of time and having sufficient Females in each rank and problems faced in Ops/Adm duties for want of well experienced Females in higher /SOs Rank, the eligibility conditions for promotion of Females was also made at par with Male Jawans vide Standing Order No. 6/1999. This Standing order was issued before issue of order of promotion of the petitioner. Perhaps, the petitioner had qualified SUOCC in SI. No. 4 during 1998 but being enlisted as Ct//GD (Mahila) in CRPF on 25.02.1986, she had not completed 18 years service from the date of enlistment, which is mandatory for promotion to the rank of SI/ GD (Mahila) as per S.O.-6/99. It is further denied that her case has not been considered in approved list B/GD (Mahila).

20. Let us also note response of the respondents to ground E urged in the writ petition. The same reads as under:- A TO J That the contents of these paras of this writ petition are wrong and denied. All these contentions are being repeated herein. The detailed reply has already been given above.

21. It is apparent that the respondents have not denied that H.C. Meera Devi and H.C. Leela Devi were junior to the petitioner and were promoted to the post of Sub-Inspector (Mahila) in the year 1998, the month being October.
22. The respondents have not denied the assertions of the petitioner that she has successfully cleared the SUOCC Course. The assertions of the petitioner that as per the Standing Order No. 1/96 the eligibility criteria was 4 years service as a Head Constable and successful completion of the SUOCC Course has not been denied.
23. The fact that 2 Head Constables junior to the petitioner have been promoted in October, 1998 establishes the fact of vacancies being available.
24. The attempt of learned Counsel for the respondents to justify the non-promotion of the petitioner on account of the promulgation of the Office Order dated 19.03.1999 is noted by us and rejected, for the reason the entitlement of the petitioner for promotion matured in the month of October, 1998 and had to be considered and decided with reference to then existing promotion policy being the promotion policy circulated vide Standing Order No. 1/96.
25. Before issuing the final directions, we note that as a result of the grievous injuries sustained by the petitioner, when she successfully repelled a terrorist attack which took place at Srinagar Airport in the year 2001, she has died.
26. The writ petition as of today is prosecuted by her legal representatives who would be entitled to the monetary benefits.
27. We allow the writ petition and direct the respondents to grant promotion to the petitioner to the post of Sub-Inspector (Mahila) with effect from the date persons junior to her i.e. H.C. Meera Devi and H.C. Leela Devi were promoted.
28. The pay and allowances payable to the petitioners would be re-fixed in the scale applicable to the post of Sub-Inspector (Mahila). Needless to state, the Family Pension being paid would be accordingly enhanced.
29. Needful be done within 12 weeks from today. If not done within 12 weeks, the arrears payable to the petitioner would be paid with interest @ 9% per annum reckoned from 12 weeks after the passing of the order till payment is made. The petitioners are also entitled to cost in sum of Rs. 11,000/- against the respondents.
30. Copy of this order be supplied Dasti to learned Counsel for the parties.