

(1972) 02 DEL CK 0028

In the Delhi High Court

Case No : Civil Writ Petition Appeal No. 859 of 1971

Kailash Wati Bajaj

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 14-02-1972

Acts Referred:

Citation : (1972) ILR Delhi 692 : (1973) LabIC 954

Hon'ble Judges : P.S. Safeer, J; Jagjit Singh, J

Bench : Division Bench

Advocate : S.A.K. Dhar and B. Kirpal, for the Appellant;

Judgement

Jagjit Singh, J.

(1) Lady Head-Constables Kailash Wati Bajaj, Narinder Kaur, Krishna Kumari and Sumitra Devi belong to the Delhi Police Force. Out of them Shrimati Kailash Wati Bajaj was the senior-most but her name was not included in promotion list "D" approved by the Deputy Inspector General of Police (Administration), Delhi, on June 4, 1971. The list was prepared in accordance with Standing Order No. 238, issued on February 12, 1971 by the Inspector General of Police, and by it names of Shrimatis Narinder Kaur, Krishna Kumari and Sumitra Devi were included with effect from June 2, 1971. Feeling aggrieved by the non-inclusion of her name in promotion list "D" she filed this writ petition, on August 2, 1971, for getting quashed the Standing Order and the order of the Deputy Inspector General of Police (Administration) dated June 4, 1971.

(2) The writ petition was placed for hearing before one of us. As the matter involved was of some general importance it was referred to a larger Bench. That is how the case came to be heard by us.

(3) The petitioner was enlisted as Lady Constable on September 15, 1952. She was promoted as Head-Constable in an officiating capacity from December 3, 1958 and was confirmed in that rank from November 16, 1962. Her confirmation as Head-Constable from the said date, however, did not come through in the

normal routine. Shrimati Krishna Kumari (respondent No. 5), though junior to her, was at first confirmed by the authorities with effect from November 16, 1962. She made a representation on which the Delhi Administration issued directions to the Inspector General of Police for confirming her with effect from an appropriate date according to her seniority. Thereon by an order dated November 30, 1964 the confirmation of Shrimati Krishna Kumari as Head-Constable with effect from November 16, 1962 was cancelled and the petitioner was confirmed as Head-Constable from that date. Shrimati Krishna Kumari was, however, confirmed along with Shrimatis Narinder Kaur and Sumitra Devi and two other officiating Lady Head-Constables from October 1, 1964. Undisputedly, Therefore, the petitioner became the senior most confirmed Lady Head-Constable.

(4) The Standing Order (No. 238) issued by the Inspector General of Police on February 6, 1971 lays down the procedure to be adopted for drawing up promotion list "D" for women police. According to the petitioner the Standing Order being directly in conflict with the provisions of rule 13.9 of the Punjab Police Rules, 1934 (Volume II), as applicable to the Union Territory of Delhi, is illegal. It was also averred in her petition that as she had incurred the wrath of her superiors by making a representation to the Chief Commissioner, Delhi, they had become hostile to her and in order to mar her future career had arbitrarily drawn promotion list "D" by including persons who had been confirmed much later than her. The results of the test held pursuant to the Standing Order (No. 238) were as well alleged to have been manipulated.

(5) On behalf of the Union of India, the Inspector General of Police and the Deputy Inspector General of Police (respondents I to 3) an affidavit was filed, in opposition to the writ-petition, by Shri I. M. Mahajan, Deputy Inspector General of Police, Delhi. It was admitted that the petitioner is the senior most confirmed Lady Head-Constable but it was denied that by submitting a representation the petitioner had incurred the wrath of her superior officers or that the results of the departmental test held in accordance with standing order No. 238 were in any way manipulated. It was stated that whereas the petitioner failed to qualify in the test Shrimatis Narinder Kaur, Krishna Kumari and Sumitra Devi (respondents 4 to 6) were successful and "notwithstanding the fact that they were previously junior to the petitioner, they were brought on Promotion List "D"". Standing Order No. 238 was urged to be valid and not to be in conflict with rule 13.9 of the Punjab Police Rules. The stand taken in that connection was that rule 13.9 did not prohibit holding of any test as the rule has to be read with rule 13.1 and with any administrative order which may be issued laying down the mode of selection. It was added that rule 13.9 does not as a whole relate to Lady Head-Constables as the training school Phillaur from where the qualifications of lower school course and the intermediate school course can be acquired is meant only for "male police officers". So far as the training of lady police officers is concerned it was mentioned that it is given in Delhi and that the petitioner had already undergone the training.

(6) The Punjab Police rules, 1934 were issued under sections 7 and 12 of the Police Act, 1861 (V of 1861). In those rules, as applicable to the Union territory of Delhi, certain amendments have been made recently by the Lt.-Governor Delhi u/s 46 of the Police Act, through Notification No. F. 5 (64)/66-23 (iv) Home (P) dated January 28, 1970 as published in the Delhi Gazette of April 2, 1970. Some of the amendments made were with a view to make certain provisions for Lady Assistant sub inspectors and Lady Head-Constables. No amendment was, however, made in rules 13.1 and 13.9, which alone are relevant for purposes of this case.

(7) SUB-RULE (1) of rule 13.1 of the Punjab Police Rules provides that promotion from one rank to another and from one grade to another in the same rank shall be made by selection tempered by seniority. It reads as follows :-

" PROMOTION from one rank to another, and from one grade to another in the same rank, shall be made by selection tempered by seniority. Efficiency and honesty shall be the main factors governing selection. Specific qualifications, whether in the nature of training courses passed or practical experience, shall be carefully considered in each case. When the qualifications of two officers are otherwise equal, the senior shall be promoted. This rule does not affect increments within a time-scale."

Sub-rule (3) of that rule enjoins that for the purposes of regulating promotion amongst enrolled police officers six promotions lists-A, B, C, D, E and F-will be maintained. It is specifically provided that promotion list "D" shall be maintained "as prescribed" in rule 13.9. Rule 13.9 is in the following terms:-

"13.9(1) A list shall be maintained in each district in card index Form 13.9 (1) of those head constables who have passed the lower school course and the Intermediate school course at the Police Training School and are approved by the Deputy Inspector-General as eligible for officiating or substantive promotion to the rank of assistant sub-inspector. No head constable shall be admitted to this list who is not thoroughly efficient in all branches of the duties of a constable and head constable and of established integrity. (2) Officiating promotion to the rank of assistant sub-inspector shall be made from the list prescribed in sub-rule (1), as far as possible in rotation, so as to give each man a trial in the duties of the higher rank. Substantive promotion shall be made by the Deputy Inspector-General in accordance with the principles prescribed in rule 13.1, and officiating promotion shall be made in accordance with sub-rule 13.4 (2). (3) Half-yearly reports in Form 13.9 (3) on all head constables in this list shall be furnished on the 15th April and the 15th October, to the Deputy Inspector-General."

(8) It was not disputed before us that rules 13.1 and 13.9 of the Punjab Police Rules are statutory in character, having been made under the Police Act, 1861, and are applicable to the Union territory of Delhi. Further as these rules do not make any distinction between male and female members of the police force, list "D" for regulating promotion to the rank of Assistant Sub-inspectors even in the

case of Lady Head-Constables has to be prepared in accordance with the provisions of rule 13.9. If for maintaining list "D" for Lady Head-Constables for regulating their promotion to the rank of Assistant Sub-Inspectors any method is adopted which is in conflict with the procedure prescribed by rule 13.9 it would obviously be illegal, being opposed to a statutory rule. It appears that the respondents were conscious of this legal position and, Therefore, in the affidavit of the Deputy Inspector General of Police the validity of standing order No. 238 was sought to be justified by urging that it was not in conflict with rule 13.9.

(9) The impugned standing order (No. 238) issued by the Inspector-General of Police, Delhi, provides for drawing up promotion list "D" (women police) on the basis of a departmental qualifying test to be held as and when necessary. All confirmed Lady Head Constable with three years or more of continuous service as Head Constables are eligible for appearing in that test. For qualifying in the test candidates have to secure at least 40 per cent marks in law, practical police work, parade and service record and 60 per cent marks in the aggregate. The names of Lady Head-Constables who thus qualify are to be admitted to list "D" in order of their seniority in the rank of Head-Constables. The standing order as well provides that the written papers in law and practical police work are to be of 50 marks each. Fifty marks are assigned for departmental test in parade and the assessment of service record is to be on the following basis:-

"(i) Length of service (One mark to be given 15 marks for each completed period of six months service as Head Constable). (ii) Education. 10 marks Metric 10 marks Middle pass 7 marks Below middle 5 marks (iii) Good entries in Ch. Roll 15 marks (3 Marks for each I class C.C.) (2 marks for each II class C.C.) (1 mark for each III class C. C.) NOTE:--Certificates granted one month before the declared date will not be considered. (iv) Absence of punishment. (3 marks to be deducted 10 marks for each major punishment) (1 mark to be deducted for each censure). NOTE:-No mark to be deducted if a punishment was awarded 10 years before the declared date of the test."

(10) There cannot be the least doubt that the above referred to standing order (No. 238) of the Inspector General of Police is in total conflict with the procedure prescribed for maintenance of promotion list "D" by rule 13.9 of the Punjab Police Rules. The fact that for the Delhi Police force so far arrangements for imparting training in lower school course and the intermediate school course have only been made at the Police Training School Phillaur, where only males are admitted, does not entitle the Inspector General of Police to scrape the provisions of rule 13.9 in the case of Lady Head-Constables by issuing executive instructions in the form of a standing order. It is not possible to agree with the learned counsel for the respondents that the standing order merely contains instructions to supplement the provisions of rule 13.9 without in any way nullifying or contravening those provisions.

(11) Even if the Police Training School does not admit women police officials for the different courses for which instructions are provided, there could be no

difficulty for the Administration to make suitable arrangements for the lower school course and the intermediate school course in Delhi or elsewhere where Lady Police officials may be imparted instructions and training. Subrule (3) of rule 13.1 does not contemplate laying down a different procedure for woman police than the one contained in rule 13.9 for maintaining list "D".

(12) The learned counsel for the respondents tried to meet the objection that the standing order (No. 238) provided altogether a different method for drawing up promotion list "D" (women police) than the one contemplated by rule 13.9 by submitting that the test provided was only meant for selections being made out of eligible Lady Head-Constables for purposes of admitting their names to the promotion list. In that connection reference was made to the averment contained in the affidavit of the Deputy Inspector General of Police that training to lady police officers is given in Delhi and that the petitioner had already undergone the training. The learned counsel was, however, not prepared to go to the extent that the training already undergone by the petitioner and the other Lady Head-Constables could be equated with the passing of the lower school course and the intermediate school course for purposes of rule 13.9.

(13) In the case of Sardul Singh Head Constable v. Inspector General of Police, Punjab and others 1970 S.L.R. 505 a Full Bench of the Punjab and Haryana High Court held that under rule 13.9 efficiency and honesty are the two factors to be taken into consideration by the Deputy Inspector general of Police while admitting a Head-Constable to List "D" and that this can be done only after a Head-Constable qualifies himself by passing the lower school course and the intermediate school course and that these two factors cannot be taken into consideration when a Head-Constable is to be sent for intermediate school course. It was further observed that a Head-Constable can become eligible for being selected only after he acquires the basic qualification by passing the intermediate school course and without passing that course he cannot be considered and, Therefore, it can legitimately be said that the acquiring of the qualification does not constitute a part of the process of promotion. It was further laid down that once a Head-Constable is admitted to list "D" he is to be given officiating promotion to the rank of Assistant Sub-Inspector in rotation so as to find out his suitability for the higher rank and after the test of suitability he is to be granted by the Deputy Inspector General of Police substantive promotion in accordance with the principles prescribed in rule 13.1. So far as efficiency and honesty are to be taken into consideration by the Deputy Inspector General of Police for admitting eligible persons to list "D" the Full Bench was of the view that these factors have to be determined on the basis of the service record of every Head-Constable.

(14) Even if the process of promotion of a Head-Constable to the rank of Assistant Sub-Inspector starts from the stage when names of eligible persons are considered for inclusion in list "D" under rule 13.9 still the validity of the standing order (No. 238) cannot be justified. The standing order does not proceed on the

basis that the test to be held is a selection test for purposes of rule 13.1 of persons who have already acquired the basic qualification by passing the lower school course and the intermediate school course, as required by rule 13.9. As stated above the training given at present to Lady Constables and Head-Constables has not been equated with the passing of lower school course and intermediate school course and obviously, Therefore, the qualifying test required to -be passed by Lady Head-Constables by the standing order issued by the Inspector General of Police was meant to be a substitute for the basic requisite qualification of passing the lower school course and the intermediate school course. The contention that the test was adopted as an objective method of selecting most suitable persons out of Lady Head-Constables who have already acquired the basic qualifications required under rule 13.9 has, Therefore, to be rejected as being untenable.

(15) Plainly the object of standing order No. 238 of the Inspector General of Police was to prescribe altogether a different method for drawing up promotion list "D" (women police) and the method adopted was contrary to and in conflict with the provisions of rule 13.9. In our opinion the standing order (No. 238) did not have the effect of merely supplementing the provisions of rule 13.9. A method contradictory to the one prescribed in rule 13.9 was provided by the standing order for list "D" (women police). As the standing order (No. 238) was issued in violation of the requirements of rule 13.1 (3) and 13.9 it has to be regarded as illegal.

(16) Reference was also made by the learned counsel for the respondents to a judgment of Deshpande, J. in Union of India and another v. Shri Hans Raj 1969 S.L.R. 7820 in which the learned Judge held that rule 13.1 (1) of the Punjab Police Rules does not bar holding a test as a fair method of judging the efficiency. It is not necessary to consider that case as the test prescribed by standing order (No. 238) was not only for judging efficiency for promotion but for substituting a different type of basic qualifications in lieu of the requirement of rule 13.9 of passing the lower school course and the intermediate school course. Even for purposes of judging efficiency the view taken in the case of Sardul Singh was that it was to be determined from service record.

(17) We accordingly accept the writ petition and quash the standing order (No. 238) issued by the Inspector General of Police, Delhi, on February 6, 1971 as being illegal and in conflict with rule 13.9 of the Punjab Police Rules, 1934 (volume II), in accordance with which list "D" is to be maintained both for men and women police. Further as the names of Shrimatis Narinder Kaur, Krishna Kumari and Sumitra Devi (respondents 4 to 6) were brought on list "D" not in accordance with rule 13.9 but under a standing order which had no legal validity, the order of the Deputy Inspector General of Police, dated June 4, 1971 is also quashed. It will be for the authorities to maintain list "D" (women police) in accordance with law. The petitioner shall also be entitled to her costs. The counsel fee is assessed at Rs. 200.00.