

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

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WP (C) No. 4651/2017

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Reserved on : 19th September, 2017

Pronounced on: 19th December, 2017

SHARMILA YADAV

..... Petitioner

Through : Mr. Ankur Chibber, Advocates.

versus

UNION OF INDIA AND ORS.

..... Respondent

**Through : Mr. Manish Mohan, CGSC with Ms.
Shivangi Sinha and Ms. Manisha Saroha,
Advocates.**

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAVIN CHAWLA

SANJIV KHANNA, J.

Sharmila Yadav, the writ petitioner, has filed the present petition for grant of notional seniority in the rank of Assistant Sub-Inspector (Mahila) with effect from 6th July, 2011 with all consequential benefits. She has also prayed for quashing of orders dated 2nd August, 2016 and 8th February, 2017, whereby the respondents have rejected her case for fixation of seniority in the rank of Assistant Sub-Inspector (M) with effect from 6th July, 2011.

2. The petitioner had joined the Central Reserve Police Force (CRPF) at the post of Head Constable (M) upon selection on 28th January, 2006.

3. On 7th December, 2009, the petitioner had appeared in the departmental examination for promotion to the post of Assistant Sub-Inspector (M). As per the gradation list published on 27th April, 2010, the petitioner had qualified and had secured rank at Sr.No.780 amongst Head Constable (M) as on 1st April, 2008. The petitioner was thereafter nominated along with other eligible qualified Head Constables (M) for promotion to the post of Assistant Sub-Inspector (M) on 13th January, 2011.

4. On 6th July, 2011, promotion list of Assistant Sub-Inspectors (M) from Head Constables (M), who had passed the Departmental Examination-2009, for the vacancy year 2011-12, was released. This list included Head Constables up to the Sr. No.1372 of the gradation list as on 1st April, 2009. The petitioner did not figure in the promotion list because on 22nd March, 2011, she had been placed in Shape-II Temporary Medical Category on account of her first trimester of pregnancy. This became the ground and reason for her non-promotion as Assistant Sub-Inspector (M) with her batch mates and juniors.

5. The petitioner immediately protested vide representation and letter dated 19th July, 2011 to the Deputy Inspector General of Police (Org.) and Director General, CRPF. The respondents possibly on realizing their mistake promoted the petitioner to the rank of Assistant Sub-Inspector (M) on 19th June, 2012. However, the petitioner's seniority vis-à-vis her batch mates and juniors, who were promoted on 6th July, 2011, was not protected.

6. Abhishek Kumar Sinha, immediate junior of the petitioner in the rank of Head Constable, was promoted as Assistant Sub-Inspector in the selection list dated 6th July, 2011. He was placed at Sr. No.35 in the

promotion post of Assistant Sub-Inspector. His rank in the gradation list was 784.

7. In the new gradation list dated 1st January, 2015, after promotion of the petitioner as Assistant Sub-Inspector (M), Abhishek Kumar Sinha was placed at Sr. No.502, whereas the petitioner was placed at Sr. No.1019.

8. The petitioner again protested by making representations dated 5th January, 2016 and 20th July, 2016, praying for re-fixation of her seniority in the cadre of Assistant Sub-Inspector. These two representations were rejected by the respondents vide communications dated 7th June, 2016 and 2nd August, 2016. The respondents re-examined the issue of seniority for the third time in view of the petitioner's representation that she was temporarily in Shape-II medical category owing to her pregnancy on 22nd March, 2011 and had re-gained Shape-I medical category on 7th May, 2012 and thereafter, she was in Shape-I medical category ; previously also, the petitioner was in shape-I medical category. The respondents again rejected the petitioner's representation vide communication dated 8th February, 2017.

9. The respondents in the counter affidavit have stated that as per Standing Order No.04/2008 dated 15th December, 2008, being in Shape-I medical category is essential for promotion to the rank of Assistant Sub-Inspector. The petitioner was assessed and considered for promotion as Assistant Sub-Inspector (M) and was placed in the panel for the vacancy year 2011-12, albeit, she could not be promoted as she was declared to be in Shape-II Low Medical Category on account of her pregnancy. Subsequently, she was promoted to the rank of Assistant Sub-Inspector (M) vide signal dated 19th June, 2012 from the panel of vacancy year 2012-13 on

regaining Shape-I medical category as on 7th May, 2012. As per paragraph 4.16 of Standing Order No.04/2008, an official can regain his or her seniority immediately on his/her promotion, if he/she regains Shape-I medical category within the validity period of the Departmental Promotion Committee, which criteria the petitioner did not meet. Hence, the petitioner lost her seniority with reference to the candidates for the year 2011-12 and she cannot claim seniority over her juniors, who were promoted to the rank of Assistant Sub-Inspector for the vacancy year 2011-12.

10. We are of the opinion that the stand of the respondents is fallacious, unjustified and unacceptable. In fact, it reeks of discrimination and *per se* violates Articles 14, 15, 16 and 21 of the Constitution. Pregnancy discrimination is abhorrent and cannot be accepted as it violates the principle of equality and discriminates on the ground of gender. The petitioner, who has by choice become a mother, must be given the same opportunity and chance of promotion as others. Gender discrimination would include discrimination on ground of pregnancy and maternity and it is unlawful to treat the petitioner unfavorably because she has exercised her right and choice to be a mother. Constitutional mandate imposes a duty and obligation on the respondents to ensure that equal opportunity for promotion is provided to all similarly situated employees including those who have exercised their right to be a mother. Same opportunity for career development, promotion etc. must be ensured. Otherwise, it will amount to gender bias virtually treating pregnancy as a disability disqualifying a person for the time being. Indeed, we have had enacted affirmative enactments in the form of Maternity Benefits Act, 1961, which may not be directly applicable in the present factual matrix, albeit promote the

constitutional manifest of equal treatment and non-discrimination on the ground of gender.

11. We would refer to the two judgments of this Court in W.P. (C) No.4525/2014, *Inspector (Mahila) Ravina Vs. UOI and Ors.*, decided on 6th August, 2015 and W.P. (C) No. 8744/2011, *Bilju A.T. Vs. UOI and Ors.*, decided on 24th May, 2013. *Inspector (Mahila) Ravina* (supra) relates to a case of Sub Inspector, who was denied promotion to the rank of Assistant Commandant as she was unable to attend the promotional course owing to her pregnancy at that time and was declared to be in Shape-III medical category. She had subsequently cleared the course. The Division Bench observed that the case of the respondents was indefensible for it negates Articles, 14, 16 and 21 of the Constitution. Reference was also made to the commitment and constitutional goals under the Directive Principles vide Article 42, which provides for just and humane conditions of work and maternity relief, and Article 45 which refers to early childhood care and education of children below the age of 6 years, and it was held that denial of promotion, which could possibly entail loss of seniority, on the ground that woman employee has decided to become a parent and to treat this as unwillingness amounts to infraction of Article 16 and 21 of the Constitution. Pregnancy could not be equated with unwillingness. Reference was made to Article 10 of the International Covenant on Economic, Social and Cultural Rights, which has been ratified by India and reads as under:-

“Article 10

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its

establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits...”

The abovementioned decision also refers to the decision of the Supreme Court in *Suchita Srivastava Vs. Chandigarh Administration*, AIR 2010 SC 235.

12. The second decision of the Delhi High Court in *Bilju A.T.* (supra) struck down Rule 5(A)(d) of the CRPF Rules, 1955 as being discriminatory, for it postulated a separate cadre upto the rank of Inspector for Mahila Battalion. This decision dealt with the injustice suffered by some of the lady officers on account of pregnancy. The judgment refers to the earlier judgment of the Supreme Court in *Air India v. Nergesh Meerza and Ors.* AIR 1981 SC 1829, on the question whether on pregnancy, services of a woman Air Hostess can be terminated. In *Nergesh Meerza* (supra), it was observed as under:-

“82. Coming now to the second limb of the provisions according to which the services of AHs would stand terminated on first pregnancy, we find ourselves in complete agreement with the argument of Mr Setalvad that this is a most unreasonable and arbitrary provision which shocks the conscience of the Court. The Regulation does not prohibit marriage after four years

and if an AH after having fulfilled the first condition becomes pregnant, there is no reason why pregnancy should stand in the way of her continuing in service. The Corporations represented to us that pregnancy leads to a number of complications and to medical disabilities which may stand in the efficient discharge of the duties by the AHs. It was said that even in the early stage of pregnancy some ladies are prone to get sick due to air pressure, nausea in long flights and such other technical factors. This, however, appears to be purely an artificial argument because once a married woman is allowed to continue in service then under the provisions of the Maternity Benefit Act, 1961 and the Maharashtra Maternity Rules, 1965 (these apply to both the Corporations as their Head Offices are at Bombay), she is entitled to certain benefits including maternity leave. In case, however, the Corporations feel that pregnancy from the very beginning may come in the way of the discharge of the duties by some of the AHs, they could be given maternity leave for a period of 14 to 16 months and in the meanwhile there could be no difficulty in the Management making arrangements on a temporary or ad hoc basis by employing additional AHs. We are also unable to understand the argument of the Corporation that a woman after bearing children becomes weak in physique or in her constitution. There is neither any legal nor medical authority for this bald proposition. Having taken the AH in service and after having utilised her services for four years, to terminate her service by the Management if she becomes pregnant amounts to compelling the poor AH not to have any children and thus interfere with and divert the ordinary course of human nature. It seems to us that the

termination of the services of an AH under such circumstances is not only a callous and cruel act but an open insult to Indian womanhood — the most sacrosanct and cherished institution. We are constrained to observe that such a course of action is extremely detestable and abhorrent to the notions of a civilised society. Apart from being grossly unethical, it smacks of a deep rooted sense of utter selfishness at the cost of all human values. Such a provision, therefore, is not only manifestly unreasonable and arbitrary but contains the quality of unfairness and exhibits naked despotism and is, therefore, clearly violative of Article 14 of the Constitution.

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13. Reference was also made to *Namit Sharma Vs. Union of India*, (2013) 1 SCC 745 and several other judgments in *Bilju A.T.* (supra) to hold:-

“49. The above narration of fact would also show that the respondents are causing grave prejudice to women who are unable to undergo a promotional course on account of pregnancy. Instead of enabling such female Sub-Inspectors to undertake the course immediately after she delivers her child, she is made to wait for several years even to undergo the promotional course resulting in denial of promotion to her for several years. In fact the petitioner in WP(C) No.1368/2012 were so denied an opportunity to undergo a promotional course even though they were permitted to undergo the SSIC course. We are informed that they are still continuing to work as Sub-Inspector only because they could not be detailed for the SSIC promotional course in August, 2008 on account of their pregnancy and were sent for this course only in June,

2011.”

14. In view of the aforesaid discussion, we would allow the present writ petition and quash the impugned orders denying seniority to the petitioner based on her rank in the selection test. The petitioner would be granted promotion and notional seniority as per her gradation rank at Sr. No.780 in the written examination along with her batch mates for the vacancy year 2011-12. Her pregnancy, we hold and direct, cannot be treated as a disability and disqualification as Shape-II medical category. The present pay of the petitioner would be notionally fixed as if she was promoted on the same day as her immediate junior. She will also be entitled to arrears for a period of 3 years before filing of the present writ petition on 22nd May, 2017. Arrears would be paid within three months from the date a copy of this judgment is received, failing which, the respondents would pay interest @ 8% from the date of this order and till payment of the principal amount is made. There would be no order as to costs.

**SANJIV KHANNA
(JUDGE)**

**NAVIN CHAWLA
(JUDGE)**

**DECEMBER 19th , 2017
NA**