

Mongol Das Vs. Lt. Governor, I.G., D.i.G., A.i.G., S.P., D.S.P.

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Court : Delhi

Decided On : Dec-07-1973

Reported in : 1974RLR329

Judge : V.S. Deshpande, J.

Acts : Punjab Police Rules, 1934 - Rules 13 and 15; [Constitution of India](#) - Article 239

Appeal No. : Civil Writ Appeal No. 43 of 1973

Appellant : Mongol Das

Respondent : Lt. Governor, I.G., D.i.G., A.i.G., S.P., D.S.P.

Advocate for Pet/Ap. : D.K. Kapur and; J. Kishore, Advs

Judgement :

V.S. Deshpande, J.

(1) Petitioner Mangal Dass was confirmed as a Sub Inspector of Police in the Delhi Police Force in March, 1965. The promotions of the officials of the police force are dealt with in Chapter Xiii of the Punjab Police Rules 1934, Vol. li, as applied to Delhi. According to Rule 13.1 (1) promotions 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.

Before a Sub-Inspector is promoted to the post of an Inspector of Police, the procedure of selection is laid down in rule 13.15 which is (...)

(2) The petitioner complains that the procedure prescribed by rule 13.15 was violated by the respondents (the police authorities operating under the rules) in the following manner:-

(A) In 1965 a test was held for selection from among the Sub-Inspectors for inclusion in List 'F' in acc

(3) The petition was resisted by the Police authorities whose reply to the above contentions was briefly as follows :-

(A) & (b) The procedure of holding a test as also the procedure for selection by a committee was in accordance with rule 13.15. (c) The petitioner could not be considered for inclusion in List 'F' because a criminal case was pending against him. (d) The alleged non-consideration in 1971 and thereafter took place after the writ petition was filed and was pleaded by way of an amended writ petition to which the respondents have not filed any reply. This allegation, therefore, remains unrebutted.

(4) Let us now examine the contentions of the petitioner in the order in which they have been reproduced above.

1.(a) In *Union of India V. Shri Hans Raj, A.S.I. Police* 1969. S.L.R. 782, a distinction was made between an officiating promotion and a regular promotion. It was held that the holding of a test to decide whether an officiating person should be confirmed or not was in accordance with rule 13.1 and the petitioner who had been reverted for failure to pass the test resulting in the removal of his name in the List 'E' was not reduced in rank within the meaning of Article 311(2) of the Constitution. In the present case, however, we are concerned with the right of the petitioner to a substantive promotion and for inclusion in List 'F'. This question has to be decided entirely in accordance with the procedure laid down in rule 13.15 reproduced above. Reliance was placed by Mr. D.K. Kapur, learned counsel for the petitioner, on the decision in *State of Punjab and others v. Kirpal Singh*

Officiating Assistant Sub-Inspector, Government Railway Police and other. 1970 S.L.R. 239 by a Division Bench of the Punjab High Court. In paragraph 21 of the decision a comparison was made between rule 13.10 and the administrative Instructions according to which the selection of Assistant Sub-Inspectors was to be made for inclusion in List 'E' by a Committee consisting of the D. I. G. and two Superintendents of Police. It was held that these Instructions were contrary to rule 13.10 in various respects and were, therefore, invalid. This decision was followed by a Division Bench of this Court in Smt. Kailash Wati Bajaj v. Union of India and others 1973 (1) S.L.R. 249, while considering the question of the procedure for inclusion of names in List 'D'. In none of these decisions the question of inclusion of names in List 'F' in accordance with rule 13.15 was considered. In Chandi Ram v. Union of India Civil Writ No. 481-D of 1964, decided by Tatachari J. on 16-8-1967, however, the question whether a competitive test could be prescribed for a substantive promotion of a Sub-Inspector by including his name in List 'F' was specifically considered and answered in negative. This decision has, therefore, to be respectfully considered in deciding the first contention of the petitioner. It is not possible to controvert the first contention of the petitioner in view of this decision. It may, therefore, be held or assumed that in 1965 the petitioner should not have been subjected to a competitive test for a substantive promotion. His cause of action to make a grievance therefore arose in 1965 itself. He did not avail himself of the remedy of a writ petition to get that grievance redressed up to 1971. In the meanwhile the rights of innocent third parties intervened in as much as other persons have been promoted from the rank of a Sub-Inspector to the rank of an Inspector after being included in List 'F'. These persons are not parties to this writ petition. If the petitioner is to be now considered for promotion on the basis of his eligibility in 1965, and is to be promoted as in 1965, his promotion would inevitably affect the seniority of some other persons. In view of the delay in attacking the validity of the test held in 1965, as also the injustice that would be involved in redressing that grievance now, the petitioner cannot be granted the relief of being entitled to be considered for inclusion in List 'F' on the basis of his eligibility in 1965. (Rabindra Nath Base & others v. Union of India and another, : [1970]2SCR697 , followed by Fall Bench of this Court in N. Lakshmaiah and others v. Union of India and others . (b) The petitioner has not set out the

composition of the Selection Committee or the Departmental Promotion Committee who considered the candidates for promotion in 1967. Shri D. K. Kapur, learned counsel for the petitioner, states before me at the Bar, however, that the said Committee consisted of the Inspector-General of Police and two Deputy Inspectors-General of Police. The question, therefore, is whether the consideration of the petitioner along with others for inclusion in List 'F' by this Committee was contrary to rule 13.15. One point was clarified from Shri Kapur. In paragraph 17 of the writ petition expression used is select list prepared by the respondents.' I asked Shri Kapur if this means that the Select List was prepared by persons other than the members of the Selection Committee. The learned counsel says that it was prepared by the Selection Committee and not by any other persons. Learned counsel objects to the presence of the other D.I.G. and the I.G. at the Selection Committee in as much as under rule 13.15(1), it is the exclusive function of the D.I.G., under whom the petitioner was working, to see the petitioner before recommending him to the I.G. It seems to me that rule 13.15 contemplates two stages of selecting, namely-(1) selection by the D.I.G. who then makes recommendations to the I.G. under rule 13.15 (1), and (2) the final selection by the I.G. from those recommended by the D.I.G. under rule 13.15(2). If there are more than one D.I.Gs. working under an I.G., according to the distribution of the work, some of the candidates may be working under another D.I.G. The procedure adopted in constituting the Selection Committee, consisting of the I.G., and the two D.I.Gs, seems to combine the two stages described above. In this Selection Committee the D.I.G. under whom the particular candidate is working would be 'seeing' the candidate within the meaning of rule 13.15(1). There is a presumption that official acts are done according to the procedure laid down in rule 13.15. Unless, therefore, the petitioner alleges that the other D.I.G. under whom he was not working interviewed the petitioner, the presumption would be that it is only the D.I.G. under whom the petitioner was working did alone interview the petitioner. Certainly, at the time of the interview the other D.I.G. and the I.G. were present. Unless, however, it is alleged that they interfered in the seeing of the candidate by the proper D.I.G., it cannot be presumed that they did so. In the absence of any such allegation it would appear that after the concerned D.I.G. had seen and recommended a candidate, the I. G. there and then decided whether to accept the

said recommendation or not. The procedure of selection committee was thus more expeditious than the procedure which would ordinarily have been followed under rule 13.15. If such quicker administrative procedural efficiency is secured, it is not for the court to strike it down by insisting on the less efficient procedure. The test which will govern interference by the court is whether rule 13.15 was complied with substantially or not. Since the functions of D.I.G. and the I.G. have not been alleged to be performed otherwise than as they are required to be done under rule 13.15, it cannot be said that the said rule is violated merely because these functions are performed immediately one after the other by these officers meeting together. I take the view, therefore, there was no violation of rule 13.15 when the petitioner was judged by the Selection Committee in 1967. There is no other allegation by the petitioner that the rest of the procedure under the said rule, such as sending the confidential report by the Superintendent of Police etc., was not observed. I am unable, therefore, to hold that the petitioner was not properly considered under rule 13.15 in 1967. List 'F' of 1968 did not contain the name of the petitioner for the same reason, namely, that the Selection Committee did not select him. (c) According to the petitioner the next selection list came out on 13-2-70. Admittedly the petitioner was not considered for inclusion in this list because a criminal case was pending against him. This may be a valid reason for not considering the petitioner so long as the criminal case was pending against him. But once the criminal case is decided in favor of the petitioner, the effect of the decision would be as if criminal case had never been filed against the petitioner. The Ministry of Home Affairs have issued instructions to the effect that if a disciplinary enquiry or a criminal case is pending against a person, he will not be considered for promotion during the pendency of such proceedings, but after the proceeding are over, he should be considered on the basis as if these proceedings is such that had never been pending, if the result of the proceedings is such that had these proceeding been never instituted, the petitioner would have been entitled for promotion. These instructions were considered in S.S. Karir v. Delhi Administration and another 1973 (1) S.LR 1961 in paragraphs 8 and 9 by me. It is not known if these instructions apply to the present petitioner in terms. But the principle contained therein is sound. It has been applied to all the Central Government Servants. The Union Territory of Delhi is governed by the President

of India under Article 239 of the Constitution. It is not State but is a part of the Union of India. There is no reason, therefore, why the principle which applies to the rest of the Central Government servants should not apply to the petitioner who is working under the Delhi Administration which really means that he is working under the President of India, within the meaning of Articles 309 and 310 of the Constitution. I therefore, hold that the respondents are bound to consider, whether, but for the criminal case, the petitioner would have been eligible to be included in the List 'F' which was published on 13-2-70. If the respondents are satisfied that the petitioner was so eligible then they are directed to consider the petitioner for inclusion in List 'F' with effect from 13-2-70 i.e. on the basis that his name would have appeared in the list published on 13.2.70 with the consequences that may follow there from. Shri Kapur points out that confidential report for the period 1-4-69 to 30-6-69 was communicated to the petitioner on 3-8-70. This should have been communicated to him by the end of 1969. The petitioner's remedy to make representation against the said report is left untouched. Such representation will be taken into account by the respondents in considering the suitability of the petitioner as on 13-2-70. (d) The petitioner was subjected to disciplinary enquiry put was expnated there from on '28-'2.-1971. A. confidential report about him for the period 1-7-1969 to 31-3-1970 was communicated to him on 11-11-1971. The petitioner may make a representation against the said report and it will be taken into account by the respondents considering whether the petitioner was fit to be included in List 'F' as on 31-8-1970. The respondents are directed to do so hereby.

(5) The petition is thus partly allowed in above terms. The consideration of the petitioner for inclusion in List 'F' firstly as on 13-2-70 and secondly as on 31-8-70 shall be done by respondents before the next list is due and at any rate not later than two months from today. There will be no order as to costs.