

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT JAMMU**

**SWP No. 2797/2002**

**IA No. 2627/2002**

**IA No. 626/2003**

**Pronounced on : 16.06.2023**

Sh. Krishan Singh Jasrotia (deceased)  
represented through LRs Bimla Devi and  
others

..... Petitioner(s)

Through :- Mr. O.P.Thakur, Sr. Advocate with  
Ms. Neha Abrol, Advocate.  
Petitioner no.4 present in person.

**Vs**

Union of India and others

.....Respondent(s)

Through :- Mr. Vishal Sharma, DSGI.

**Coram: HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE**

**JUDGMENT**

- 01.** The petitioner was initially appointed as constable in J&K Armed Police on 11.05.1961 and posted in Ist Battalion (JKAP) which was subsequently merged with Border Security Force in July, 1966. The petitioner received promotions and rose to the rank of Inspector in 1988. The petitioner submits that he was also awarded many rewards and commendation certificates by the respondent Nos. 1 to 3 during his service career. That no adverse remarks were recorded against the petitioner during his service career. However, some remarks were treated as adverse remarks vide dated 11.03.1996 and the same were stated as "there were complaints against SO about mixing up with smugglers. He was earlier de-inducted from 'G' set up". On representation being made against the so called adverse report, the remarks "he was de-inducted from 'G' set up on adverse report" was

expunged. The rest of the portion of adverse remarks remained unchanged and the remarks were communicated to the petitioner on 09.11.1995. It is further stated that the petitioner made representation on 19.03.1996 and the petitioner through letter No. PS/8-96/1227-29 dated 05.07.1996 was informed that the remarks endorsed in ACR for the year 1994-95 are not adverse and are only factual in nature and the remarks do not warrant their expunction. It is further stated that the respondent Nos. 1 to 3 promoted 63 Sub-Inspectors to the post of Assistant Commandant including the respondent Nos. 4 to 9 as per minutes of the Departmental Promotion Committee held on 12.12.1997 as per the record.

- 02.** The petitioner was aggrieved of his non-inclusion in the list of promotees and made representation to respondent No.2. The representation of the petitioner was rejected vide communication dated 30.04.1998 on the basis of order dated 16.04.1998 mentioned therein. He was informed that the petitioner could not make the 'Bench Mark Grade'. The challenge was thrown to the communication dated 30.04.1998 by the petitioner in SWP No. 1274/1998. The petitioner also sought his promotion as Assistant Commandant in the said writ petition which was disposed of vide judgment dated 06.07.2001. The court disposed of the writ petition with the following observations:-

“.....nothing adverse came to notice’.

A perusal of the above para does indicate that in case of doubt or suspicion prescribed procedure of recording secret note has to be followed. This has not happened in this case. As such this petition is disposed of with a direction to re-consider the case of the petitioner in the light of the instructions noted above. If a separate note exist, position would be different. Otherwise it would be a case indicating 'nothing adverse came to notice'. The petitioner's claim would be re-assessed. He be

given such bench mark as become due to him. His claims be re-considered. This be done within a period of three months from the date, copy of this order is made available by the petitioner to the respondents.”

- 03.** The claim of the petitioner was again rejected after the judgment of 06.07.2001 vide communication dated 18.12.2001 and is under challenge in the present petition. It was communicated to the petitioner vide aforesaid communication that the DPC was held on 07.09.1998 and the DPC did not recommend your empanelment for eventual promotion to the rank of Assistant Commandant with reference to DPCs held on 07.09.1998 and 20.06.2000. It was also stated in the communication that the adverse remarks of ACR for the year 1993-94 had been ignored and with regard to the DPC held on 20.06.2000 the petitioner had been graded ‘as good’. The Subedars of general category who were graded as ‘very good’ were empanelled by DPC.
- 04.** The main contention raised in the petition is that the respondents have not implemented the judgment passed by the writ court in the earlier round of litigation while dismissing the claim of the petitioner. It is submitted that the ACRs of the petitioner in the preceding years have been graded at least as very good and has been awarded even outstanding grade.
- 05.** The petitioner could not have been put in the zone of not having made Bench Mark while making promotions to the post of Assistant Commandant. The awards and the recommendation certificates of the petitioner in favour of the petitioner from the inception of his appointment till 1997 speak of the high performance of the petitioner. The petitioner was not communicated any adverse remarks which

might have impacted the decision of the DPC eventually. It is also apprehended by the petitioner that the communication wherein it was mentioned that the remarks for the year 1994-95 were not adverse and were only factual in nature of the petitioner could have still weighed with the respondent for rejecting the claim for the post of Assistant Commandant.

- 06.** The objections stand filed to the petition wherein the contention of the petitioner qua the apprehension raised in the petition that the official respondents have not considered the case of the petitioner in terms of the Judgment passed in SWP No. 1274/1998 is allayed. It is also the case of the respondents that the performance of the petitioner was assessed in the DPC held on 12.12.1997 for considering the subedars for promotion to the rank of Assistant Commandant. The petitioner was graded as average by the DPC on the basis of the performance of the petitioner in his ACRs for the period from 1992-1993 to 1996-1997. As the Bench Mark for the promotion to the rank of Assistant Commandant was not cleared by the petitioner, therefore, the petitioner was not promoted to the rank of Assistant Commandant. It is also the case of the respondents that it is not that the private respondents have been promoted only by ignoring the merit of the petitioner.
- 07.** The petitioner having failed to make the grade as required for promotion to the rank of Assistant Commandant, the petitioner could not be promoted to that rank.
- 08.** It may be mentioned herein that the respondent Nos. 4 to 9 having been promoted more than two and a half decades back and also retired,

therefore, the challenge to the promotion of said respondents should not concern the court as the promotion of the private respondents cannot be disturbed at this stage.

- 09.** The factual aspects of the case are more or less not in dispute. The respondents have produced photo copies of some record. It is made out from the record and it is not denied by the respondents that the petitioner was awarded the awards and given commendation letters as mentioned in the petition itself. It is also revealed from the record (photo copy) produced by the learned counsel appearing for the respondents that the petitioner had very good gradings in the ACRs recorded in the year 1993-1994 till 1997 when the DPC was held in the year 1997, 1998 and also on 20.06.2000. The ACRs of the petitioner of course remained the same of the years from 1992-1993 to 1997 during the DPCs held on 12.12.1997, 07.09.1998 and 20.06.2000. However, the DPC conducted in the year 1997 recorded the assessment of the petitioner as 'average' whereas in the subsequent DPCs held in the year 1998 and in the year 2000 the assessment of the petitioner was recorded as 'good'. Apparently, there seems to be no good reason to record the performance of the petitioner as 'average' even in the first DPC of 1997 more so when the performance of the petitioner is recorded in the ACRs of earlier five years as very good or outstanding.
- 10.** No doubt the communication dated 18.12.2001 impugned in the present writ petition does refer to ignoring of adverse remarks recorded in ACRs for the year 1993-1994 and graded as average in the DPC conducted on 12.12.1997, it may be mentioned herein that the

respondents had in the reply filed to SWP No. 1274/1998 had mentioned of the adverse remarks of the petitioner which were earlier held against him and taken into consideration while assessing the performance of the petitioner. The petitioner has also stated that the adverse remarks were not communicated to him for a fairly long time. The respondent had not followed the instructions in terms of para 10 of which mention is made in the judgment passed in SWP No. 1274/1998. The court is of the considered view that the case of the petitioner is required to be reviewed again by the DPC keeping in view the directions passed by the writ court in SWP No. 1274/1998 and also the grades recorded in the ACRs of the relevant years as the court is not to grade the performance of the petitioner and act as a substitute for the Departmental Promotion Committee.

11. The Court, in the facts and circumstances of the case, quashes the impugned communication of the year 1998. The promotion of private respondents as Assistant Commandant cannot be disturbed and remains intact but directs the official respondents to constitute DPC where the performance of the petitioner shall be assessed again and the DPC to record whether the petitioner is entitled to be promoted to the rank of Assistant Commandant from the year 1998 itself when the others were promoted as Assistant Commandants, uninfluenced by the earlier decision taken by the DPC.
12. The petitioner retired in the year 2002 from service and unfortunately died during the pendency of the present writ petition in the year 2014. The Court genuinely hopes and trusts that the case of the petitioner

shall again be considered by the DPC to be constituted by the competent authority in its right earnest keeping in view the directions earlier passed by this Court in SWP No. 1274/1998, the rules on the subject and the performance of the petitioner of the relevant years and the fact that he had served the respondents virtually without blemish. In case it is concluded by the respondents that the petitioner-late Krishan Singh Jasrotia is entitled to promotion as Assistant Commandant he shall be entitled to all the pecuniary benefits as a consequence of the same. The respondents shall pass the speaking order within a period of three months from the date copy of the judgment is received by the respondents.

13. Disposed of.

Jammu:  
16.06.2023  
Pawan Chopra



**(PUNEET GUPTA)  
JUDGE**

Whether the order is speaking:	Yes
Whether the order is reportable:	Yes/No