

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE

ON THE 11th OF OCTOBER 2022

WRIT PETITION No.3200 of 2011

Between:-

**KAMAL SINGH S/O SHRI ATAR SINGH,
AGE 32 YEARS, OCCUPATION:
CONSTABLE NO.441, 14TH BATTALION,
GWALIOR, R/O GWALIOR (M.P.)**

.....PETITIONER

(SHRI SAURAB SINGH TOMAR- ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH
THROUGH THE PRINCIPAL SECRETARY
DEPARTMENT OF HOME, GOVERNMENT
OF M.P. MANTRALAYA, VALLABH
BHAWAN, BHOPAL (MADHYA PRADESH)**
- 2. THE DIRECTOR GENERAL OF POLICE,
POLICE HEADQUARTER,
JAHANGIRABAD, BHOPAL (MADHYA
PRADESH)**

.....RESPONDENTS

(BY SHRI GIRRAJ KISHORE AGARWAL- GOVT.

ADVOCATE)

This petition coming on for admission this day, the court passed the following:

ORDER

(1) The present petition under Article 226 of the Constitution of India was initially preferred by two petitioners against denial of out of turn promotion to the petitioner, even after the case of the petitioner was recommended by Superintendent of Police and Inspector General of Police for the outstanding and excellent performance while executing duties including killing of a dreaded dacoit, on whose head there was a reward of Rs.52,000/-. Petitioner no.1 Rajendra Singh in the year 2015 itself had withdrawn his petition by filing I.A.No.5432/2015, which was allowed vide order dated 8.10.2015, therefore, by this petition rights of the petitioner no.2 only remains to be adjudicated.

(2) Brief facts leading to the present petition are that petitioner who is a Constable, was giving his services in 13th Battalion, which was deployed at Maghjava District, Satna. The said Battalion was sent for arresting one dreaded criminal named Suresh Gaud @ Bijju Mama, who was operating in the area and was involved in killing of 12 persons at Village Bichiyan, District Satna and on whom a reward of Rs.52,000/- was announced by the State Government. On 11/03/2010 Police, Chitrakoot got

information that the said dacoit was likely to visit Village Pasena Nala, P.S. Baroda, District Satna. Four search parties were constituted, out of which in one of the parties the petitioner Kamal Singh was a member, which was headed by Udaibhan Singh, S.H.O., P.S. Bharonda. As and when the dacoit was surrounded by the search parties, he opened indiscriminate fire and in retaliation, when there was exchange of fire by Police, he got killed.

(3) The act of bravery compelled the Superintendent of Police to recommend the case of the petitioner for out of turn promotion and a similar letter dated 01/05/2010 was also issued by the Inspector General and the name of the petitioner was recommended for out of turn promotion, but latter vide representation dated 19/01/2011 the scrutiny committee recommended only ten names and the petitioner was left out. In pursuance to the said recommendations vide order dated 15/02/2011, the said persons were given out of turn promotion. Aggrieved the present petition had been filed.

(4) Counsel for the petitioner with his usual vehemence contended that as per regulation 70A of the Police Regulations, which was prevailing at the time when the incident took place and which reads as under:

“70A.- Notwithstanding anything contained in Regulation 70, a Constable may be promoted to the rank of Head Constable by the Superintendent of Police with the prior approval of the Directors General of Police and a Head

Constable to the rank of Assistant Sub-Inspector by the Deputy Inspector General of Police with the prior approval of the Director General of Police if he has distinguished himself in anti-dacoit operations, law and order situations of shooting competitions or in some other field of duty or who has been awarded the President's Police Medal for Gallantry or for meritorious/distinguished services, if he considers him suitable for promotion. Similarly the Inspector General of Police may promote an Assistant Sub-Inspector to the rank of Sub-Inspector and a Sub-Inspector to the rank of an Inspector on similar grounds if found suitable for promotion and subject to the prior approval of the Director General of Police. The number of officers promoted under this Regulation shall not exceed 10 percent."

(5) The petitioner was required to be given out of turn promotion. It is submitted that as per Police Regulation 70-A, 10 police personnel's have been granted out of turn promotion, but the petitioner has been denied the benefit of Regulation 70-A without any reason. It is undisputed that the petitioner was also a member of the police party, who had encountered dacoit Suresh Gaud @ Bijju Mama. It is submitted that though there was recommendation of both Superintendent of Police and Inspector General for grant of out of turn promotion, for denying the benefit of the same to the petitioner, no reasons have been assigned, rather from reply Annexure R/3, the Inspector General appears to

had revised its recommendations and the list of 18 persons which were recommended earlier was reduced to 10 and the name of the petitioner was left out, when the act of the petitioner was the same with those, whose names were recommended vide revised recommendations dated 19/01/2011 and the scrutiny committee only on the basis of the second revised recommendations, forwarded its recommendations for out of turn promotion, which in fact is act of mala fide and is arbitrary. It is further submitted that by not granting out of turn promotion to the petitioner and by granting the same benefit to the similarly placed police personnel, the respondents have discriminated the petitioner and thus, their act is violative of Articles 14 and 16 of the Constitution of India.

(6) Per contra Government Advocate submitted that the petitioner cannot claim out of turn promotion as a matter of right because in view of Regulation 70-A of the Police Regulations, it is the domain of the constituted scrutiny committee, who would consider the case of the petitioner and the recommendations of the committee would be final and it was only after scrutiny by the committee, the petitioner was not found fit for out of turn promotion and thus, the administrative decision taken by the authorities cannot be interfered with lightly and prayer was made for dismissal of the writ petition.

(7) Heard the parties at length and perused the record.

(8) In the present case, the encounter with the notified gang of Suresh Gaud @ Bijju Mama took place on 11/03/2010. The

participation of the petitioner in the encounter has not been disputed by the respondents. It is also not in dispute that Inspector General of Police vide letter dated 01/05/2010 had recommended the name of the petitioner for grant of out of turn promotion, but what transpired before the scrutiny committee, which occasioned for asking the Inspector General for reanalysing its recommendations and resending it, had not been explained by the respondents nor there is whisper in that regard in the entire reply. From bare perusal of para 9 of the recommendation given by Inspector General dated 01/05/2010, it would be evident that the petitioner was also found to be one of the active participant of the encounter party. Extract of para 9 is reproduced below:

"इस मुठभेड में आर0 441 कमल सिंह 14 बटालियन द्वारा पार्टी नम्बर 1 में रहकर फायर कर रहे डकैतों का अप्रतिम वीरता से मुकाबला किया। डकैतों की प्राणघातक गोलियों से स्वयं के प्राणों की परवाह न कर नाले से डकैतों के नजदीक जाकर पार्टी प्रभारी के कंधे से कन्धा मिलाकर जबावी फायर किए जिसके कारण डकैत धराशायी हुए। सम्पूर्ण मुठभेड में महत्वपूर्ण योगदान रहा।"

(9) Though it is settled position that out of turn promotion for act of bravery is not a legal right, however, the administrative discretion should not be vitiated by any unreasonableness, irrationality, prejudice, bias or arbitrariness. This Court in the case of **Suresh Pal Singh Vs. State of M.P. & Others**, reported in **2012(1) MPHT 226 (DB)**, has held as under :-

"12. We are of the view that out of turn promotion in terms of Regulation 70-A of

Madhya Pradesh Police Regulations is not a matter of legal right. It is within the discretion of the Competent Authority of the respondents to grant or not to grant out of turn promotion. But, exercise of administrative discretion by the Department must not be vitiated by any unreasonableness, irrationality, prejudice or any bias. Since a plea has been taken on behalf of the appellant that the Department has granted out of turn promotion to his juniors in regard to the same act of bravery, we deem it appropriate that ends of justice shall be adequately met in case the case of the appellant for his out of turn promotion is considered by the Department once again limiting only on the point whether any person junior to him has been granted out of turn promotion with regard to the same act of bravery in the incident of encounter that took place on 16th November, 2002. In case, upon such consideration, it is found by the Department that any person junior to the appellant has been granted out of turn promotion, then they should also consider the claim of appellant for his out of turn promotion taking into account the role played by him in the encounter which we have already extracted herein above, but that should again be dependent upon availability of vacancy in the quota of out of turn promotion at the relevant time and, of course, the relevant time is the date when encounter in which the appellant had participated had taken place."

(10) Thus, it is clear that though the petitioner cannot claim his

out of turn promotion for the act of his bravery, as a matter of legal right, but at the same time, the discretion of the authorities should not be arbitrary and unreasonable. In the absence of any glaring discrepancy or bias in the decision-making process, ordinarily the Court does not normally take upon itself the task of making a subjective assessment of an officer's performance in relation to matters of promotion and that too of the nature contemplated in the present case. However, at the same time, the Court is also duty bound to consider the materials placed before it in order to arrive at a conclusion as to whether an injustice has been caused to the concerned officer.

(11) In the present case, Inspector General of Police, after observing the petitioners act at the time of incident, had recommended that the petitioner should be given out- of-turn promotion. The said recommendations seemed to suggest that the performance of the petitioner merited special consideration. Similarly situated persons were given out of turn promotion and there is no explanation as to the situation for asking the Inspector General to reanalyse his recommendations and Inspector General to reappraise his earlier recommendations and ousting the petitioner from the lot of persons recommended for out of turn promotion and while doing so, neither Inspector General nor the Screening Committee has recorded any finding that he is not fit for promotion. Thus, it is a clear-cut case of discrimination.

(12) Since the petitioner has been made to run from pillar to post

for granting out of turn promotion, the question which arise for consideration before this Court is that whether the Court should direct the respondents to promote the petitioner out of turn in the peculiar facts and circumstances of the case particularly when the findings of this Court has attained finality regarding entitlement of the petitioner instead by directing the authorities to consider the case for promotion.

(13) Reference of the Division Bench of this Court in the case of **State of M.P. & others Vs. Mahendra Kumar Sharma; ILR (2008) MP 208**, would be relevant in the circumstances of the case as under :

"8. On this root question, whether Writ Court should directly order for promotion of an employee or should only give direction to consider his case for promotion, as per the decision of the Constitutional Bench, it is true that generally in such cases the Court should not order for directing promotion to the employee and direction should be given to consider the case. As per Regulation 70-A, if the appellant is found suitable for promotion he can be granted out of turn promotion. It is also true that in the return, State has not stated anything that the respondent was not found otherwise unsuitable for promotion on any other ground. Therefore, if the respondent was found suitable then he was entitled for out of turn promotion. While rejecting the case of the respondent, Screening Committee has not recorded such a finding that he is

not fit for promotion. Under Article 226 of the Constitution of India while issuing the mandamus the High Court is fully competent in appropriate cases to issue such directions. If the circumstance permits and case is made out legally and if it is found that the person was not otherwise found unsuitable for promotion and a case of discrimination is made out, then certainly there cannot be any embargo on the powers of the High Court to issue such a directions. In this case under the circumstances brought on record and explained in the order, learned Single Judge has already directed to promote the respondent w.e.f. 27.05.2003. Therefore, we do not find any ground to interfere in such direction nor such a direction is contrary to law. However, it is made clear that at the time of issuing promotion order the respondent shall be free to consider that the respondent is not otherwise unsuitable for promotion.

9. Consequently, this writ appeal is W.P.No.2850/2012(S) disposed of accordingly."

(14) Normally this court would have sent the matter back to the Authorities to reconsider the case of the petitioner, but looking to the dictum of Division Bench in the matter of **Mahendra Kumar Sharma (supra)** and long period which has already lapsed in the litigation; it would be in the fitness of the things to put an end to the further complications at this stage only and therefore, the respondents are directed to extend the benefit of out of turn

promotion to the petitioner in terms of Clause 70-A M.P. Police Regulation with all consequential benefits from the date when other identically situated police personnel were granted out of turn promotion.

(15) Resultantly, this petition succeeds and is hereby allowed.

(16) Let this exercise be completed within a period of three months from the date of receipt of certified copy of this order.

E-copy/Certified copy as per rules/directions.

(Milind Ramesh Phadke)
Judge

Pawar*