

Krishna Kumar Pandey Vs. State of U.P. and Another

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Court : Allahabad

Decided On : Jul-04-2001

Reported in : 2001LabIC3953; (2001)3UPLBEC2113

Judge : Ashok Bhushan, J.

Acts : Uttar Pradesh Police Regulation and Statutory Rules; [Police Act, 1861](#) - Sections 23; [Constitution of India](#) - Article 226

Appeal No. : C.M.W.P. No. 39053 of 1998

Appellant : Krishna Kumar Pandey

Respondent : State of U.P. and Another

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Umesh Narain Sharma and ;Anil Kumar Bajpai, Advs.

Judgement :

Ashok Bhushan, J.

1. This writ petition has been filed praying for quashing of the order dated 18.7.1998 passed by the Director General of Police rejecting the claim of the petitioner for out of turn promotion. Petitioner has further prayed for a writ of mandamus directing the respondents to grant the petitioner out of turn promotion

In pursuance of the Government Order dated 3.2.1994 and the Circular letter dated 10.2.1994 Issued by the Director General of Police, U. P., Lucknow.

2. Counter and rejoinder-affidavits have been exchanged and with the consent of the parties, the writ petition is being finally decided.

3. The facts of the case as emerge from the pleadings of the parties are ; that the petitioner was appointed as Sub-Inspector in civil police in the year 1982. Petitioner-states that while he was posted as Station Officer. Police Station, Lalganj, district Basti, he gunned down three notorious criminals on 23/24.5.1995 in an encounter. Petitioner further stated that during the aforesaid encounter, petitioner suffered Injuries and was admitted to the hospital. Petitioner states that deadly weapons like stengun was recovered from the possession of the criminals who were shot dead in the encounter. A magisterial enquiry was held in which the Sub-Divisional Magistrate submitted his report which has been filed as Annexure-5 to the writ petition. After conclusion of the magisterial enquiry, the name of the petitioner was recommended by the Superintendent of Police, Basti for out of turn promotion in pursuance of the Government Order dated 3.2.1994. The Deputy Inspector General of Police, Basil Range, Basti and Inspector General of Police. Gorakhpur Region, Gorakhpur also recommended the claim of the petitioner for out of turn promotion. Petitioner stated that his case is squarely covered by the Government Order dated 3.2.1994. The committee did not found petitioner's case fit for out of turn promotion and an order dated 13.7.1998 was issued refusing the claim of the petitioner. The respondents have filed the proceedings of the committee dated 13.7.1998 as Annexure-C.A. 1 which bears approval of the Director General of Police dated 16.7.1998.

4. The details of the encounter as given in. the first information report Annexure-1 to the writ petition states that petitioner after coming to know that three criminals, namely, Mahatam Gadartya, Panney Dadi and Tufani have come at the residence of Bhagirathi and Ram Brlksha Gadariya and he along with the police force went for apprehending the criminals after giving information to Station House Officer. Basti. The criminals after coming to know about the arrival of the police ran towards west of the village on motor cycles. Police party chased the criminals and

about 2.15 a.m. in the night : they left the motorcycles and took positions and challenged the police party. In exchange of fire : with the police party, three criminals were shot dead from whose possession stengun and other arms and ammunitions were recovered. First information report also stated that in the encounter, petitioner. Sub-Inspector V. K. Mlsra and constable Diwan Abdulla received injuries.

5. I have heard Sri Umesh Naraln Sharma. counsel for the petitioner and learned standing counsel. Counsel for the petitioner submitted that the decision of the committee denying out of turn promotion is erroneous. The act of the petitioner showed indomitable courage and gallantry which entitled the petitioner for an out of turn promotion. The counsel for the petitioner submitted that he has received fire-arm injuries in the encounter which fact has been mentioned in the recommendation of the Superintendent of Police and the committed erred in not considering the aforesaid relevant facts. The fact that the petitioner received injury showed that the petitioner did not fear for his life. Counsel for the petitioner has also submitted that throughout the petitioner's career, he has received several awards for his courageous and brave acts, details of which have been mentioned in the writ petition. Counsel for the petitioner further submitted that the order of the committee itself found that the petitioner has shown exemplary courage and gallantry, hence there was no occasion for denying out of turn promotion.

6. Before considering the submissions of the counsel for the parties, it is necessary to find out as to what is the object of the Government Order dated 3.2.1994 and what are the requirements which have to be fulfilled before granting benefit of the Government Order to a police person. All police personnel are governed by the Police Act of 1861 and the U. P. Police Regulation and Statutory Rules framed governing their service condition, Section 23 of the Police Act of 1861 provides the duties of the Police Officers. Section 23 is quoted below :

'23. Duties of Police Officers, --It shall be duty of every Police Officer promptly to obey and execute all orders and warrants lawfully issued to him by any competent authority, to collect and communicate intelligence affecting the public peace : to prevent the commission of offences and public nuisances : to detect and bring

offenders to justice ; and to apprehend all persons whom he is legally authorised to apprehend and for whose apprehension sufficient ground exists ; and it shall be lawful for every Police Officer, for any of the purpose mentioned in this section without a warrant, to enter and inspect any drinking shop, gaming-house or other place of resort of loose and disorderly characters.'

Thus, normal duties of the Police Officer include detection and bringing the offenders to justice and to apprehend all persons whom he is legally authorised to apprehend and for whose apprehension sufficient ground exists.

7. Police regulation provides for mode of promotion. Chapter XXX of Police Regulation provides for promotion and Chapter XXXI provides for rewards. Police Regulation contemplates different acts of 'good service'. Paragraph 466 sub-clause (4) of the Police Regulation provides :

'466 (4) Rewards should not be given to any class officer for 'general good work' but only for particular acts of special merit, such as good arrests, good detection or good service on a special occasion. Cash rewards for good marksmanship during annual weapon firing and shots during musketry competitions are also admissible. Rewards are not to be given as a matter of routine whenever a case is directed. Nor should they be given for the efficient discharge of ordinary duties, e.g. to a reserve inspector for good recruiting or for training recruits.'

8. The above paragraph 466 sub-clause (4) clearly contemplates that the rewards should not be given for general good work. The Government Order dated 3.2.1994 contemplates giving out of turn promotion on Indomitable courage and gallantry. Government Order contemplates not merely a courage but indomitable courage. The Government Order does not contemplate giving of out of turn promotion to a Police Officer who, in discharge of his official duties, apprehends the criminal to which he is duty bound. For good work including an act of bravery, a Police Officer may be rewarded according to Chapter XXXI of Police Regulation but the Government Order dated 3.2.1994 requires something more than good work and bravery. The Government Order requires person claiming out of turn promotion to prove that his action showed Indomitable courage and gallantry. The action of the person may be his individual act or his act in aid of collective effort of a police

team.

9. After having examined the object and contents of the Government Order it has now to be seen as to whether any error has been committed by the committee in examining the claim of the petitioner for grant of out of turn promotion. The writ petition asks this Court to review the decision of the committee. The scope of Judicial review of assessment made by the department promotion committee is well defined. The Apex Court in *Badrinath v. Government of Tamil Nadu and others*, (2000) 8 SCC 395, has laid down in paragraphs 40 and 41 as under :

'40. Unless there is a strong case for applying the Wednesbury doctrine or there are mala fides, courts and Tribunals cannot interfere with assessments made by Departmental Promotion Committees in regard to merit or fitness for promotion. But in rare cases, if the assessment is either proved to be mala fide or is found based on inadmissible or irrelevant or insignificant and trivial material and if an attitude of ignoring or not giving weight to the positive aspects of one's career is strongly displayed, or if the inferences drawn are such that no reasonable person can reach such conclusion, or if there is illegality attached to the decision, then the powers of judicial review under Article 226 of the Constitution are not foreclosed.

41. While the courts are to be extremely careful in exercising the power of Judicial review in dealing with assessment made by Departmental Promotion Committee, the executive is also to bear in mind that, in exceptional cases, the assessment of merit made by them is liable to be scrutinised by courts, within the narrow Wednesbury principles or on the ground of mala fides. The Judicial power remains but its use is restricted to rare and exceptional situations. We are making these remarks so that courts or Tribunals may not--by quoting this case as an easy precedent--interfere with assessment of merit in every case. Courts and Tribunals can neither sit as appellate authorities nor substitute their own views to the views of Departmental Promotion Committees. Undue interference by the courts or Tribunals will result in paralysing recommendations of Departmental Committees and promotions. The case on hand can be a precedent only in rare cases.'

10. After hearing the counsel for the parties and perusing the record, it is clear that the petitioner has specifically submitted that during the course of encounter, he

suffered injuries. Paragraph 8 of the writ petition is extracted below :

'8. That during the aforesaid encounter, the petitioner also suffered injuries and was admitted in the Hospital. For kind perusal of this Hon'ble Court, injury report dated 24.5.1995 examined at Primary Health Centre. Bankata, district Basti is enclosed and marked as Annexure-4 to the writ petition.'

11. Paragraph 8 of the writ petition has been replied in paragraph 5 of the counter-affidavit. In paragraph 5 of the counter-affidavit, it has been stated that the contents of paragraph 8 of the writ petition needs no comment. Thus, the contents of paragraph 8 of the writ petition are not denied by the respondents. The Superintendent of Police in his recommendation dated 31.7.1997 which has been filed as Annexure-6 to the writ petition, has stated that in the aforesaid encounter S.I. Virendra Kumar Misra and Sub-Inspector Krishan Kumar Pandey received serious injuries and the copy of injury report was also sent along with the recommendation. Petitioner has also filed copy of the Injury report in the writ petition as Annexure-4 which mentions fire arm injuries. There is no denial that the criminals who were shot in the encounter, were not dreaded criminals. The details of criminal cases against those persons are mentioned in the recommendation of the Senior Superintendent of Police as Annexure-6 to the writ petition. That the recommendation of the Senior Superintendent of Police clearly mentions that both Virendra Kumar Misra and the petitioner showed indomitable courage and gallantry and without fearing for their life, they gunned down the criminals, Inspector General of Police in his recommendation dated 20.10.1997 has mentioned recommendation in favour of the petitioner and Virendra Kumar Misra.

12. That the committee has given only one reason for refusing the claim, that in the encounter, none of the police personnel had by personally risking their life showed Indomitable courage and gallantry of higher order. The aforesaid reasons given by the committee do not take into consideration the injuries which were received by the petitioner during the course of encounter. The Senior Superintendent of Police and Inspector General of Police both have stated in their recommendation that the petitioner having risked his life has gunned down the criminals, while forming the opinion, the committee has not considered the

relevant material, namely, the injuries suffered by the petitioner in the encounter. Petitioner suffered fire-arm injury and without considering the said fact, the formation of opinion by the committee cannot be said to be objective opinion.

13. A learned single Judge of this Court in Writ Petition Wo. 18692 of 1997, Brij Nandan Rai v. State of U. P., and others, held as under :

The grant of power to give out of turn promotion to a Police Officer is no doubt subjectively formulated but the decision of the Committee one way or the other must be based on objective consideration of valid materials such as the reports/ recommendations made by the sponsoring authorities.'

14. That the Apex Court in Badrinath v. Government of Tamil Nadu and others (supra) has laid down that if in the assessment an attitude of ignoring or not giving weight to the positive aspects of one's career is strongly displayed, then the Interference by this Court under Article 226 is not foreclosed. The present case shows that the relevant material, i.e.. the injury report which was referred to in the recommendation of the Senior Superintendent of Police has not been considered by the Committee which vitiates the decision of the committee.

15. A Division Bench of this Court in Special Appeal No. 687 of 2000, Home Secretary U. P.. Shashan v. Ashok Rana, had quashed the decision of the committee on the ground that it did not take into consideration all the relevant material. The Division Bench in the aforesaid case has directed the committee to consider the matter again.

16. In view of the above, the impugned order Annexure-18 to the writ petition (filed also as Annexure-C.A. 1 to the counter-affidavit) is quashed. It is directed that the competent, authority may consider the matter afresh. While considering the case of petitioner, all the materials on record Including the Injury report of the petitioner be considered and reasoned order be passed in accordance with law within a period of three months from the date of production of a certified copy of this order.

17. The writ petition Is disposed of with the aforesaid direction.

