

Vinod Kumar Singh and ors. Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Nov-27-2002

Reported in : 2003(1)AWC709

Judge : R.D. Shukla, J.

Appeal No. : Writ Petition No. 4788 (S/S) of 1999

Appellant : Vinod Kumar Singh and ors.

Respondent : State of U.P. and ors.

Judgement :

R.D. Shukla, J.

1. Present petition has been filed for a writ of certiorari quashing the impugned order dated 9.8.1999, passed by opposite party No. 2.
2. Heard learned counsel for the petitioners and learned standing counsel. Counter-affidavit has been filed.
3. Petitioner Nos. 1, 2, 3, 4, 5 and 6 belong to the police service. Petitioner Nos. 1 and 2 are Sub-Inspectors whereas petitioner Nos. 3, 4, 5 and 6 are police constables. In the intervening night of 17/18.9.1995 under police station Madlaon, Lucknow, these police personnel were engaged in apprehending the culprits who had committed murders in a house. Four persons were murdered. The culprits

were notorious criminals. These police personnel engaged them in an encounter in which these notorious criminals were killed and several others were arrested. This was treated as courageous act. But the case of petitioner No. 1 Vinod Kumar Singh was not considered for out-of-turn promotion, therefore. Writ Petition No. 2347 (S/S) of 1998 was filed. The petition was decided finally with a direction to the competent authority to decide the representation of the petitioner. This representation of the petitioner dated 11.6.1998 was addressed to Director General of Police. Petitioner No. 1 Vinod Kumar Singh served the certified copy of the order of High Court dated 27.5.1998 along with a copy of the said representation to opposite parties. Director General, Police on 18.11.1998 called for a report of the Inspector General of Police who submitted his report on 1.8.1999 in which he stated that Up Nirikshak Sarnath Singh also participated in the aforesaid encounter and his case for out-of-turn promotion has been recommended. He discussed the cases of the police officers and constables who participated in the said encounter and after examining the case of each one, recommended their out-of-turn promotion. He concluded in the report that the case of Up Nirikshak V.K. Singh, who is petitioner Vinod Kumar Singh, was recommended earlier for out-of-turn promotion. There is an order dated 27.8.1998 in which Director General of Police gave out-of-turn promotion to two Sub-Inspectors of Police, namely, Sunil Kumar and Shashi Bhushan Singh along with few police constables. This out-of-turn promotion related to certain incident of District Ghaziabad. Similarly on 11.11.1998 out-of-turn promotion was granted by Director General of Police to Head Constable Ramesh Chandra Yadav and Constable Kanhalya Rai in connection with separate incidents of District Ghaziabad and District Allahabad. These documents Annexures-2 to 14 detailed these acts of Director General of Police in contrast to the case of the petitioners of district Lucknow. Most relevant document Annexure-15 shows that Director General of Police gave out-of-turn promotion to one Sub-Inspector of Police and few police constables relating to encounter of notorious criminal Sripati Darhi of police station Sarojni Nagar, Lucknow, but the same yardstick has not been applied to the case of petitioner No. 1 Vinod Kumar Singh. As far as the case of other petitioners of this writ petition is concerned learned counsel for the petitioners could not state specifically as to whether they have been given

promotion in normal course or not. Therefore, on the basis of the statement of the learned counsel for the petitioners only the case of petitioner No. 1 Vinod Kumar Singh is being considered in this writ petition.

4. Annexure-1 to this writ petition dated 9.8.1999, did not give out-of-turn promotion to petitioner Vinod Kumar Singh on the ground that they had not shown exemplary courage and determination in the occurrence dated 18.9.1995, relating to police station Madlaon, District Lucknow. This occurrence resulted in killing of three notorious criminals and recovery of arms and ammunition. The consideration of the Director General of Police, it appears, was not based on proper appreciation of the circumstances of the case particularly when his subordinates on the basis of the directions issued by him submitted their report on 1.8.1999 and recommended the case of the petitioner V.K. Singh along with others for out-of-turn promotion on the ground that each one of the police personnel, participating in the said occurrence, had shown exemplary courage, bravery and determination when three notorious criminals were killed. This report of Inspector General of Police recommended the case for out-of-turn promotion. There appears no Justification for ignoring this report in the impugned order Annexure-1 dated 9.8.1999, when the same Director General of Police gave out-of-turn promotion to several other persons of different districts as detailed earlier for courage, determination and bravery in fighting notorious criminals. The impugned order Annexure-1 dated 9.8.1999, passed by Director General of Police thus is not based on material consideration of the circumstances, the report and the facts of the case in question relating to the occurrence of 18.9.1995 in which three notorious criminals were killed. There was no Justification for not acting upon the report of the Inspector General of Police dated 1.8.1999. which recommended out-of-turn promotion of petitioner No. 1 Vinod Kumar Singh.

5. In *Ashok Rana v. Home Secretary, U.P. Shasham, Lucknow*, 2000 (4) AWC 2889 : (2000) 3 UPLBEC 2324, it has been held on similar facts and circumstances that the reports of sponsoring authorities constituted valid material for the formation of opinion as to whether the petitioner was entitled to be given out-of-turn promotion. These reports were not liable to be ignored without any valid reasons. 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 S.S.P./D.I.G./I.G. (P).

6. Power of the authority to give out-of-turn promotion to its subordinate is to be exercised with subjective consideration of the facts involved. The submission of the reports of the officers immediately subordinate to the ultimate authority having power to grant out-of-turn promotion, should not normally be ignored. The power to grant promotion is not a prerogative of the authority to be exercised arbitrarily. The order passed and the action taken in the matter must reflect deep consideration of the authority of the facts and the circumstances of the case. The arbitrariness and lack of valid reason in the order passed shall exhibit that due consideration has not been given for the claim of out-of-turn promotion. One of the objects for the provisions relating to out-of-turn promotion is to encourage and provide incentives for fighting lawlessness but in this case the action taken by the Director General of Police amounts to discouragement.

7. In the instant case, claim of the petitioner No. 1 Vinod Kumar Singh for out-of-turn promotion has been ignored without any valid reason.

8. The order of Director General of Police dated 9.8.1999, is thus quashed. The said authority is directed to reconsider and grant the petitioners out-of-turn promotion on the basis of the report and material given by Inspector General of Police in his report dated 1.8.1999.

9. With these directions, the writ petition is disposed of finally.

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