
(2012) 02 AHC CK 0127
In the Allahabad High Court
Case No : Service Single No. 6490 of 2009

Amar Singh Raghubanshi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 21-02-2012

Acts Referred:

Police Act, 1949 — Section 2
Police Act, 1949 — Section 2
Police Act, 1949 — Section 2

Citation : (2012) 02 AHC CK 0127

Hon'ble Judges : Surendra Vikram Singh Rathore, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble Surendra Vikram Singh Rathore, J.—By means of this petition, the petitioner has challenged the order dated 14.5.2009 passed by respondent No. 1 whereby the claim of the petitioner for out of turn promotion/gallantry award was declined.

2. In brief, the grievance of the petitioner is that the petitioner was working on the post of Sub Inspector of Police in the police department of Uttar Pradesh. During the course of his services, he was deployed in the Special Task Force (hereinafter referred to as S.T.F) and was deputed in ante terrorists operation. One Salar alias Salim alias doctor who was a hardened terrorist belonging to the group of "Lashkare Tayaba" and was wanted in several cases. There was an award of Rs. 50,000/ on his arrest. Copy of criminal history of the said terrorist has been filed as Annexure -2 to this writ petition, which shows a criminal history of 18 cases. On 8.3.2006 an information was received by the S.T.F. regarding the aforementioned terrorist and an encounter took place. The petitioner was also a member of the police party which took part in the said encounter and had shown exemplary courage and bravery and without caring for his life took active part in the said ante terrorist operation. In exercise of power u/s 2 of the Police Act,

1961, the State Government has issued circular dated 3.2.1994 which provides for grant of out of turn promotion to the Sub Inspectors and Head Constables on the posts of one rank higher on the ground of exemplary courage and bravery against hardened criminals or terrorists. The Superintendent of Police S.T.F Lucknow recommended the name of the petitioner for grant of out of turn promotion and in the said recommendation (Annexure-4 dated 28.1.2007), it was specifically mentioned that the petitioner showed exemplary bravery and courage in the ante social terrorist operation. Thereafter in pursuance of the letter of Additional Director of S.T.F., Lucknow dated 10.5.2007, the matter was again reviewed by the S.P., S.T.F. and again vide letter dated 9.6.2007 (Annexure-5) recommended the name of the petitioner for his out of turn promotion. In the said letter, it was specifically mentioned that this matter was discussed with the Director General of Police on 9.6.2007 during his visit to S.T.F. and he was also in agreement with the S.S.P. S.T.F. for grant of out of turn promotion to the petitioner. Inspector General of Police Sri A.K.Jain, vide his letter dated 12.6.2007 (Annexure-6) expressed his concurrence with the view of the S.P. S.T.F and also recommended the matter for necessary action. The opposite party No. 1 when did not take any action in the matter, the petitioner along with three other police personnel who also participated in the said encounter filed writ petition No. 7901 (SS) of 2008 Amar Singh Raghuvanshi and others Vs. State of U.P. and others with the following prayer,

"A writ, order or direction in the nature of mandamus thereby commanding the opposite parties to provide the petitioners out of turn promotions on the next higher posts on the basis of recommendations made by the higher officers as well as circular dated 3.2.1994 contained in Annexure- 7 to this writ petition , forthwith."

3. This court vide order dated 15.12.2008 disposed of the aforesaid writ petition finally with the following direction,

"The grievance raised by the petitioner at the first instance has to be looked into, examined and remedied by the concerned authority. As such liberty is being given to the petitioner to file a fresh representation before respondent No. 1. In case the representation is filed it may be decided by respondent No. 1 by a speaking order, in accordance with law , if possible within one month from the date of receipt of the representation. The petitioner will file a certified copy of this order along with his representation. The petitioner will file a certified copy of this order along with his representation. Respondent No. 1 after taking decision will communicate the same to the petitioner."

4. In compliance of the said order, the petitioner filed fresh representation on 21.12.2008 to the opposite party No. 1 along with other applicants and again pressed his prayer for grant of out of turn promotion but the opposite parties did not comply with the order passed by this court on 15.12.2008 and the petitioner had to file contempt petition Criminal Misc. Case No.804 of 2009 (Contempt) before this court and thereafter the representation of the petitioner was rejected

vide order dated 14.5.2009. The grievance of the petitioner is that the authorized committee who had scrutinized the matter, in its meeting dated 27.11.2007 considered the matter and the committee was of the view that the work shown by the petitioner and others did not fall within the category of exemplary courage and bravery. In the said order, the recommendations, reference of which has been made earlier in the earlier part of the judgment was not at all considered.

5. The grievance of the petitioner is that the gazetted officers involved in the said operation dated 8.5.2006 namely Rajesh Kumar Pandey, Additional Superintendent of police, Sri Ram Badan Singh, Deputy Superintendent of Police and Sri Sahab Rashid Khan, Dy. Superintendent of Police have been awarded police medals for gallantry on the recommendations made by the State Government. Photo copy of the notification dated 29.11.2007 has been filed as Annexure-9 to this writ petition but the other non gazetted police personnel who were also members of the said team were neither given out of turn promotion nor any gallantry award while it was a cumulative effort of all the police personnel who had participated in the said operation.

6. The argument of the learned counsel for petitioner is that in the impugned order a discrimination has been made between gazetted officers who were leading the team and the members who were accompanying them and only the gazetted officers were found fit for the award while the other employees were declined the benefit without any sufficient and valid reason. It is further submitted that it is undisputed that in this operation a hardened terrorist was killed and the gazetted officers who had also participated in this operation have been awarded with gallantry medals. It is mentioned in the impugned order that the said operation was the result of cumulative effort of all. It is further submitted that the observation made in the impugned order that the petitioners have not shown any personal act of bravery in the said encounter but it is the result of cumulative effort of all the police personnel and the police team was armed with latest weapons. The argument of the learned counsel is that the ground on which the claim of the petitioner was rejected was equally applicable to other gazetted officers who have been awarded gallantry medals. When the committee was of the view that it was the result of cumulative effort of all the police personnel then there was no ground for discrimination. It is further argued that gazetted officer who have been awarded were also armed with latest weapons and the police party is supposed to be well equipped with latest arm while taking party in any such operation. It is further submitted that it is nowhere the observation of the committee that the petitioner backed out from taking part in the said encounter. He kept pace with pace with other team members and therefore, declining his name for the grant of out of turn promotion or for the gallantry award was arbitrary decision and the ground mentioned therein were actually frivolous and without substance.

7. Learned counsel for petitioner has placed reliance on several case laws which shall be dealt at the relevant stage of the judgment.

8. The argument of the learned counsel for opposite party is that the petitioner has not shown any individual act of bravery therefore, his claim was rejected by the competent authority and there is no illegality or arbitrariness in the said decision.

9. The matter of out of turn/ gallantry award is covered with the G.O. No. 665 / Cha Pu-1-24/93 dated 3.2.1994 (Annexure-3) to writ petition. Para 2 of the aforesaid G.O. Is relevant for the purpose of this controversy which is as under,

"Aise Mukhya Arakshi Adama Sahas Evam Shourya Pradan Karne Vale Mukhya Arakshi ki Koti Main Ayenge Jinhone Kukhyat Antakvadi Ya Jaghanya Apradhi Ke Saath Muthbher Ya Unki Giraftari Main Adama Sahas Aur Shourya Pradarshit Kiya Ho Ya Apne Kartavya Palan Ke Dauran Jokhim Bhara Karya Kiya Ho."

10. There is no dispute to the fact situation that Salar alias Salim alias Doctor was a hardened terrorist. There was an award of Rs. 50,000/ on him. He was killed in police encounter on 8.3.2006 and the petitioner was one of member of the said police party. It is also undisputed that the gazetted police officers who were part of the police team have been granted gallantry awards. Now the only point remains to be considered in this case is whether the refusal of the claim of the petitioner for out of turn promotion or grant of gallantry award was based on sufficient reason or it was an arbitrary decision. There is a letter dated 2.8.2007 of Senior Superintendent of Police S.T.F., Lucknow addressed to I.G. police S.T.F., Lucknow in which the Senior Superintendent of Police had recommended the names of all the non gazetted police personnel for out of turn promotion. Thereafter the matter of recommendation of grant of out of turn promotion was referred back to the Senior Superintendent of Police S.T.F. by the Additional D.G.P vide his letter dated 10.5.2007. The Senior Superintendent of Police S.T.F. again discussed this matter with the D.G.P during his visit and again affirmed the recommendation sent by him earlier. The said recommendation were concurred by the Inspector General of Police S.T.F and a direction in writ petition No. 7901 (SS) of 2008 dated 15.12.2008 was given by this court for considering the case of the petitioner and by the impugned order ,their claim was rejected on the ground that petitioner has not shown any individual act of bravery and it was the joint effort of all the police personnel.

11. Learned counsel for petitioner has placed reliance on the pronouncement of the judgment if this court in the case of Ashok Rana Vs. Home Secretary, U.P. and others, in which it has been held as under,

"The reports "of the sponsoring authorities constituted valid material for the formation of opinion as to whether the petitioner was entitled to be given out of turn promotion and were not liable to be ignored sans any rhyme or reason. 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 a the reports/ recommendations made by the SSP/DIG/IG(P). I find no valid reason justifying

the order impugned herein passed in disregard of valid materials on record."

12. Reliance has also been placed on the case of Pooran Singh Mehra Vs. State of U.P. and Ors reported in [2002(4)E.S.C (All) 450]. In this case also the Allahabad High Court placing reliance on the pronouncement of Ashok Rana's case (supra) held, that the recommendations of the sponsoring authority constituted valid material for the formation of opinion for out of turn promotion.

13. Reliance has also been placed on the case of Prathviraj Chauhan and another Vs. State of U.P. and Ors reported in [(2006) 3 UPLBEC 2790]. In view of the facts of that case encounter had taken place on 11.11.1995. The matter was considered and only police personnel namely Pooran Singh and Indra Singh Malik were found fit for promotion in view of the G.O. Dated 3.2.1994. In view of facts of that case the claim of the petitioner was rejected without considering the recommendation of S.P. Ghaziabad. The petitioner in that case was involved throughout in encounter and in view of this fact situation, the petition was allowed.

14. Reliance has also been placed on the case of Constable 126, Rajiv Chandra Kaushik vs. State of U.P. and Ors reported in [2006(4) ESC 2901(All)] in the aforesaid case it was held,

"that in case a person has shown extra courage and bravery and recommended for out of turn promotion and the committee constituted for the said purpose if ignore the relevant valid material, the same cannot be sustained and has taken a view, "that 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 report/ recommendations made by the sponsoring authorities". Meaning thereby the Committee which has been constituted for the purpose of out of turn promotion to take into consideration the recommendation of the sponsoring authority."

15. Reliance has also been placed on the pronouncement of this court passed in writ petition No. 982 of 2010 (SB) State of U.P. & Anr. Vs. Sunder Singh Solanki decided on 14.12.2010 where- in it was observed, while dealing with the matter with regard to out of turn promotion for the act of bravery by police personnel, the State Government or the Director General of police cannot act in arbitrary manner. State or its authorities have to discharge their obligation in a just and fair manner .

16. In view of the aforementioned legal position, it is clear that the decision has to be taken by the committee on the basis of the material available before it. The recommendations of the sponsoring authorities constitute valid material for the purpose and if ignored without valid reasons and sufficient ground, the same cannot be sustained. In the facts of this case, the committee has not considered the recommendations of the sponsoring authorities. In the event of disagreement, the committee should have recorded its reason instead of

recording only vague findings. In the facts of the present case no ground has been mentioned to discard the recommendations of the sponsoring authority. It is mentioned in the said report that it was a cumulative effort of all the police personnel. It is true that there were other police personnel also and when it is a joint effort then they ought to be treated alike. There is no allegation that any of the police personnel made any effort to back out or did not cooperate in the said operation. The deceased who was a dreaded criminal had opened fire on the police party but the police personnel without caring for their life took part in the encounter and ultimately they succeeded in killing him. This court does not want to undermine the effort of the gazetted officers who have been awarded with gallantry award but the presence of other team members also gave encouragement to the leaders to proceed but it does not mean that there is no effort on behalf of the petitioner or the other police personnel.

17. In view of the discussion made above, all the police personnel who were involved in the said act did an act of bravery. The purpose of out of turn promotion or the award is to give encouragement to police personnel. All the police officers performed their duty with bravery and the State should be liberal in granting such award because it encourages the right and brave police personnel to perform their duty more effectively and with more courage and enthusiasm.

18. In view of the aforesaid discussion, the reasons given by the committee for rejecting the claim of the petitioner is not based on any material. No ground has been mentioned in rejecting the claim of the petitioner as to why the recommendations of the sponsoring authorities were rejected. Therefore, this petition deserves to be allowed and is accordingly allowed.

19. The impugned order dated 14.5.2009 is hereby quashed. The opposite parties are hereby directed to take decision afresh in the matter of the petitioner for his claim for out of turn promotion/gallantry award taking into consideration the recommendations of the sponsoring authorities. This decision shall be taken within a period of three months from today. The decision so taken in this connection shall be communicated to the petitioner.