
(2011) 05 AHC CK 0085

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 44291 of 2009

Awadhendra Tiwari

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 10-05-2011

Acts Referred:

Constitution of India, 1950 — Article 136, 162, 226
Penal Code, 1860 (IPC) — Section 302, 307, 323, 324, 335

Citation : (2011) 7 ADJ 494 : (2011) 3 UPLBEC 1971

Hon'ble Judges : Shishir Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble Shishir Kumar, J.—This writ petition has been filed for quashing the order dated 5.5.2006 passed by Deputy Inspector General of Police (Establishment), Police Head Quarters, U.P., Allahabad (Annexure 12 to writ petition). Further a writ in the nature of mandamus commanding respondents to grant out of turn promotion to petitioner on the basis of recommendation by the Superintendent of Police, Pratapgarh in view of Government Orders issued from time to time.

2. Facts as stated in the writ petition are that petitioner was appointed as Constable in Civil Police on 5.8.1997. Throughout service petitioner's career was up to the mark without any complaint by any superior authorities. State Government considering the work done by personnels of Police Department by showing exemplary courage and bravery has issued a Government Order dated 3.2.1994 followed by the Government Order dated 10.2.1994 giving out of turn promotion to police personnels to display bravery in arresting or encountering of dreaded terrorist or hardcore criminals. Government Order dated 3.2.1994 was modified by another Government Order dated 2.1.1998 and subsequently various Government Orders were issued by the Director General of Police dated 31.7.1999.

3. Petitioner alongwith one Hemant Bhushan Singh, Sub-Inspector, Civil Police after showing great courage was able to arrest one hard core criminal namely Ajai Giri. Ajai Giri was history-sheeter and was involved in about 29 cases which he committed under Sections 302, 307, 323, 324, 335, 336, 504, 506 and various other Sections of Indian Penal Code, Arms Act and Gunda Acts. Petitioner along with other police personnels were able to arrest other accused and had recovered about 52,80,000/- fake notes and 13 lacs half-made fake notes from them. It is also important to mention here that during course of operation, criminals had shot fires against petitioner and petitioner became seriously injured in the said firing and an award of Rs. 20,000/- was also given to petitioner and other police personnels. The Deputy Inspector General of Police and Superintendent of Police have also rewarded petitioner and other police personnels by Rs. 10,000/- 5,000/- and 2,500/- respectively. In view of Government Order, name of petitioner as well as other police personnels who were involved in the said incidents were recommended by the Superintendent of Police for out of turn promotion. Superintendent of Police has clearly mentioned in the recommendation that petitioner as well as other police personnels have shown great courage in arresting criminals and petitioner was also hit by bullets in the operation. It was also mentioned in the recommendation that Ajai Giri was history-sheeter and hard core criminal. It was informed to the Inspector General of Police regarding recommendation and the award. A proposal to that effect was sent for the said purpose. Certain informations were asked by Inspector General of Police regarding out of turn promotion to petitioner. That was also given by competent authority accordingly. Petitioner was not given any information regarding his out of turn promotion then petitioner made an application under the Right of Information Act, then it was informed that papers relating to promotion of petitioner is not available in the office. Subsequently petitioner enquired from the Head Quarter then it was revealed that letter has already been sent to Superintendent of Police to supply copy of the order dated 5.5.2006. After great effort, copy of said order has been supplied. It is also mentioned that the order impugned was never communicated to petitioner.

4. Learned counsel for petitioner submits that from perusal of order it is clear that order impugned has been passed without assigning any reason and without mentioning the fact regarding bravery and courage shown by petitioner. He further submits that purchase of 1994 Government Order is that if a police personnel has shown bravery and courage and his claim has been recommended by competent authority then his claim for out of turn promotion, has to be considered by competent authority. Admittedly, once the Director General after considering the act done by petitioner as well as other police personnel has held by giving bravery award regarding courageous effort to arrest hard core criminal then there was no occasion for other officers to go against his opinion. Admittedly, petitioner was hit by bullet, therefore, it cannot be said that petitioner and other police personnels of the team had not shown great courage. Respondent No. 7 has not appreciated the matter in correct perspective and

came to wrong conclusion by rejecting claim of petitioner. From the order it does not appear that what were the reasons for not accepting recommendation made by immediate superior officer, recommending claim of petitioner and no reasons have been recorded. Mere saying in the order that act done by petitioner does not come under bravery, is not sufficient.

5. Petitioner has placed reliance upon a judgment of this Court in *Ram Raj Singh v. State of U.P. and Others*, 2009 (3) ADJ 444. Placing reliance upon aforesaid judgment, learned counsel for petitioner submits "that action of the police officers arresting a suspected criminal is much more commendable than killing him. Killing a suspected criminal in actual, real encounter may be permissible. However, it is much more courageous and risky to arrest a suspected hardcore criminal."

6. Further reliance has been placed upon a Division Bench judgment of this Court in *State of U.P. and Another v. Sunder Singh Solanki*, 2011 (1) ESC 641 (AII)(DB) (LB). In that case Division Bench of this Court after considering various issues and the Government Orders has held that it is settled in law that thing should be done in a manner provided in the Act or statute and not otherwise. If the Government Order gives power to give out of turn promotion on the basis of certain criteria mentioned thereunder and if claim has recommended then that has to be seen accordingly. Competent authority only on flimsy grounds cannot reject the claim. He has placed reliance upon paras 19, 20, 21, 22, 23 and 24. The same are being quoted below:-

19. It is very well settled law that the thing should be done in the manner provided by the act or statute and not otherwise vide AIR 1936 253 (Privy Council) *Deep Chand Vs. The State of Rajasthan*, *Patna Improvement Trust Vs. Smt. Lakshmi Devi and Others*, *State of Uttar Pradesh Vs. Singhara Singh and Others*, *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, *Chandra Kishore Jha Vs. Mahavir Prasad and Others*, *Delhi Administration Vs. Gurdip Singh Uban and Others*, *Dhanajay Reddy v. State of Karnataka*, AIR 2001 SC 1512, *Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and Others*, *Prabha Shankar Dubey v. State of MP*, AIR 2004 SC 486 and *Ram Phal Kundu Vs. Kamal Sharma*, *Taylor v. Taylor*, (1876) 1 Ch.D. 426; *Nika Ram Vs. State of Himachal Pradesh*, *Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others*, *Chettian Veetil Ammad and Another Vs. Taluk Land Board and Others*, *State of Bihar and Another Vs. J.A.C. Saldanha and Others*, *A.K. Roy and Another Vs. State of Punjab and Others*, *State of Mizoram Vs. Biakchhawna*, *J.N. Ganatra Vs. Morvi Municipality*, *Morvi, Babu Verghese and Others Vs. Bar Council of Kerala and Others*, and *Chandra Kishore Jha v. Mahavir Prasad*, (1998) 8 SCC 266.

20. Power conferred by Article 162 of the Constitution of India empower Government to issue executive instruction to lay down service condition like out of turn promotion. Office memorandum is meant to encourage the police officers for the dedication to their duty while serving the public. It is an encouragement

to keep them ready to fight with the antisocial element. It is an award for their good conduct, outstanding bravery in apprehending or killing the criminals. In the absence of any statutory provision the order issued under Article 162 of the Constitution of India creates civil rights as the part of condition of service.

21. While issuing office memorandum in pursuance to power conferred by Article 162 State may fill up the vacuum and regulate the service condition to meet out the requirement of service. Accordingly, office memorandum dated 3.2.1994 has got force of law. The executive power is co-extensive with the Legislative power. The only restriction is if there is an Act or Rule it will have got primacy over executive order. The existence of statutory provision or law is not precondition for exercise of executive power vide *Dr. N.C. Singhal v. Union of India*, 1980 30 SCC 29 (Para 18, 21); *Katyani Dayal v. Union of India*, 1980 (3) SCC 245 ; *C. Rangaswamaiah and Others Vs. Karnataka Lokayukta and Others*, *Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab*, *B.N. Nagarajan and Others Vs. State of Mysore and Others*, *State of Andhra Pradesh and Another Vs. Lavu Narendranath and Others etc.*, *State of Madhya Pradesh and Another Vs. Kumari Nivedita Jain and Others*, and *State of Sikkim Vs. Dorjee Tshering Bhutia and others*,

22. While dealing with the matter with regard to out of turn promotion for the act of bravery by police personnel the State Government or Director General of Police cannot act in an arbitrary manner. State or its authorities have to discharge their obligation in a just and fair manner. *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and *Another*, and *Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others*, The State action should be just and fair.

23. In view of above, the Director General of Police or the State Government have to discharge their obligation with regard to out of turn promotion in just and fair manner keeping in view the letter and spirit of office memorandum dated 3.2.1994. it is unfortunate that this is the 4th round of litigation with regard to claimant respondent's fight for justice. State Government and Director General of Police must be conscious to the fact that no finding may be recorded contrary of contents of FIR as it shall be fatal to prosecute other accused who may be arrested by Investigating agency in due course of time.

24. It shall be gross injustice on the part of Director General of Police or its Committee not to extend due right to the brave, honest and dedicated police personnel for their act of bravery or discharge of duty in terms of office memorandum (supra).

7. In view of aforesaid fact, learned counsel for petitioner submits that the order passed by respondents are liable to be quashed.

8. Counter and rejoinder affidavits have been exchanged, therefore, with consent of parties, matter is being decided finally.

9. In the counter-affidavit filed on behalf of respondents, it has been admitted in

affidavit that Ajai Giri was arrested with other accused by petitioner. In paragraph 8 it has also been admitted that he was a history sheeter and 29 cases were pending against him. This fact has also been admitted in the counter-affidavit that petitioner as well as other police personnels were rewarded. It has also been admitted in the counter-affidavit that claim of petitioner for out of turn promotion has been recommended. It has been stated that he has not been found suitable to get out of turn promotion, therefore, the Committee considering claim, has rejected the same. There is no illegality in the order and writ petition is liable to be dismissed.

10. I have considered the submissions of parties and perused the record. From perusal of record it clearly appears that petitioner with other police personnels have arrested hardcore criminal Ajai Giri against whom 29 criminal cases were pending. It is also clear from the record that petitioner was rewarded for this bravery and gallantry work done. Claim of petitioner was recommended by competent authority but the Committee constituted for the purposes of considering claim of petitioner, has rejected the same that too without assigning any reason. From perusal of the order it has also been mentioned that Committee after considering has come to conclusion that Ajai Giri has been arrested with the effort of various police personnels, therefore, it cannot be said that any individual act of bravery has been done. This act comes under normal course of function of police personnels. In the opinion of Court, 1994 Government Order has been made for the purposes of giving benefit to those police personnels who have done bravery work in arresting or killing some hardcore criminals. In the opinion of the Court to arrest a hardcore criminal is much more commendable work than to kill a criminal. To arrest hardcore criminal is more courageous and risky work.

11. Further it has to be seen that while rejecting claim of petitioner, proper reasons considering guidelines made in the 1994 government order has not been mentioned. Admittedly, claim of petitioner has been recommended by competent authority and that was to be considered strictly in accordance with the guidelines and criteria mentioned in the Government Order of 1994. Virtually it is a great injustice on the part of Director General of Police or its Committee not to extend due right to brave, honest and dedicated police personnels if they have done some bravery or they have discharged the duty in terms of office memorandum.

12. Further it has to be seen that order impugned is an order appears to be non-application of mind without assigning proper reason and without considering guidelines mentioned in the Government Order of 1994. Mere saying in the order that work done does not come under the definition of bravery, therefore, claim of petitioner is hereby rejected. In my opinion, such reasons cannot be a reason to reject claim of person concerned.

13. In case of S.N. Mukherjee Vs. Union of India, the Apex Court has already held as follows:

In view of the expanding horizon of the principles of natural justice, the requirement to record reasons can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework where under jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an administrative authority including exercise of judicial or quasi-judicial functions the legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement. It may do so by making an express provision to that effect. Such an exclusion can also arise by necessary implication from the nature of the subject matter, the scheme and the provisions of the enactment. The public interest underlying such a provision would outweigh the salutary purpose served by the requirement to record the reasons. The said requirement cannot, therefore, be insisted upon in such a case. Therefore except in cases where the requirement has been dispensed with expressly or by necessary implications, an administrative authority exercising judicial or quasi-judicial functions is required to record the reasons for its decision.

The recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of arbitrariness and assures a degree of fairness in the process of decision-making. The said purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. Therefore, the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It is however not required that the reasons should be as elaborate as in the decision of a Court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicitly so as to indicate that the authority has been due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge.

14. In the case of Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others, the Apex Court has held as under:

The reasons are harbinger between the mind of the maker of the order to the controversy in question and the decision or conclusion arrived at. They also exclude the chances to reach arbitrary, whimsical or capricious decision or conclusion. The reasons assure an inbuilt support to the conclusion/decision reached. When an order affects the right of a citizen or a person, irrespective of

the fact whether it is a quasi-judicial or administrative order, and unless he rule expressly or by necessary implication excludes recording of reasons, it is implicit that the principles of natural justice or fair play require recording of germane and precise relevant reasons as a part of fair procedure. In an administrative decision, its order/decision itself may not contain reasons. It may not be the requirement of the rules, but at the least, the record should disclose reasons. It may not be like a judgment. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicitly so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons. If the appellate or revisional authority disagrees, the reasons must be contained in the order under challenge. The recording of reasons is also an assurance that the authority concerned consciously applied its mind to the facts on record. It also aids the appellate or revisional authority or the supervisory jurisdiction of the High Court under Article 226 or the appellate jurisdiction of the Supreme Court under Article 136 to see whether the authority concerned acted fairly and justly to mete out justice to the aggrieved person.

15. In the case of Mahabir Prasad Santosh Kumar Vs. State of Uttar Pradesh and Others, the Apex Court has held as under:-

The High Court in rejecting the petition filed by the appellants has observed that the District Magistrate in considering the explanation of the appellants had "considered all the materials" and also that "the State Government in considering the appeal had considered all the materials". We have, however, nothing on the record to show what materials if any were considered by the District Magistrate and the State Government. The High Court has also observed that Clause 7 of the Sugar Dealers' Licensing Order does not require "the State Government to pass a reasoned order. All that is required is to give an aggrieved person an opportunity of being heard." We are of the view that the High Court erred in so holding. The appellants have a right not only to have an opportunity to make a representation, but they are entitled to have their representation considered by an Authority unconcerned with the dispute and to be given information which would show the decision was reached on the merits and not on considerations of policy or expediency. This is a clear implication of the nature of the jurisdiction exercised by the appellate authority; it is not required to be expressly mentioned in the statute. There is nothing on the record which shows that the representation made by the appellants was even considered. The fact that Clause 7 of the Sugar Dealers' Licensing Order to which the High Court has referred does not "require the State Government to pass a reasoned order" is wholly irrelevant. The nature of the proceeding requires that the State Government must give adequate reasons which disclose that an attempt was made to reach a conclusion according to law and justice.

16. The writ petition is accordingly allowed. The impugned order dated 5.5.2006 (Anenxure-12 to the writ petition) passed by the Deputy Inspector General of Police (Establishment), Police Headquarters, U.P. Allahabad, is hereby quashed. The matter is remanded back to authority concerned to consider claim of petitioner strictly in accordance with observation made above by assigning reasons and to consider claim of petitioner strictly in view of guidelines of 1994 and notification issued from time to time within a period of two months from the date of production of certified copy of this order.

No order as to costs.