

**(2010) 05 J&K CK 0018**

**In the Jammu And Kashmir High Court**

**Case No :** SWP No's. 1209 of 2005 and 2099 of 2007 and CMP No's. 1395 of 2005, 3049 of 2007 and 1087 of 2009

Babu Lal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 18-05-2010

**Acts Referred:**

**Citation :** (2010) 2 JKJ 754

**Hon'ble Judges :** Jai Pal Singh, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## **Judgement**

J.P. Singh, J.—Petitioner-Babu Lal, having been brought on the approved list B (FTR) of 1/2002, was released on promotion as SI/MM

vide Directorate General, CRPF's Letter No. P.VII.2/2002-Pers-II dated 12.07.2002. On his allotment to Group Centre, CRPF, Bantalab, he

was promoted as SI/MM on 11.10.2002 vide Office Order No. P.VII.7/2002.16.EC.I dated 12.10.2002. He served on the promotional post of

SI/MM for more than three years when pursuant to Directorate General CRPF's No. P.VII.5/2003-Pers-II (K.W) dated 21.07.2005, he was

ordered to be removed from the approved list and the order issued for his promotion as SI/MM was cancelled. He was resultantly ordered to be

brought back to the rank of Head Constable/Fitter.

2. The operation of the Directorate General's order was stayed by this Court in Petitioner's Writ Petition SWP No. 1209/2005.

3. During the pendency of the Writ Petition, the Directorate General Central Reserve Police Force brought the Petitioner along with others on

Special Approved List B/Ftr 11/2006 directing their promotion as SI/MM vide Communication No. P-VII-5/2006-PERS-II dated, the 02

January, 2007. It was indicated in the Communication that the Petitioner's promotion would be subject to review as per the outcome of his Writ

Petition.

4. This order of the Directorate too was questioned by the Petitioner in his Second Writ Petition SWP No. 2099/2007.

5. The subject matter of dispute in both the Writ Petitions pertains to the Petitioner's promotion as SI/MM. These Petitions were accordingly taken

up for joint consideration.

6. The dispute which arises for determination in these Writ Petitions is as to whether the Directorate General's Order removing the Petitioner from

the approved list B(FTR) and rescinding his promotion as SI/MM, impugned in SWP No. 1209/2005 and Communication dated, the 02 January,

2007 directing Petitioner's promotion as SI/MM from a later date was justified.

7. Petitioner's learned Counsel submits that the Directorate General's order impugned in Writ Petition SWP No. 1209/2005 was violative of the

principles of Natural Justice, hence bad in law, in that, the Petitioner having served for more than three years on the promotional post, was entitled

to be heard by the Respondents before any order adverse to his right to hold the promotional post could be passed. His further submission is that

the order impugned in SWP No. 1209/2005 was even otherwise unsustainable, in that, it had been issued on the basis of change in the Rules,

which by no stretch of reasoning could be operated retrospectively.

8. Justifying the order impugned in the Writ Petition, Respondents' learned Counsel submitted that the Petitioner was not entitled to be brought on

the approved list B(FTR) as he had not completed 18 years of service from the date of Remustering/appointment and no notice preceding his

removal from the approved list and cancellation of his promotion was necessary, in that, his Enlistment in the approved list and consequent

Promotion had been ordered as a result of mistake ignoring Rules governing the field.

9. I have considered the submissions of learned Counsel for the parties and am of the view that having enjoyed the promotional post for more than

three years, pursuant to his Enlistment in the approved list of B(FTR), the

Petitioner had acquired right to continue on the promotional post and he could be deprived of his Promotion by the Respondents only after apprising and hearing him on the grounds on which he was proposed to be removed from the approved list and denied Promotion as SI/MM, particularly when the amendment to the Rules relied upon by the Respondents to deny the Petitioner, the benefit of Enlistment and Promotion had been promulgated after his Enlistment and Promotion on the basis of unamended Rules.

10. The Respondents had neither heard the Petitioner before passing the order impugned in the Writ Petition nor had they apprised him of the grounds on which he was proposed to be removed from the approved list and denied Promotion as SI/MM. They have thus violated the principles of Natural Justice in passing the impugned order removing the Petitioner from the approved list of B(FTR) and cancelling his promotion, which renders it void.

11. Accordingly, allowing the Writ Petitions, Directorate General's Order No. P.VII.5/2003-Pers-II (K.W) dated 21.07.2005 cancelling Petitioner's Enlistment in the approval list and subsequent Promotion as SI/MM is quashed, leaving the Respondents, however, free to pass fresh orders on the question as to whether the Petitioner's Enlistment in the approved list and subsequent Promotion as SI/MM was justified and warranted under Rules.

12. In view of the quashing of the Director General's order P.VII.5/2003-Pers-II(K.W) dated 21.07.2005, the Respondents are directed not to give effect to Director General CRPF's Order No. P-VII-5/2006-PERS-II dated, the 02 January, 2007 in so far as it pertains to the Petitioner's Enlistment and Promotion from a later date and pass appropriate orders as warranted under Rules, after hearing the Petitioner and complying with the principles of Natural Justice.

13. Until fresh decision was taken by the Respondents in the matter, they are directed to maintain Status quo regarding the Service Status of the Petitioner as SI/MM, which shall not, however, operate as impediment in Petitioner's transfer from his present place of posting.