
(2006) 09 AHC CK 0215
In the Allahabad High Court

Constable No. 126 Rajiv Chandra Kaushik	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 08-09-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2006) 7 ADJ 507 : (2007) 1 AWC 573

Hon'ble Judges : Shishir Kumar, J

Bench : Single Bench

Judgement

Shishir Kumar, J.—The present writ petition has been filed for quashing the impugned order dated 13.11.2003 passed by Director General of Police U.P. Lucknow (Annexure 1 to the writ petition) Further issuing a writ in the nature of certiorari quashing the impugned orders dated 13.4.2001 and 4.8.2001 passed by Director General of Police U.P. Lucknow to the extent by which the petitioner has been promoted to the post of Head Constable in armed police.

2. The facts arising out of the present writ petition are that the petitioner was appointed as Constable in the civil police in the year 1993. Although the petitioner was inducted in the Civil Police, the Deputy Inspector General of Police, Allahabad Range, Allahabad, in exercise of power under Regulation 525 of the Police Regulation transferred the entire batch from Civil Police to Armed Police. It is relevant to state here that the aforesaid order was not a permanent order but the same was passed to resolve shortfall in armed police. The State Government constitute a Special Task Force in District Allahabad in the year 1998 and the services of the petitioner were inducted in Special Task Force. The Special Task Force was created for the purposes of ejecting crime from District Allahabad and further to forcefully and effectively combat organized crime being conducted by various groups and individuals in the district Allahabad. As the petitioner shows exemplary courage, honesty and integrity towards their duties the petitioner was inducted in the Special Task Force, which basically carries out the work of Civil Police. Regulation 396 of the Police Regulations provides that the police force

shall consist of following:

(i) Provisional Police, Civil, Appointed and enrolled under Armed and mounted Act V of 1861 (ii) Government Railway Police (iii) Village Chaukidars Appointed in Agra under act XVI of 1873 and in Oudh under Act XVIII of 1876. Not enrolled under Act V of 1801.

3. The Regulation 65 of the Police Regulations lays down the functions of the Armed Police. The same is being reproduced below.

65. The Armed Police are intended for the protection and of treasuries tehsil and lockups, for the escorts of treasures, prisoners and Government property, for service on magazine and quarter guards, for the suppression and prevention of disorder and crimes of violence, and for the pursuit and apprehension of dangerous criminals.

This branch of the force is under the Special charge of the Deputy Inspectors General who are responsible that Superintendents maintains discipline and efficiency.

4. The functions of the Civil Police is purely prevention of crime. The petitioner was appointed as constable in Civil Police . Their prime job is prevention of crime as mentioned in Regulation 61, which is being reproduced below:

61. Constable of the Civil Police will not be armed except on special occasions. Their principal duty is the prevention of crime. They must be courageous and considerate to the public whose servants they are.

Every constable on duty, except when deputed on special detective work requiring disguise, shall wear the prescribed uniforms.

5. In the year 1999, the Director General of Police constituted Special Operation Group in all districts of Uttar Pradesh. The best officers of the district who has proven courage integrity and honest are included in the Special Operation Group. The petitioner was made member of Special Operation Group in district Allahabad. The purpose was to deal effectively and forcefully with hardened criminals and gangs engaged and operating in criminal activities Since 1998, the petitioner was responsible for eliminating large number hardened criminals in police encounters and were also instrumental in busting international arm trade in the district of Allahabad and unearthing fake currency in huge quantity etc. Few of the achievements of the petitioner is being enumerated herein below:

(i) On 26.6.1998, a history shetter Pramod Kumar Sonkar alias Pintoo Kana was eliminated in police encounter.

(ii) On 27.7.1998, 14 four wheelers were recovered from an interstate gang of auto lifters.

(iii) On 28.8.1998, a gang dealing in ornaments was busted and ornaments worth Rs. 10,05,000/- were recovered.

(iv) On 27.9.1998, Kalim Panda a history sheeter was eliminated in police encounter.

(v) On 24.11.1998, an international gang dealing in fake currency was busted and international fake currency of the value of Rs. 11,50,000/- was recovered.

(vi) On 20.4.1999, a history sheeter Amit alias Umi was eliminated in police encounter.

(vii) On 10.6.1999, Shailesh alias Babloo Chaurasiya, who was involved in international illegal of arms and ammunitions were seized from him.

(viii) On 15.6.1999, the head of gang No. 8 of Uttar Pradesh i.e. Lakhna Pandit and his aid Ajmuddin were eliminated in police encounter.

(ix) On 19.7.1999, the dacoity committed in the shop of Rana Jewelers, Civil Lines, Allahabad was solved and 9 dacoits were arrested and the loot worth Rs. 10,28,000/- was recovered from them.

(x) On 7.1.2000, a history sheeter and train dacoit Arvind Tiwari was shot dead in police encounter.

(xi) On 25.7.2000, a dreaded badmash Kullu Pasi and 13 of his associates were arrested and large number of vehicles both two wheelers and four wheelers were recovered from them.

(xii) On 14.9.2000, a person was arrested along with an idol of Astdhatu worth Rs. 25 lacs.

(xiii) On 15.9.2000, interstate road robbers gang was busted robbers were arrested along with DCM cloths worth Rs. 15,00,000/-

(xiv) On 6.11.2000, an international gang dealing in ammunitions was busted with the arrest of Kausher, Munna and Sayeed belonging to the gang of Deepak Banerjee.

(xv) On 9.11. 2000, Ikramuddin alias Tota, a member of Dawood Ibrahim gang was eliminated in police encounter.

(xvi) On 13. 2000 Rishi Dom and Raju alias Raja who were operating as gangs in several nearby districts, were shot dead in police encounter.

6. The Superintendent of Police (City), Allahabad considering outstanding performance of the petitioner shown by risking their lives vide letter dated 29.12.1998 sent a proposal to the Senior Superintendent, of Police. Allahabad for giving out of turn promotion to the petitioner to the next higher post that is head Constable in Civil Police. A copy of the same has been filed as Annexures 2 and 3 to the writ petition. Thereafter the petitioner vide its order dated 13.4.2001 granted out of turn promotion in Armed Police as Head Constable. The petitioner submits that the petitioner was recommended for out of turn promotion for the work, which he has done while he was performing his duty of civil police.

Admittedly, the petitioner was appointed as Constable in Civil Police but for a temporary period, as contemplated in Regulation 25 of the Police Regulations, the petitioner was transferred to Armed Police, therefore, the petitioner was given wrongly promotion as Head Constable (Armed Police) vide its order dated 13.4.2001. The same has been filed as Annexure 4 to the writ petition. After the aforesaid order the Senior Superintendent of Police, Allahabad vide its letter dated 20.4.2001 requested the Director General of Police U.P. Lucknow, to give out of turn promotion to the petitioner in Civil Police instead of Armed Police as per the Government Order dated 3.2.1994. In turn, the respondent No. 2 directed the Deputy Inspector General of Police (Establishment), Police Head Quarter Allahabad to enquire into the matter and submit a report. The Deputy Inspector General of Police, (Establishment) submitted his report on 20.5.2001 categorically recommending for out of turn promotion to the petitioner in Civil Police instead of Armed Police. Subsequently, vide its letter dated 8.5.2001, the respondent No. 3 wrote a letter directing the respondent No. 4 Deputy Inspector General of Police (Establishment), Allahabad Range Allahabad to take steps to transfer the petitioner from Armed Police to Civil Police, in exercise of powers conferred under 525 of the Police Regulation and in the meantime, the promotion of the petitioner was kept in abeyance and it was also directed to inform regarding the action taken. The respondent No. 4 vide its letter dated 10.7 2001 recommended that the approval to the transfer of the petitioner from armed police to civil police may be given so that further action may be taken for giving out of turn promotion to the petitioner. But in spite of so many correspondences and recommendations which have been carried out at different level amongst the top I.P.S. officers, with regard to out of turn promotion, but the reasons best known to the Director General of Police i.e. respondent No. 2, the transfer of the petitioner was not approved by the respondent No. 2 and the same was refused vide order dated 4.8.2001 and a direction was issued to promote the petitioner as Head Constable in Armed Police. Aggrieved by the aforesaid order, the petitioner filed a Writ Petition No. 41373 of 2001 before this Court but the same was dismissed on 10.12.2001 on the ground of alternative remedy. The petitioner approached the Public Service Tribunal as Claim petition No. 190 of 2002, which too was dismissed on 27.3.2002 on the ground that the petitioner has not availed any departmental remedy against the order dated 4.8.2001. Feeling aggrieved, the petitioner again filed a writ petition challenging the order of Tribunal and this Hon''ble Court vide its order dated 13.2.2003 quashed the orders dated 13.4.2001, 4.8.2001 and 27.3.2002 and the Division Bench of this Court while quashing the order has clearly directed the respondent No. 2 to again apply his mind and pass a fresh order keeping in view of the recommendations of the higher authorities. A copy of the said judgment has been filed as Annexure 12 to the writ petition.

7. That the respondent No. 2 vide its order dated 13.11.2003 in a most casual manner rejecting the request of the petitioner for giving him out of turn promotion in Civil Police as Head Constable instead of Armed police on the sole

ground that the petitioner at the time of incident was a member of Armed police, therefore, in view- of the Government order dated 3.2.1994, he can be given promotion as Head Constable in Armed Police, therefore, there is no necessity of changing the earlier order by which the petitioner was given out of turn promotion as Head Constable Aggrieved by the aforesaid order the petitioner has filed the present writ petition.

8. Notices were issued and the interim order was granted to the petitioner that till the decision of the writ petition it is directed that the petitioner will not be compelled to join on the promoted post and the respondents were granted time to file a counter affidavit. As the counter and rejoinder affidavits have already been exchanged, with the consent of parties the writ petition is being disposed of finally.

9. The petitioner has also filed a supplementary affidavit bringing out the fact that the petitioner has been discriminated and there is a clear violation of Article 14 of the Constitution of India as one of the Constable of Armed Police namely Saukat Ali who in an encounter killed one criminal in Muzaffamagar on 19.12.2004, was given out of turn promotion in Civil Police as Head Constable, only for the reason that at the time of promotion he was posted in civil police.

10. It has been submitted on behalf of the petitioner that the Government Order dated 3.2.1994 only states about the promotion to be given out of turn. It is nowhere stipulates that a person posted in Armed Police or Civil Police will get out of turn promotion in his respective cadre of police that is Armed Police or Civil Police. The government order says that the promotion so given will be deemed to be ex-cadre promotion which itself makes it clear that posting of individual in Civil or Armed Police is not relevant. The thing which is relevant is that he should have shown exemplary courage and bravery. The respondent No. 2 giving out of turn promotion to the petitioner in Armed Police without assigning any reason for disagreeing with the recommendations of the Inspector General of Police (Establishment), the Deputy Inspector of Police (Establishment) and Deputy Inspector General Range. No. reason has been recorded to this effect that the recommendation to this effect was made that he should be transferred in Civil Police as admittedly the appointment of the petitioner is in Civil Police and when the Special Operation Group was formed due to the performance of the petitioner, the petitioner was inducted in Special Operation Group. That cannot be treated that the petitioner is a member of Armed Police. The petitioner has been discriminated because similarly situated person Saukat Ali was given out of turn promotion in Civil Police for the work of exemplary courage and bravery while he was posted in Armed Police. The only difference is that the promotion order was passed when he was transferred from Armed Police to Civil Police. In the present case also there are recommendations to this effect that the petitioner has shown exemplary courage and bravery while discharging duties of Civil Police but he was not given out of turn promotion in Civil Police. The reason assigned in the impugned order that at the time of incident the petitioner was posted in

Armed Police" therefore, he will not given out of turn promotion in Civil Police. The said action of the respondents is arbitrary and discrimination of Article 14 of the Constitution of India.

11. It has further been submitted on behalf of the petitioner that the cadre of police become two cadre after the post of Head Constable. One cadre is known as Head Constable Civil Police and another cadre is known as Head Constable Armed Police and the channel of promotion also differs in both the cadres, though the avenues are the same. Had the petitioner not been given out of turn promotion, he would have an opportunity to opt for either of the cadre but on account of the impugned order now the cadre of the petitioner will be the cadre of Armed Police.

12. The petitioner has placed reliance upon para 525 of the Police Regulation. As the aforesaid para gives power to transfer a constable of one branch of police to another branch, but it does not talk about transfer of Head Constable, therefore, the petitioner once given promotion in Armed Police will lose his vested right for being appointed in Civil Police. Para 525 is being reproduced below:

Constable of less than two years service may be transferred by the Superintendent of Police from the armed to the civil police and vice versa. Foot police constable may be transferred to mounted police at their own request. Any civil police constable of more than two and less than 10 years service may be transferred to the armed police and vice versa by the Superintendent for a period not exceeding six months in anyone year." All armed police constables of over two years service and civil police of over two and under 10 years service may be transferred to other branch of the force for any period with the permission of the Deputy Inspector of General.

In all other cases the transfer of police officers from one branch of the force to another or from the police service of other Provinces to Uttar Pradesh Police requires the sanction of the Inspector General.

13. The further argument raised on behalf of the petitioner is that this is the third time when the petitioner has approached this Court and previously the Director General of Police has been relegated to pass appropriate orders according to law. In such situation the petitioner submits that it will be futile exercise if this Hon"ble Court again relegates the matter to the respondent No. 2. This Court while exercising the power under Article 226 of the Constitution of India can direct the respondent No. 2 to first transfer the petitioner to Civil Police and then consider out of turn promotion to the petitioner. In Writ Petition No. 51469 of 2005, Vijay Kumar Yadav v. State of U.P. and Ors. decided on 25.7.2005, the petitioner has placed reliance upon a judgment of this Court in similar circumstances where the matter came before this Court four times this Court has recorded a finding that remanded the mater back will serve no fruitful purpose and as such mandamus was issued to the respondents to give appointment to the petitioner.

14. The further reliance has been placed upon a judgment of this Court reported in 2001 (3) Educational and Services Cases 1227 Krishna Kumar Pandey v. State of U.P. and Ors. In support of the aforesaid contention the petitioner submits that this Court has also taken into consideration the fact 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 ignored 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 reports/recommendations made by the sponsoring authorities. Meaning thereby the Committee, which has been constituted for the purposes of out of turn promotion to take into consideration the recommendation of the sponsoring authority. Admittedly in the present case of the petitioner vide its order dated 24.1.2001 addressed to the Director General of Police U.P. Lucknow has recommended that the petitioner should be given out of turn promotion as Head Constable in Civil Police in view of the government order dated 3.2.1994 in order to boost his morals but the Committee and the respondent No. 2 without taking into consideration the aforesaid fact has granted the promotion to the petitioner in Armed Police.

15. Further it has been argued that this Court while exercising the power under Article 226 of the Constitution of India has a wide power of judicial review if in the assessment an attitude of ignoring or not given weight to the positive aspects of one's career is strongly displayed then the interference by this Court under Article 226 of the Constitution of India is not fore-closed.

16. The further reliance has been placed upon a judgment of the Division Bench of this Court in Special Appeal No. 687 of 2000 Home Secretary U.P. Shashan v. Ashok Rana and 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.

17. The counsel for the petitioner has also placed reliance upon a judgment of this Court reported in 2004 (5) Educational Service Cases 285 Balwant Ram Chaudhary v. Bharat Petroleum Corporation Ltd. Allahabad and Ors. and has placed reliance that the judicial review is permissible only against the decision making process and not against the decision itself.

18. In view of the aforesaid fact, the petitioner submits that the orders passed by the respondents are liable to be quashed and the recommendation of the sponsoring authority be accepted by the respondent No. 2 and an order to that effect be passed transferring the petitioner in Civil Police and then to promote the petitioner out of turn as Head Constable in Civil Police.

19. A counter affidavit has been filed on behalf of the respondents. The respondents have admitted regarding the bravery work, which has been done by

the petitioner. The reason given in the counter affidavit is that as the petitioner when he has done the bravery work was working in the Armed police therefore he is entitled to be promoted in the same cadre. In Para 6 of the counter affidavit it has been stated that the persons who are working in STF-they are getting salary in the same cadre where they are appointed. The respondents have wanted to justify the order only on the ground that the Government order dated 3.2.1994 which provides for out of turn promotion also provides that a person will be promoted or giving out of turn promotion in the same cadre. As the petitioner on the date when the order was passed was working in the armed police, therefore, an order by the respondent No. 2 has been passed permitting the petitioner in armed police.

20. I have heard Sri Anil Kumar Bajpai and the learned Standing Counsel for the respondents and have perused the record.

21. From the record it is clear that the petitioner was appointed as constable in the Civil Police in the year 1993 but as the performance of the petitioner was good, therefore, after the constitution of Special Task Force the service of the petitioner was inducted in Special Task Force and the petitioner was instrumental in eliminating one Pramod Kumr Sonkar on 26.6.1998. On 27.7.1998 the petitioner recovered 14, four wheelers from an inter-state gang of auto lifters. On 28.8.1998, the petitioner busted an ornament worth Rs. 10 lacs five thousand. On 27.9.1998, one Kalim Panda a history sheeter was eliminated in police encounter. A fake currency to the tune of Rs. 11 lacs fifty thousand was recovered from an international gang dealing in fake currency on 24.11.1998 and other various incidents which have already been mentioned have been done by the petitioner. Keeping in view of the aforesaid fact and the bravery courage shown by the petitioner by risking their lives the Superintendent of Police (City) Allahabad vide its letter dated 29.12.1998 has recommended the case of the petitioner for out of turn promotion in the Civil Police. The Senior Superintendent of Police has also recommended the case but the petitioner was given out of turn promotion in Armed Police as Head Constable treating the petitioner to be in Armed Police and not in Civil Police. Again the recommending authorities have recommended the case of the petitioner and highlighted the brave and daring acts of the petitioner to the Director General of Police that as the initial appointment of the petitioner was in civil police and the total batch when the petitioner was given appointment was made member of Armed police therefore, the petitioner cannot be treated to be in Armed Police, basically his appointment was in Civil Police, therefore, the competent authority has recommended that the petitioner be transferred to Civil Police and then an order promoting the petitioner as head constable in Civil Police be passed but the respondent No. 2 without taking into consideration the recommendation as well as the provisions of Regulation 525 has passed an order again reiterating the same order which has been passed earlier. The respondent No. 2 has not taken into consideration the fact that the initial appointment of the petitioner was not in armed police and there is no criteria in the government order that a person on the date when he

has shown bravery can only be promoted in the same cadre. From the perusal of the order passed by the respondents while rejecting the claim of the petitioner dated 22nd November 2002, has not assigned any reason. It has only been stated that as the petitioner was working in the Armed Police, therefore, he is entitled to be promoted as Head Constable out of turn that is Armed Police. The basis of the respondent No. 2 that in view of the Government Order dated 3.2.1994, the promotion is to be granted only in the same cadre where a person is working. This Court has perused the Government Order dated 3.2.1994 which does not form the reasoning given by the respondent No. 2 in the said order.

22. The purpose of giving out of turn promotion is that if a person has shown an extra bravery and courage while eliminating the gangster and was involved in a various recovery of international gang dealing with fake currency, instrumentally in busting a gang of auto lifters and other various works then he is to be considered in view of the Government Order dated 3.12.1994 for out of turn promotion. The petitioner on the basis of the aforesaid extra courage has been recommended by the competent authority for giving out of turn promotion. It is also clear from the record that when the petitioner was promoted in Armed Police on the post of Head Constable, then the competent authority has recommended the case of the petitioner has clearly recommended for transferring the petitioner to civil police and then to grant promotion but the respondent No. 2 without considering all these aspects of the matter without taking the recommendations only on the ground that at the time when the petitioner has shown an extra bravery he was working in the armed police, therefore, he is entitled to be given promotion in the Armed police.

23. From the order it is clear that while passing the order dated 22.10.2002 the respondent No. 2 has not taken into consideration all these aspects of the matter, in a mechanical manner after elaborating the detailed fact regarding performance of the petitioner has only stated that in view of the Government order dated 3.2.1994, the promotion is to be granted only for the same cadre where a person was working. No reasons regarding the recommendations have been recorded by the respondent No. 2. Admittedly the writ petition has been allowed by this Court and this Court has held that the Civil Police and Armed Police constitute a different cadre which was admitted by the respondent in counter affidavit filed in the said writ petition. The Division Bench of this Court has also taken into consideration Regulation 61 and 65 along with Regulation 525 and has held that the Armed Police and Civil Police constitute a different cadre, however, in Regulation 525 transfer of police officer from one branch of the force to another requires the sanction of Inspector General of Police (now the Director General of Police) thus it is apparent that armed police and civil police constitute a different cadres yet transfer can be done from one cadre to another with the sanction of Director General of Police. However; this does not mean that the Director General of Police can act arbitrarily. Having the power is one thing and exercise of power is another. In the present case the petitioner's service record appears to be exemplary and they have requested for posting in civil police and the

recommendations have been made by the S.P.(City) Allahabad, S.S.P. Allahabad, D.I.G. Allahabad Range, Allahabad, and Inspector General of Police (Establishment), in supports of his claim. The respondent No. 2 without assigning any reason has rejected the request and recommendation of the petitioner. Taking into all the consideration of the fact, the Division Bench of this Court has quashed the order on the ground that no reasons have been recorded.

24. From the perusal of the order impugned it is also clear that in spite of the judgment and order passed by the Division Bench of this Court the same and similar order has been passed without assigning any reason regarding recommendations of the authorities under whom the petitioner was working. The respondent No. 2 has not recorded any reason that why he is not agreeable to the recommendation of the Recommending Authority. The respondent No. 2 has also failed to consider this fact that admittedly the appointment of the petitioner is in civil police and admittedly, the 93 batch in which the petitioner was inducted in Civil Police the Deputy Inspector General of Police Allahabad Range in exercise of power under Regulation 525 of the Police Regulation transferred the entire batch from Civil Police to Armed Police. The said fact has not been taken into consideration by the respondent No. 2 while passing the impugned order. The one of the argument raised on behalf of the petitioner regarding discrimination has also got force that one Saukat Ali who was working in armed police and due to his performance his name was recommended for out of turn promotion and the same was considered by the competent authority and in the meantime when the matter was under consideration for out of turn promotion Saukat Ali was transferred to Civil Police then he was given out of turn promotion in civil police, therefore, it clearly goes to show that the contention of the respondents cannot be accepted as they have stated that in view of the government order dated 3.2.1994 if a person has shown extra bravery and his name has been recommended for out of turn promotion he can be promoted to different cadre on the post of Head Constable while considering the case of out of turn promotion. It is not necessary that if a person who was working in Armed Police has shown extra bravery and his case has been recommended he can only be promoted out of turn on the post of Head Constable in the Armed Police only. From the perusal of the Government Order dated 3.12.1994, there is nothing to show that a person can only be promoted in the armed police if he was working in the armed police. He can also be given out of turn promotion in civil police. Admittedly, in view of Regulation 525, the case of the petitioner was recommended for transferring the petitioner from armed police to civil police and it was also requested that after the order transferring the petitioner to civil police the matter be considered for out of turn promotion.

25. The contention of the petitioner has got force that the cadre of police become two cadre after the post of head constable. One cadre is known as Head Constable civil police and another cadre is head Constable armed police and the channel of promotion also differs in both cadres, though avenues are the same and if the petitioner has not been given out of turn promotion, he would have an

opportunity to opt for either of the cadre but now in view of the order passed by the respondent No. 2 the petitioner will be in the cadre of armed police which is clear from para 525 of the Police Regulation. From the perusal of para 525 of the Police Regulation, only gives a power to the competent authority to transfer constable from one branch of police to another branch but for a limited period and it no where talks of transfer of Head Constable. As such once the petitioner has been given promotion in armed police the petitioner will lose his vested right for being appointed in Civil Police. From the perusal of the counter affidavit filed on behalf of the respondents the aforesaid submission raised by the petitioner has been admitted. From the order of promotion of Saukat Ali dated 25.5.2005 annexed to the supplementary affidavit also supports the case of the petitioner that contention and grounds in the impugned order is not sustainable that the out of turn promotion can only be given in view of the Government order dated 3.2.1994 to the effect that if a person who was working in armed police he can only be given out of turn promotion to the post of head constable in the same cadre.

26. As it is now well settled that the administrative authority is also required to record the reasons in view of the A.K. Kraipak v. Union of India reported in AIR 1970 Supreme Court 150. The Apex Court has observed that concept of Rule of law would lose its validity if the instrumentalities of the State are not changed with the duty of discharging their functions in a fair and just manner. Now the requirement of administrative law is that administrative authorities should act fairly in Tata Iron Steel Company Ltd. v. Union of India reported in (2001) 2 Supreme Court Cases 41, the Apex Court has observed that doctrine of fairness and the duty to act fairly is a doctrine developed in the administrative law, field to ensure the rule of law. In all fairness the Director General of Police, i.e. respondent No. 2 should have recorded a reason why he is rejected the request of the petitioner and recommendations of senior officers made to him but no reasons have been recorded. It is also clear that the petitioner has been discriminated. The order passed by the respondents is also discriminatory and as such in my opinion, cannot be sustained. The petitioner is rightly aggrieved that their requests and recommendations to the senior officers have not been considered properly after application of mind.

27. In view of the aforesaid legal position the order passed by respondent No. 2 cannot be sustained and is liable to be quashed. Though from the record it is clear that in spite of the fact that the petitioner while working was responsible for eliminating large number of hardened criminals in police encounters and also busting international armed trade in district Allahabad and had shown outstanding performance as well as exemplary bravery and courage shown by the petitioner by risking their lives and in spite of the recommendations by the sponsoring authority the petitioner has to run from pillar to post for his promotion. This is the third inning by the petitioner to approach this Court for his grievances but due to the inaction of the respondent No. 2 the petitioner is deprive of his valuable rights for which the petitioner was entitled in view of the

Government Order and in view of the extra ordinary bravery shown by the petitioner. The said action of the authorities is not appreciable. The such type of action of the administrative authorities instead of moral busting of an police officer who have shown extra bravery while busting the international gangs and eliminating the criminals instead of giving promotions passes orders without assigning any reason and without application of mind. The aforesaid act demoralizes the police officers. If the administrative authorities are permitted to act in a manner like this, no police officer will show the extra bravery and will involve himself in eliminating the criminals in police encounters as he is aware that in spite of the fact that he government has issued a government order to give out of turn promotion in such cases but the administrative authority without any reason and basis is to harassing the police officers rejecting their claims. Such type of act of the administrative authority cannot be appreciated. If, like the petitioner who is being harassed without any reason, and respondent No. 2 is adopting a pick and choose attitude, then in future the police officers will not be able or they deliberately will not involve themselves in such outstanding performance in future, as they are aware that in spite of fulfilling all the relevant criteria of Government Order dated 3.2.1994 they are upon the mercy of the Head of the Department. The action of the respondent No. 2 is only to frustrate the true spirit of Government Order dated 3.2.1994.

28. In similar circumstances this Court in Judgment reported in 2006 (4) ADJ 217 Pritiviraj Chauhan v. State of U.P. has quashed the order rejecting the claim of the petitioner and directed the Director General of Uttar Pradesh and relevant Committee to consider the out of turn promotion of the petitioner on the basis of recommendations.

29. As this Court while exercising the power under Article 226 of the Constitution of India cannot directly pass an order promoting the petitioner out of turn on the post of Head Constable in Civil Police but this Court can only direct the authority concerned to reconsider the case of the petitioner in view of the observations made above taking into consideration all the relevant factors and the recommendations of the sponsoring authorities.

30. In view of the aforesaid fact, the order dated 13.11.2003 (Annexure 1 to the writ petition) and orders dated 13.4.2001 and 4.8.2001 passed by Director General of Police U.P. Lucknow is hereby quashed and the respondent No. 2 is directed to consider the claim of the petitioner on the basis of the recommendation by the sponsoring authority and the recommendation dated 20th April, 2001 by the Senior Superintendent of Police Allahabad giving the petitioner out of turn promotion in the Civil Police as head Constable. The respondent No. 2 will also consider the fact that the initial appointment of the petitioner was in civil police. The respondent No. 2 will also take into consideration the promotion order of one Saukat All dated 25.5.2005. After passing the order transferring the petitioner to civil police the respondent No. 2 is directed to pass appropriate orders in favour of petitioner for out of turn

promotion to the post of head constable in civil police. The specific and detailed order of consideration of the petitioner regarding transfer in Civil Police and promotion on the post of Head Constable civil police be passed by the respondent No. 2 within a period of two months from the date of production of the certified copy of this order.

31. With these observations the writ petition is disposed of.

32. There shall be no order as to costs.