

(2014) 04 DEL CK 0072
In the Delhi High Court
Case No : W.P. (C) 6910/2013

Govt. of Delhi and Others

APPELLANT

Vs

Rahul Kumar Singh

RESPONDENT

Date of Decision : 23-04-2014

Acts Referred:

Arms Act, 1959 — Section 25, 27

Penal Code, 1860 (IPC) — Section 186, 307, 34, 353

Citation : (2014) 211 DLT 131

Hon'ble Judges : V. Kameswar Rao, J;Gita Mittal, J

Bench : Division Bench

Advocate : Zubeda Begum, Advocate for the Appellant; Sourabh Ahuja, Advocate for the Respondent

Final Decision : Dismissed

Judgement

V. Kameswar Rao, J.—The challenge in this writ petition is to the order dated March 12, 2013 passed by the Central Administrative Tribunal (Tribunal, in short), Principal Bench, New Delhi in Original Application (OA) No. 2698/2012, whereby the OA filed by the respondent herein, inter alia, seeking ad-hoc promotion on out of turn basis to the post of Inspector under Rule 19(ii) of the Delhi Police (Promotion and Confirmation) Rules, 1980 from the date when SI Dharmender Kumar was allowed the same.

2. Some of the facts, which are relevant to decide the issue which falls for our consideration in this writ petition are, that the respondent was appointed as Inspector (Executive) on February 10, 1994. On December 30, 2004, the respondent along with his team members namely SI Dharmender Kumar, SI Mehtab Singh and HC Ajit had led a successful operation in which, dreaded gangster Krishan Pehalwan of gang Surender @ Sunder, carrying cash reward of Rs. 25,000/- on his arrest from Haryana Police, was pinned down in an encounter after a shoot out at outer gate, Sugar Mill, Panipat, Haryana. Two of his associates Pradeep and Ranbir were also apprehended. During the shoot out, SI

Mehtab Singh sustained bullet injuries and later succumbed to his injuries. The Incentive Committee constituted for this purpose, after going through the facts, considered the cases of the respondent and SI Dharmender Kumar, and finally, in the meeting held on December 04, 2006, recommended the names of the respondent and SI Dharmender Kumar for out of turn promotion to the rank of Inspector. The said recommendations were placed before the then Commissioner of Police, who after going through the same, had approved the same on December 05, 2006. It appears that SI Dharmender Kumar and the respondent could not be given promotion due to non-availability of earmarked vacancies for the purpose.

3. It is on record that the respondent had got promoted to the rank of Inspector on his own turn along with his batch mates on January 13, 2009. It is also noted that a fresh Incentive Committee was constituted to review the earlier decisions of the earlier Commissioners. The new Committee recommended "Asadharan Karya Puraskar"(AKP) to SI Dharmender Kumar. Insofar as the respondent is concerned, it did not recommend any incentives.

4. SI Dharmender Kumar challenged the decision of the petitioners granting him AKP by filing OA No. 557/2011 before the Tribunal. The Tribunal, vide its order dated September 05, 2011 allowed the Original Application by relying upon its own judgment in the case of HC Sukhbir Singh Vs. Govt. of NCT of Delhi and Ors. in OA No. 2304/2010.

5. In Sukhbir Singh's case (supra), the Tribunal had found the action of the petitioners as illegal and arbitrary to a high degree and directed the petitioners to grant to the applicant in that OA, one time promotion as SI with effect from October 31, 2005. Pursuant to the order of the Tribunal in the Original Application filed by SI Dharmender Kumar, the petitioners issued order dated October 14, 2011 whereby SI Dharmender Kumar was granted out of turn promotion to the rank of Inspector with effect from September 14, 2007.

6. Finding that SI Dharmender Kumar has been granted benefit of out of turn promotion, the respondent filed a representation dated January 03, 2012, calling upon the petitioners to grant him out of turn promotion as has been given to SI Dharmender, his team mate.

7. Suffice to state that the representation was considered but the request could not be acceded to and accordingly, the respondent was informed by the petitioners vide communication dated May 07, 2012 about the decision. It is this order which was challenged by the respondent by filing the Original Application No. 2698/2012 before the Tribunal, which culminated in the impugned order dated March 12, 2013, a reference of which has already been given above.

8. Ms. Zubeda Begum, learned counsel appearing for the petitioners would submit that the Original Application was filed by the respondent only in the year 2011 after a lapse of almost five years after the decision was taken by the petitioners to grant out of turn promotion to the respondent. In other words,

according to her, the OA filed by the respondent was badly barred by time. She would justify the denial of out of turn promotion by the petitioners on facts as well.

9. On the other hand, Mr. Saurabh Ahuja, learned counsel appearing for the respondent would justify the order of the Tribunal. According to him, the action of the petitioners in denying the out of turn promotion, is totally illegal and arbitrary inasmuch as once the decision has been taken at the level of the Commissioner, a new Commissioner could not have reviewed the earlier order. That apart, he would justify that the role of the respondent in the encounter was no different from the role of SI Dharmender Kumar, in whose favour, out of turn promotion has been granted pursuant to the orders of the Tribunal. He has taken us through the citation for out of turn promotion, which is annexed as Annexure-2 (at page 61-62), which reads as under:

On 30.12.2004 on the basis of specific information a trap was laid around outer gate, Sugar Mill Colony, Panipat, Haryana in order to apprehend the criminal Surender @ Sunder. SI Rahul Kumar along with other team members took position at the outer gate, Sugar Mill colony. Around 4.40 PM three persons came on a motorcycle from the inside of the colony and slowed down at the barricades. The informer identified the second pillion rider as Surender @ Sunder. At this SI Mehtab and SI Dharmender loudly disclosed their identity and directed them to stop. But being found themselves cordoned by the police party, all three criminals started firing at police party. Criminal Surender @ Sunder started to run back inside the colony but SI Rahul Kumar along with SI Mehtab and SI Dharmender chased Surender @ Sunder. None of the three officers mentioned above was wearing bulletproof jacket so as not to be spotted by the criminal. During shoot out SI Mehtab Singh was critically injured by the bullets fired by criminal Surender @ Sunder and he fell down while SI Rahul Kumar who was in the forefront had a close shave and without caring for his life, he bravely confronted with the gangster and simultaneously directed his other team members to provide immediate first aid/medical aid to the injured officer. During the shoot out Surender @ Sunder was also sustained injuries but kept on indiscriminately firing at him. SI Rahul Kumar also continued firing in self-defense and to protect the lives of other team members. After the firing stopped from the side of criminals, the police team also immediately stopped firing and injured Surender @ Sunder was removed to the hospital by SI Rahul Kumar however both SI Mehtab Singh and criminal Surender @ Sunder succumbed to their injuries and were declared brought dead at the hospital SI Rahul Kumar very closely faced the hail of bullets being showered from the dreaded criminal's pistol. Undeterred and unfazed, he put his life at risk, and bravely confronted the criminal. He fired 3 rounds from his pistol and played a vital role in neutralizing the rewarded dreaded criminal Surender @ Sunder. During the shoot out SI Rahul Kumar took prompt decisions in sending injured SI Mehtab Singh to the hospital and to ensure safety of other team members. The other two associates of Surender @ Sunder namely Pradeep and Ranbeer both R/O Panipat Haryana,

who were also firing on the police party were forced to surrender along with their weapons by the police party.

The shoot out took place in open at a very short distance and there was no cover available to protect himself from the spray of bullets fired by gangster Surender @ Sunder in spite of that SI Rahul Kumar bravely confronted gangster at a very short distance. It was due to his exemplary good work, extraordinary courage and valor, selfless dedication towards the duty and presence of mind that he was able to neutralize the gangster and prevented heavy loss of life and property.

10. Similarly, insofar as SI Dharmender Kumar is concerned, the citation reads as under:

On 08.11.2004 members of Krishan Pahalwan gang namely Deepak Kumar @ Khilu, Rajesh Kumar @ Fauzi, Bijender r/o Rohtak, Haryana and Bijender Singh r/o Sonapat, Haryana were arrested after a brief encounter which took place at Road No. 318, Mangolpuri Industrial Area, Mangolpuri, Delhi. One hand grenade, One 30 Chinese pistol along with eight cartridges, one Double Barrel gun with six live cartridges and two country made pistols along with two live cartridges were recovered from their possession. A Case vide FIR No. 147/2004 dated 08.11.2004 U/s. 186/353/307/34 IPC & 25/27 Arms Act was registered at PS Special Cell, Lodhi Colony, New Delhi, in this regard. On interrogation it was revealed that accused Surender @Sunder was hiding with one Sudhir Kumar R/O VPS Abub Shahar, Dabawali, Sirsa Haryana. An immediate raid was conducted under the supervision of SI Dharmender Kumar, in which Sudhir Kumar above noted, an escapee from police custody and involved in many cases of murder, attempt to murder, robbery and many other heinous cases, was apprehended. Surender @ Sunder however had left the hideout prior to the raid and the team missed him.

On further efforts to trace out accused Surender @ Sunder, SI Dharmender Kumar developed and deputed local sources in and around the Panipat City. One of the local sources deployed revealed that Surender @ Sunder was hiding with one Pradeep Kumar in Vill. Nangal Kheri, Panipat, Haryana. On 30.12.2004 SI Dharmender Kumar received specific information from the source developed by himself, that Surender @ Sunder with associates would come to meet someone at Sugar Mill Colony, Panipat, Haryana at about 4.30 PM on motorcycle No. HR-06 H-2580 and they would have illegal arms in their possession. A trap was laid around outer gate, Sugar Mill colony, Panipat, Haryana in order to apprehend the criminal Surender @ Sunder. SI Dharmender Kumar along with other team members took position at the outer gate, Sugar Mill colony. SI Dharmender Kumar was forced to leave behind his bulletproof jacket so as not to be spotted by the criminal. Around 4.40 PM three persons came on a motorcycle from the inside of colony and slowed down at the barricade. The informer identified the second pillion rider as Surender @ Sunder. At this SI Dharmender Kumar immediately alerted the team members and after loudly disclosing his identity, directed the criminals to stop. But being found themselves cordoned by the

police party, all three criminals started firing indiscriminately at the police party. SI Dharmender Kumar along with other team members returned the fire in self-defence and to apprehend the criminals. Surender @ Sunder started to run back inside the colony but SI Dharmender, SI Rahul Kumar and SI Mehtab chased Surender @ Sunder in face of the volley of bullets fired by all the three criminals. During the shoot out SI Mehtab Singh was critically injured by the bullets fired by criminal Surender @ Sunder and fell down. While SI Rahul Kumar directed other team members to provide immediate first aid/medical aid to the injured officer, SI Dharmender Kumar continued confronting the criminal Surender @ Sunder. In the single-handed fire fight between SI Dharmender Kumar and the dreaded criminal Surender @ Sunder, the valiant police officer fired several rounds from his service weapon. Ignoring all danger, lack of bullet proof clothing and even seen the falling of his colleague SI Mehtab Singh, he closed in on the dreaded criminal and managed to inflict critical injuries on Surender @ Sunder forcing him drop his weapon and took the critically wounded Surender @ Sunder into custody. Meanwhile other members of the team made arrangements to rush the injured SI Mehtab Singh to hospital. Unfortunately injuries proved fatal to both the injured police officer as well as the dreaded criminal. The other two associate of Surender @ Sunder namely Pradeep and Ranbeer both R/O Panipat, Haryana who were also firing on the police party were forced to surrender along with their weapons by the police party.

SI Dharmender Kumar very closely faced the hail of bullets from the trained militants and put his life at risk so as to ensure the safety of innocent public persons and other members of police party. He promptly took the decision in the crucial moment. Undeterred and unfazed, he bravely confronted the criminal Surender @ Sunder and fired 4 rounds from his service pistol. Had it not been for the resourcefulness of SI Dharmender Kumar and his brave stand in the line of duty without care of his own life and safety, the dreaded Surender @ Sunder might well have escaped and become an even greater threat to the life and liberty of law abiding citizens. The sacrifice of the other officer SI Mehtab Singh would have been vain. SI Dharmender Kumar's actions were in the best tradition of the force and reinforce the principles of "duty before self."

11. Having considered the plea advanced by the learned counsel for the parties, insofar as the plea of limitation raised by Ms. Zubeda Begum is concerned, the same is liable to be rejected inasmuch as no such plea was ever taken before the Tribunal. The plea of limitation is a mixed question of fact and law. In the absence of any such plea having been taken, there was no occasion for the Tribunal to go into the question of limitation. Even otherwise, we find that SI Dharmender Kumar had also filed the Original Application in the year 2011. So did the respondent herein. Even otherwise, the cause of action had arisen in favour of the respondent to file the OA, when his representation was rejected on May 07, 2012. Further, we find that the order of the Tribunal in the Original Application filed by SI Dharmender Kumar was not challenged by the petitioners before this Court. They had implemented the judgment in his favour. In view of

this, the plea of limitation need to be rejected.

12. From the perusal of the role played by the respondent in the encounter, it is noted that his role was identical to the one, played by SI Dharmender Kumar. There is no basis for differentiating between the role of both the officers in the encounter. It is noted that they were at the forefront to nab the dreaded gangster and had risked their life. There is no reason why the respondent could have been denied the same benefit, as has been given to SI Dharmender Kumar.

13. Further, we may note that an identical issue came up before this Court in W.P. (C) 6015/2010, Commissioner of Police Vs. Akhileshwar Yadav, wherein one of us (V.K. Rao, J.) was a party to the judgment and wherein, it was held as under:

8. In the Review Application a dramatically opposite stand is taken inasmuch as the petitioner underplayed the role of the respondent in solving the case. It is an accepted position that three of the personnel have been granted out of turn promotion to the next higher post from the post on which they were working. It is also an accepted position that the acts for which they have been recommended out of turn promotion is for solving the case of kidnapping of the child, with which the respondent was associated as a team leader. The acts of the three police personnel are not different cannot be segregated with the acts of the respondent in solving the case. At this stage it is important to reproduce the relevant contents of the letter of the then Special Commissioner (Admn.) in his letter dated September 18, 2003 which is as under:

It was indeed a miraculous break through subsequent expeditious and timely action which helped solving the case in less than 24 hours. It was entirely the initiative/drive/resourcefulness and local contacts of the SI, through whom the information could be developed and was made use of. Even at the time of the recovery of the child, the SI was himself leading along with the HC and Constable, but the then DCP/South as admitted, had perhaps, acted with a great degree of modesty and underplayed the matter, but the officer, it is strongly felt, should not be denied his due, and may kindly be considered for an out of turn promotion as and when there is a vacancy in the slot. It would not be out of place to mention that he is currently posted in the Special Staff, South District and a number of sensational cases worked out in South District which have hit the headlines during the last few years, are attributed to his good work.

9. On the face of such a stand having been taken by the then Special Commissioner (Admn.) in his communication it is surprising how the petitioner can even contest the impugned orders of the Tribunal.

14. We note that the petitioner had issued an order in promoting Akhileshwar Yadav, the respondent in the abovesaid case as Inspector (Executive) pursuant to the order of this Court in W.P.(C) 6015/2010.

15. We agree with the conclusion of the Tribunal in para 7 of the impugned order, which reads as under:

7. We have heard the learned counsel for the applicant Shri Saurabh Ahuja and the learned proxy counsel for respondents Sh. Madhurendra Jha. In our considered view, when the case of the team mate of the applicant SI Dharmender Kumar who was similarly placed was allowed by this Tribunal vide order dated 05.09.2011 in OA 557/2011 (supra) and the respondents have implemented the same vide their order dated 14.10.2011, there is no justification to deny the same benefit to the applicant herein. Otherwise, it will amount to invidious discrimination. We, therefore, allow this OA. Consequently, the respondents shall grant ad hoc promotion on out of turn basis to the next higher rank of Inspector (Exe.) under Rule 19 (ii) of the Delhi Police (Promotion and Confirmation) Rules, 1980. The date of such promotion shall be from the due date as determined in the case of promotion given to SI Dharmender Kumar to the rank of Inspector. Consequently, the applicant's promotion to the aforesaid rank already granted w.e.f. 13.01.2009 shall stand preponed. The respondents shall pass appropriate orders in compliance of the aforesaid directions within two months from the date of receipt of a copy of this order. There shall be no orders as to costs.

16. In view of our above discussion, we do not see any merit in the writ petition. The same is dismissed.

17. No costs.