
(2000) 09 MP CK 0022
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1285 of 2000

Hassan Khan

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 15-09-2000

Acts Referred:

Constitution of India, 1950 — Article 227
Madhya Pradesh Police Regulations — Regulation 70A

Citation : (2000) 4 MPHT 515 : (2001) 1 MPLJ 194

Hon'ble Judges : S.P. Srivastava, J;N.G. Karambelkar, J

Bench : Division Bench

Advocate : D.K. Katare, for the Appellant; K.B. Chaturvedi, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Srivastava, J.

Heard the learned counsel for the petitioner.

Perused the record.

This writ petition invoking the jurisdiction of this Court envisaged under Article 227 of the Constitution of India is directed against an interlocutory order dated 26-5-2000 passed by the respondent-Tribunal, whereunder while issuing notice against admission of the claim petition filed by the present petitioner as well as the application seeking interim relief the Tribunal had refused to grant an exparte stay order.

On 12-6-2000 when the case was listed again before the respondent-Tribunal the Government Advocate representing the respondents sought for an adjournment in order to enable them to file a reply in opposition to the application seeking interim relief, which was opposed on behalf of the petitioner who prayed for an interim order requiring the parties to maintain status quo. This prayer was also rejected.

The petitioner has prayed for the quashing of both the aforesaid orders and as an interim measure has prayed that the effect and operation of the order dated 15-1-1999 passed by the Atirikta Police Mahanirikshak Prashashan, Bhopal communicating the decision of the Director General of Police whereunder he declined to grant the approval to the proposal of the petitioner's out of turn promotion as well as the order passed by the Tribunal dated 26-5-2000 be stayed.

The petitioner claims that he had participated in a face to face encounter with one dreaded dacoit, Bimlesh Jatav on the morning of 9-5-1998 and the matter relating to this incident was also highlighted in the daily news paper and a Magisterial inquiry was also done whereunder the Enquiry Officer had confirmed in his report dated 17-8-1999 about the active part of the police party and the fact that the petitioner had taken part in the aforesaid encounter wherein the dacoit was killed by the police party. It is also claimed that taking into consideration the exemplary work of the petitioner the Inspector General of Police, Gwalior, had granted an out of turn promotion to the petitioner on the post of Head Constable and he is working on the said promotional post since 9-5-1998. But, after a lapse of more than two years the impugned order has been passed by the Director General of Police disapproving the promotion on the basis whereof he was sought to be reverted to his original post of Constable.

In the writ petition in Paragraph 5.9 it was asserted that the petitioner was promoted after approval of the then Director General of Police. This assertion is based on a wireless message sent by the Inspector General of Police, Gwalior to the Director General of Police (M.P.) on 9-5-1998 evening wherein it has been observed that in compliance of the consent and order of the DGP (MP) Hassan Khan and Udaibhan Singh, the Constables had been promoted to the rank of Head Constables indicating further that a case for obtaining formal sanction for their out of turn promotions has been forwarded to PHQ, Bhopal.

A perusal of the aforesaid wireless message, a copy of which has been filed alongwith the writ petition, indicates that although it has been noticed by the Inspector General of Police that the petitioner had been promoted in compliance of the consent and order of the Director General of Police yet his case for obtaining formal sanction in regard to the out of turn promotion had been forwarded to the PHQ. This obviously indicates that no formal sanction had been granted by the Director General of Police for the out of turn promotion which had been granted to the petitioner to be effective from 9-5-1998 and the formal sanction was still awaited. A copy of the letter issued by Atirikta Police Mahanirikshak (Prashashan) dated 15-1-1999 indicates that the Director General of Police had refused to grant approval sought for.

In the return/counter affidavit filed in opposition to the writ petition it has been asserted that the Director General of Police had rejected the recommendation for the out of turn promotion of the petitioner after considering the record which disclose that the death of the dacoit in the encounter was a result of the

collective efforts of the police party. Reliance is placed by the learned Government Advocate in support of his submission in opposition to the writ petition on the enquiry report submitted by the Magistrate dated 17-8-1999 wherein it had been found that the dacoit Bimlesh had been hit by fired cartridges inflicting gun shot wounds in the lower portion of his right leg by the right side and the other gun shot wound in the right side of the stomach, third gun shot wound in chest and fourth gun shot wound in the left hand. The police party had fired two rounds and on the spot 63 empty cartridges had been found. None of the members of the police parties which had taken part in the encounter suffered any gun shot wound or any other injury. The report of the Magisterial inquiry indicates that no officer/employee had shown exemplary courage in coming forward and fired a shot. The encounter was found to be a collective effort.

The provision contained in Regulation 70-A of the M.P. Police Regulations provide that notwithstanding anything contained in Regulation, a Constable may be promoted to the rank of Head Constable by the Superintendent of Police with the prior approval of the Director General of Police, if he has distinguished himself in anti-dacoity operations, law and order situations of shooting competitions or in some other field of duty, if found suitable for promotion.

In the present case while the petitioner asserts that the Director General of Police had accorded the required prior approval, it is claimed by the respondents, that in fact there was no prior approval which had been obtained and on the contrary the formal sanction referred to in the wireless message was refused by the Director General of Police. It is also contended on behalf of the respondent that in face of the report of the Magisterial inquiry there could not arise any question of granting the prior approval and that too on the very date on 9-5-1998 itself as claimed by the petitioner.

The impugned order passed by the Tribunal indicates that the Tribunal has only refused to grant an *ex parte* stay order. The claim petition has not been admitted as yet. The merits of the petitioner's claim not only in regard to grant of prior approval for out of turn promotion by the Director General of Police but also in regard to the want of opportunity of hearing before passing the impugned order is yet to be gone into. Further in the counter-affidavit/ return in Paragraph 6.7 it has been asserted that the petitioner already stands reverted and is now working as Constable as before.

12-A. It should not be lost sight of that it is well known rule of practice and procedure that at an interlocutory stage a relief which is asked for and is available only at the disposal of the matter is not granted unless there is any special reason or any such compelling circumstance which may render the entire proceedings infructuous. It may further be observed that the purpose of interlocutory orders is to preserve in status quo the rights of the parties so that the proceedings do not become infructuous by any unilateral overt act by one side or the other during its pendency. However, the interlocutory orders may be

justified to prevent land slide changes rendering the proceedings ineffective or infructuous.

The learned counsel for the petitioner has tried to assert that the other constable, Udaibhan Singh, who had been granted out of turn promotion alongwith the petitioner had been granted a further promotion to the post of Assistant Sub-Inspector treating his promotion to the post of Head Constable granted in similar circumstances wherein the petitioner had been granted the promotion. The contention urged is that the impugned action in such a circumstance is exfacie discriminatory.

So far as this aspect of the matter is concerned the learned Government Advocate has pointed out that there is no such pleading in the writ petition. The plea of discrimination has not been set up while challenging the impugned order.

It may be noticed that in its decision in the case of Chandigarh Administration and another Vs. Jagjit Singh and another, , it had been clearly indicated that generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. It was further indicated that the order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order.

It has further been urged that even the contention urged by the learned counsel for the petitioner in regard to the alleged discrimination is totally misconceived and baseless as Udaibhan Singh had been granted promotion to the post of Head Constable not on the basis of this performance in the encounter which had taken place on 9-5-1998 but on the basis of his performance in another encounter which had taken place on 31-1-1999. His promotion to the post of Assistant Sub-Inspector was granted out of turn in view of his exceptional performance in the encounter which had taken place on 11-11-1999. The contention is that the assertion that there has been a discrimination is absolutely incorrect and even the order granting promotion to Udaibhan Singh alongwith the petitioner was disapproved and had no bearing on the promotions granted to the aforesaid Udaibhan Singh.

Taking into consideration the totality of the circumstances without going into merits any further we are not inclined to interfere in the impugned order at this stage while exercising the jurisdiction envisaged under Article 227 of the Constitution of India.

This writ petition accordingly fails and is dismissed.

It may however be observed that the view expressed and the observations made hereinabove will be taken as only with reference to the stage of the proceedings and will not in any manner imply or mean reflections or comments on the merits of the case which shall be decided by the Tribunal after considering its own merits on the basis of the evidence and materials produced by the parties in support of their respective cases.