

(2020) 03 J&K CK 0054

In the Jammu And Kashmir High Court

Case No : SWP No. 501 Of 2013, IA No. 686 Of 2013, Civil Miscellaneous No. 986 Of 2020

Noor Hussain

APPELLANT

Vs

State Of J&K And Others

RESPONDENT

Date of Decision : 19-03-2020

Acts Referred:

Citation : (2020) 03 J&K CK 0054

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Ashish Sharma, Sanchit Verma, Raman Sharma

Final Decision : Dismissed

Judgement

Sanjeev Kumar, J

1. The petitioner in this petition has inter alia prayed for issuance of writ of mandamus directing the respondents to grant him seniority from the date respondent No.7 was promoted as Selection Grade Constable and consequently treat the petitioner as having been promoted as Head Constable w.e.f. 30.06.2006 with consequential benefits of seniority. The relief prayed for by the petitioner in the nature of writ of certiorari for quashing out of turn promotion of respondents 6 and 7 has been withdrawn by moving formal application for seeking amendment. The relief claimed by the petitioner for his retrospective promotion as Selection Grade Constable and Head Constable has arisen out of the following factual matrix:

2. That the petitioner was recruited as SPO in the J&K Police in District Poonch in the year 1999. Because of his exemplary and outstanding performance, he was appointed as Constable on 18.06.2000. He was subsequently promoted as Selection Grade Constable vide PHQ Order No. 1416/05 dated 30.04.2005 and further promoted as Head Constable vide PHQ Order No. 2339 of 2009 dated 02.07.2009. The promotion to the post of Selection Grade Constable as also to

the post of Head Constable was out of turn and in recognition of his outstanding performance on the anti-militancy front. The grievance of the petitioner, however, is that the respondents No.7 was also similarly promoted as Selection Grade Constable vide Order No.2039 of 2006 dated 30.06.2006 in recognition of his outstanding performance on anti-militancy front, but, the petitioner, who was already a Selection Grade Constable and had been recommended by the competent authority, i.e., SSP, Poonch for his promotion to the post of Head Constable was not given out of turn promotion to the post of Head Constable. He was only promoted as Head Constable on 02.07.2009. It is further submitted by the petitioner that the respondent No.6- Mustaq Hussain, who had also shown outstanding performance on the anti-militancy front like the petitioner was given out of turn promotion as Selection Grade Constable and Head Constable, Assistant Sub Inspector and then Sub Inspector, but, the petitioner was not given further promotion to the post of Assistant Sub Inspector. The petitioner claims that the petitioner is similarly situated with the respondents 6 and 7 and was, thus, entitled to out of turn promotion on operational grounds on the analogy of respondents 6 and 7.

3. The respondents have opposed the writ petition filed by the petitioner by filing objections in which it is contended that the petitioner got the benefit of out of turn promotion to the post of Selection Grade Constable in the year 2005 and 2nd out of turn promotion to the petitioner was granted as Head Constable in the year 2009 in recognition of his outstanding performance on anti-militancy front. It is submitted that the petitioner because of his outstanding performance on anti-militancy front got the benefit thrice. The claim of the petitioner that he is similarly situated with the respondents 6 and 7, however, has been refuted.

4. Having heard learned counsel for the parties and perused the record, I am of the view that the petitioner has no case to maintain this petition. It is not in dispute that the petitioner has shown outstanding courage and exemplary performance on anti-militancy front. In tune with government policy, the petitioner who was recruited as SPO was first appointed as Constable and thereafter given two out of turn promotions as Selection Grade Constable and Head Constable. The plea of the petitioner that for each encounter with militants he participated in, he should be given promotion is not tenable in law. The parity claimed by the petitioner with respondent No.7 is also beyond the comprehension. The respondent No. 7 got promotion out of turn as Selection Grade Constable when the petitioner was already a Selection Grade Constable and had been recommended for further promotion to the post of Head Constable. The petitioner too got the promotion as Head Constable in the year 2009. Regarding respondent No.6, the petitioner has not placed on record anything to show that he has got four out of turn promotions on operational grounds. That apart, it is for the authorities concerned, i.e., Police Establishment Board in the instant case to evaluate the performance of each Police Officer on anti-militancy front and, accordingly, decide as to whether the person who has participated in the anti-militancy front and shown outstanding performance deserves awarding

of medals or advance increments or would be entitled to out of turn promotion. This is best left to the competent authority to decide. Each case has to be evaluated on its own merit and no uniform yardstick can be laid in this regard. The respondents have evaluated the performance of the petitioner and on finding that his performance on anti-militancy front has been exceptionally outstanding, not only he was substantively appointed as Constable from SPO, but, was also given two out of turn promotions to the posts of Selection Grade Constable and Head Constable in quick succession. The claim of the petitioner that for every encounter he has participated, he should be rewarded with out of turn promotion, is neither logical nor permissible. Ordinarily, a Constable/Selection Grade Constable/Head Constable would earn his next promotion on the basis of the seniority and merit and subject to eligibility, but, with a view to encourage the participation of the local police in anti-militancy operations and sufficiently reward them, the respondents have devised a policy of granting out of turn promotion. The petitioner is beneficiary of such policy and has not only got permanent employment in the J&K Police, but, has earned two further promotions as Selection Grade Constable and Head Constable in quick succession. For the purpose of grant of out of turn promotion on the basis of performance of officer(s) on anti-militancy front, no two cases can be similar.

5. For the forgoing reasons, I find no merit in this petition and the same is, accordingly, dismissed along with connected CM(s).