
(2015) 10 AHC CK 0063
In the Allahabad High Court
Case No : WRIT-A No. 46937 of 2014

Pawan Kumar Sharma

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 14-10-2015

Acts Referred:

Constitution of India, 1950 — Article 141, 20, 226
Criminal Procedure Code, 1973 (CrPC) — Section 157, 158, 173, 176, 190
Police Act, 1861 — Section 2, 23

Citation : (2015) 11 ADJ 286 : (2015) 113 ALR 824 : (2015) 4 UPLBEC 2833

Hon'ble Judges : Surya Prakash Kesarwani, J.

Bench : Single Bench

Advocate : Vivek Rai, D.K. Singh and V.K. Singh, for the Appellant

Final Decision : Dismissed

Judgement

Surya Prakash Kesarwani, J.—Heard Sri Prabhakar Awasthi, holding brief of Sri Rohit Upadhyay, learned counsel for the petitioner and Sri R.K. Pandey, learned Standing Counsel for the respondents.

2. The submission of the learned counsel for the petitioner is that the impugned order dated 24.6.2014 is wholly arbitrary and illegal for the following reasons:--

"(i) The Government Order dated 7.6.2014 is prospective in nature and since the petitioner had moved the application dated 27.12.2012 through his wife for out of turn promotion and as such his case should have been considered in the light of the Government Order dated 3.2.1994;

(ii) The petitioner has shown courage during the performance of his duty as a police officer and, therefore, he is entitled for out of turn promotion;

(iii) Government Order dated 7.6.2014 shall apply prospectively and it shall not apply to cases pending consideration, as the impugned order does not indicate that there was no recommendation in favour of the petitioner for out of turn promotion."

3. In support of his submission, learned counsel for the petitioner relied upon the decision in Writ-A No. 50782 of 2014, Mahaveer Singh and others v. State of U.P. and others and other connected writ petitions, decided on 4.9.2015.

4. Learned standing counsel submits that the judgement in the case of Mahaveer Singh and others (supra) is distinguishable on facts, inasmuch as in that case recommendations were made for out of turn promotion by the competent authority much prior to the Government Order dated 7.6.2014.

5. He submits that the Government Order dated 7.6.2014 is the policy decision of the State Government, which cannot be interfered with and which is not even under challenge in the present writ petition. He further submits that a writ, order or direction in the nature of mandamus cannot be issued in the absence of any legally protected or judicially enforceable subsisting right for out of turn promotion which is the foundation for invoking the jurisdiction under Article 226 of the Constitution of India.

6. I have considered the submissions of the learned counsel for the parties and perused the record.

7. The Government Order No. 665(1)/Chh: Pu-1-24-93 Lucknow dated 3.2.1994 under which the petitioners are claiming out of turn promotion, is reproduced below :

8. All the police personnel are governed by the provisions of the Police Act 1861 and the U.P. Police Regulations and Statutory Rules framed for governing their service conditions. Section 23 of the Police Act, 1861 provides for duties of police officers, which is quoted below :

"23. Duties of police-officers-- It shall be the duty of every police-officer promptly, to obey and execute all orders and warrants lawfully issued to him by any competent authority, to collect and communicate intelligence affecting the public peace, to prevent the commission of offences and public nuisances; to detect and bring offenders to justice and to apprehend all persons whom he is legally authorised to apprehend, and for whose apprehension sufficient ground exists; and it shall be lawful for every police-officer, for any of the purposes mentioned in this section, without a warrant to enter and inspect, any drinking-shop, gaming-house or other place of resort of loose and disorderly characters."

9. Chapter- XXX of U.P. Police Regulations provides for mode of promotion of police personnel. Chapter- XXXI of the Regulations provides the provision with regard to "Rewards". Paragraph 466(4) provides as under:

"466(4)- Rewards should not be given to any class officers for "general good work" but only for particular acts of special merit, such as good arrests, good detection or good service on a special occasion. Cash reward for good marksmanship during annual weapon firing and shots during musketry competitions are also admissible. Rewards are not to be given as a matter of routine whenever a case is directed. Nor should they be given for the efficient

discharge of ordinary duties, e.g., to a reserve inspector for good recruiting or for training recruits."

10. From perusal of Section 23 of the Police Act, 1861 it is clear that it is the normal duty of a police personnel to detect and bring offenders to justice and to apprehend all persons whom he is legally authorised to apprehend, and for whose apprehension sufficient ground exists. Paragraph-466(4) of the U.P. Police Regulations contemplates that rewards should not be given to any class of officers for "general good work" but only for particular acts of special merit. The Government Order dated 3.2.1994 contemplates for out of turn promotion to certain categories of police personal, if a police personnel shows "Indomitable courage and gallantry ",. The word "Courage" used in the said Government Order is qualified by the word-"Indomitable". As per Oxford English-Hindi- dictionary the word-"Indomitable" means to defeat or frighten, even in a difficult situation, very brave and determine .

11. In the case of Ram Saran Goyal Vs. State of U.P. and Others, , (paragraph-10) this Court held as under :

"Gallantry has been defined as dashing bravery, showily attentive behaviour to women; a compliment made to a woman firing with her (New Lexicon Webster"s Dictionary).The same dictionary defines bravery as courage, and courage has been defined as the capacity to meet danger without giving way to fear. The exemplary courage and bravery as such requires something more than being gallant. The award of police medal for gallantry may be one of the consideration for out of turn promotion on the ground of exemplary courage and bravery or taking risk in performance of duties, but that by itself, cannot be a conclusive proof to form an opinion for bravery and courage."

12. In view of the Government Order dated 3.2.1994, Section 23 of the Police Act, 1861, Paragraph-466(4) of the U.P. Police Regulations and the dictionary meaning of the words-"Indomitable courage and gallantry", it is clear that for out of turn promotion under the government Order dated 3.2.1994, something more than good work and bravery is required. The said Government Order dated 3.2.1994 requires a police personnel claiming out of turn promotion to prove that his action showed "Indomitable courage and gallantry . The action of such police personnel may be his individual act or his act in the aid of collective effort of a team.

13. By Government Order dated 7.6.2014 the State Government has taken a policy decision to abolish with immediate effect the Government Order dated 3.2.1994 for out of turn promotion and in place provided a letter of appreciation alongwith cash award of Rs. 25,000/- and for act of high category courage an award of monthly allowance of Rs. 1000/- and a medal for bravery. The aforesaid Government Order dated 7.6.2014 is reproduced below :

14. From perusal of the aforementioned two Government Orders and the provisions of Paragraph No. 466(4) of Chapter XXXI of the U.P. Police Regulations it is clear

that reward may be given to a police for particular act of special merit, which is given for moral boosting of police personnel. It can neither be given as a matter of routine nor any one can claim it as a matter of right.

15. Section 23 of the Police Act 1861 describes the duties of police officer which includes the alleged acts of the petitioner during the course of discharge of his duty. No provision has been shown by the petitioner either in the Police Act 1861 or in the U.P. Police Regulations which provides for award in the form of out of turn promotion in discharge of his official duties.

16. In the case of Union of India (UOI) and Others Vs. C. Krishna Reddy, Hon"ble Supreme Court considered the controversy with regard to reward to an informer in customs matter under the scheme of the Government and held as under :

"11. In our opinion, the view taken by the High Court that the revised guidelines would not apply is patently erroneous both on the fact situation of the case and also as a principle of law. The respondent has himself averred in para 14 of the writ petition that the Collector of Customs, Madras decided the case by his order dated 5.3.1993 and thereafter, he started contacting the officers of the Department for payment of the reward. He, therefore, made a claim for grant of reward for the first time in 1993. In Union of India v. R. Padmanabhan exactly same question was examined and it was held that being ex gratia no right accrues to any sum as such till it is determined and awarded and, in such cases, normally it should not only be in terms of the guidelines and policy, in force, as on the date of consideration and actual grant but has to be necessarily with reference to any indications contained in this regard in the scheme itself. It was also held that the question of any vested rights accrued being protected from any subsequent amendments would not arise in such a case and, therefore, the guidelines, as are in force on the date of consideration will really be applicable and relevant.

12. The scheme or the policy of the Government of India dated 30.3.1985 shows that the authority competent to grant the reward, while taking a decision regarding the entitlement of the person concerned has to keep many factors in his mind like specificity and accuracy of the information, the risk and trouble undertaken, the extent and nature of the help rendered by the informer, whether information gives clues of the persons involved in smuggling or their associates, the difficulty in securing the information, the risk involved for the government servants in working out the case and whether apart from seizure of contraband goods, the owners/organisers/financiers/racketeers have been apprehended. The scheme further mentions that reward is an ex gratia payment and subject to the guidelines and may be granted on the absolute discretion of the competent authority and further that no one can claim the reward as a matter of right. The High Court in writ jurisdiction cannot examine or weigh the various factors which have to be taken into consideration while deciding a claim regarding grant of reward. These are matters exclusively within the domain of the authorities of the

Department as they alone can weigh and examine the usefulness or otherwise of the information given by the informer. In the writ petition filed by the respondent, no details had been given on the relevant issues. If the grant of reward cannot be claimed as a matter of right, it is not understandable as to how a writ of mandamus can be issued commanding the Government to give a particular amount by way of reward. Though this specific plea was taken in paras 18 and 21 of the counter-affidavit, yet neither the learned Single Judge nor the Division Bench adverted to this aspect of the matter.

13. It is well settled by a catena of decisions of this Court that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officers concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of the writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within the limit of their jurisdiction. Therefore, in order that a mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance.[See *Bihar Eastern Gangetic Fishermen Coop. Society Ltd. v. Sipahi Singh*, AIR para 15, *Lekhraj Sathramdas Lalvani v. N.M. Singh, Dy. Custodian cum Managing Officer and Umakant Saran (Dr.) v. State of Bihar*.]"

17. In the case of *S.I. Paras Kumar and Others Vs. S.I. Ram Charan and Others*, Hon"ble Supreme Court considered the matters of " out of turn promotion" and held as under :

"30. Consequently, the question for consideration is whether out-of-turn promotion based upon "courage on anti-terrorist front or outstanding performance in sports" by the Director General of Police is permissible under the format of the Punjab Police Rules, 1934.

31. The Punjab Police Rules were framed under Section 2 of the Indian Police Act, 1861 (the Police Act). The voluminous Punjab Police Rules cover all aspects of police administration. They have withstood the test of time and have undergone many amendments and modifications. Yet, the basic structure of the Rules has not changed. It is worthwhile to mention that the Punjab Police Rules are still in force in six States in India and even in some Provinces in Pakistan. First of all it has to be clarified that the pay and other conditions of service of police has to be decided by the State Government under Section 2 of the Police Act. (See generally Constitution Bench decision of this Court in *Ram Sharan v. DIG of Police, Ajmer* and also *State of Rajasthan v. Ram Saran*.) The right to be considered for promotion and procedure to be followed for effecting promotion is a condition of service. Promotions could be made only under Section 2 of the Police Act and no other procedure could be adopted for effecting promotion. Since the Punjab Police Rules are framed under section 2 of the Police Act, the promotions could be made only by following the procedure established under the relevant Rules. No promotions could be made by any procedure outside the

scope of Section 2 of the Police Act. Therefore, the exercise is to see whether the impugned promotions are made following the Punjab Police Rules, which are framed under Section 2 of the Police Act."

18. In the case of People's Union for Civil Liberties Vs. State of Maharashtra, , Hon"ble Supreme Court considered the controversy regarding "out of turn promotion and held as under :

"10. The statistics of the National Crime Records Bureau, 2013 are worth noticing.

10.1 Table 14.2 under the title "Persons Killed Or Injured in Police Firing During 2013 (Event- Wise)" shows that there were 684 occasions of police firing classified as "Riot Control", "Anti-Dacoity Operations", "Against Extremists and Terrorists" and "Against Others" in 2013 and, in these police firings, 103 civilians were killed and 213 were injured and, as regards policemen, 47 were killed and 1158 were injured.

10.2 Table 15.1 gives details of police personnel killed across the country in 2013 in terrorist/extremists operations, dacoity operations or other raids by riotous mobs and by other criminals.

10.3 Table 16.1 catalogues the complaints/cases registered against police personnel during 2013. During the year 2013, 51120 complaints were received, of which 26640 were declared false or unsubstantiated. Of the rest, 14928 were dealt departmentally. Of this, 3896 were reported for regular departmental action while 799 were sent up for trials/charge- sheeted. In the completed trials, 53 were convicted. In departmental proceedings, 544 were dismissed from service and 3980 had been awarded major punishment.

10.4 Incidence of human rights violations by police during 2013 is indicated in Table 16.2. This Table lists only two fake encounters (both from Assam). The figure raises doubts about its correctness.

13. Question of granting of compensation to the dependents of the deceased would depend upon the facts and circumstances of each case and it shall be determined by NHRC. However, in every case of a person being killed by the police party in the course of an encounter, the compensation granted must necessarily be at least the same as that granted to the dependants of a police officer killed by terrorists in the course of duty by the Government.

31. In light of the above discussion and having regard to the directions issued by the Bombay High Court, guidelines issued by NHRC, suggestions of the appellant - PUCL, amicus curiae and the affidavits filed by the Union of India, State Governments and the Union Territories, we think it appropriate to issue the following requirements to be followed in the matters of investigating police encounters in the cases of death as the standard procedure for thorough, effective and independent investigation:

(1) Whenever the police is in receipt of any intelligence or tip-off regarding

criminal movements or activities pertaining to the commission of grave criminal offence, it shall be reduced into writing in some form (preferably into case diary) or in some electronic form.

Such recording need not reveal details of the suspect or the location to which the party is headed. If such intelligence or tip-off is received by a higher authority, the same may be noted in some form without revealing details of the suspect or the location.

(2) If pursuant to the tip-off or receipt of any intelligence, as above, encounter takes place and firearm is used by the police party and as a result of that, death occurs, an FIR to that effect shall be registered and the same shall be forwarded to the court under Section 157 of the Code without any delay. While forwarding the report under Section 157 of the Code, the procedure prescribed under Section 158 of the Code shall be followed.

(3) An independent investigation into the incident/encounter shall be conducted by the CID or police team of another police station under the supervision of a senior officer (at least a level above the head of the police party engaged in the encounter). The team conducting inquiry/investigation shall, at a minimum, seek:

- (a) To identify the victim; colour photographs of the victim should be taken;
- (b) To recover and preserve evidentiary material, including blood-stained earth, hair, fibers and threads, etc., related to the death;
- (c) To identify scene witnesses with complete names, addresses and telephone numbers and obtain their statements (including the statements of police personnel involved) concerning the death;
- (d) To determine the cause, manner, location (including preparation of rough sketch of topography of the scene and, if possible, photo/video of the scene and any physical evidence) and time of death as well as any pattern or practice that may have brought about the death;
- (e) It must be ensured that intact fingerprints of deceased are sent for chemical analysis. Any other fingerprints should be located, developed, lifted and sent for chemical analysis;
- (f) Post-mortem must be conducted by two doctors in the District Hospital, one of them, as far as possible, should be In-charge/Head of the District Hospital. Post-mortem shall be video-graphed and preserved;
- (g) Any evidence of weapons, such as guns, projectiles, bullets and cartridge cases, should be taken and preserved.

Wherever applicable, tests for gunshot residue and trace metal detection should be performed.

(h) The cause of death should be found out, whether it was natural death, accidental death, suicide or homicide.

(4) A Magisterial inquiry under Section 176 of the Code must invariably be held in all cases of death which occur in the course of police firing and a report thereof must be sent to Judicial Magistrate having jurisdiction under Section 190 of the Code.

(5) The involvement of NHRC is not necessary unless there is serious doubt about independent and impartial investigation.

However, the information of the incident without any delay must be sent to NHRC or the State Human Rights Commission, as the case may be.

(6) The injured criminal/victim should be provided medical aid and his/her statement recorded by the Magistrate or Medical Officer with certificate of fitness.

(7) It should be ensured that there is no delay in sending FIR, diary entries, panchnamas, sketch, etc., to the concerned Court.

(8) After full investigation into the incident, the report should be sent to the competent court under Section 173 of the Code. The trial, pursuant to the chargesheet submitted by the Investigating Officer, must be concluded expeditiously.

(9) In the event of death, the next of kin of the alleged criminal/victim must be informed at the earliest.

(10) Six monthly statements of all cases where deaths have occurred in police firing must be sent to NHRC by DGPs. It must be ensured that the six monthly statements reach to NHRC by 15th day of January and July, respectively. The statements may be sent in the following format along with post mortem, inquest and, wherever available, the inquiry reports:

(i) Date and place of occurrence.

(ii) Police Station, District.

(iii) Circumstances leading to deaths:

(a) Self defence in encounter.

(b) In the course of dispersal of unlawful assembly.

(c) In the course of affecting arrest.

(iv) Brief facts of the incident.

(v) Criminal Case No.

(vi) Investigating Agency.

(vii) Findings of the Magisterial Inquiry/Inquiry by Senior Officers:

(a) disclosing, in particular, names and designation of police officials, if found responsible for the death; and

(b) whether use of force was justified and action taken was lawful.

(11) If on the conclusion of investigation the materials/evidence having come on record show that death had occurred by use of firearm amounting to offence under the IPC, disciplinary action against such officer must be promptly initiated and he be placed under suspension.

(12) As regards compensation to be granted to the dependants of the victim who suffered death in a police encounter, the scheme provided under Section 357-A of the Code must be applied.

(13) The police officer(s) concerned must surrender his/her weapons for forensic and ballistic analysis, including any other material, as required by the investigating team, subject to the rights under Article 20 of the Constitution.

(14) An intimation about the incident must also be sent to the police officer's family and should the family need services of a lawyer/counselling, same must be offered.

(15) No out-of-turn promotion or instant gallantry rewards shall be bestowed on the concerned officers soon after the occurrence. It must be ensured at all costs that such rewards are given/recommended only when the gallantry of the concerned officers is established beyond doubt.

(16) If the family of the victim finds that the above procedure has not been followed or there exists a pattern of abuse or lack of independent investigation or impartiality by any of the functionaries as above mentioned, it may make a complaint to the Sessions Judge having territorial jurisdiction over the place of incident. Upon such complaint being made, the concerned Sessions Judge shall look into the merits of the complaint and address the grievances raised therein.

32. The above guidelines will also be applicable to grievous injury cases in police encounter, as far as possible.

33. Accordingly, we direct that the above requirements/norms must be strictly observed in all cases of death and grievous injury in police encounters by treating them as law declared under Article 141 of the Constitution of India."

19. In the aforequoted law declared by Hon"ble Supreme Court and binding under Article 141 of the Constitution of India, detail guidelines have been issued with regard to all cases of death and grievous injury in police encounters. Para 15 of the guideline clearly mandates that no out of turn promotion or instant gallantry rewards shall be bestowed on the concerned officers soon after the occurrence and it must be ensured at all costs that such rewards are given/recommended only when the gallantry of the concerned officers is established beyond doubt. There is no averment in the writ petition that the petitioner qualifies the said guidelines. The judgement in the case of Mahaveer Singh (supra) is distinguishable on facts as noted in Para 4 above. Besides, in the said judgement the provisions of the Police Act, U.P. Police Regulations and the law

laid down by Hon''ble Supreme Court were not noticed.

20. In view of the above discussion, I find that the Government Order dated 7.6.2014 reflecting the policy decision of the State Government is neither malafide nor unreasonable nor arbitrary nor unfair.

21. The aforementioned Government orders which abolished the Government Order dated 3.2.1994 reflect the policy decision of the State Government and shall govern all matters of reward. It is well settled that the Courts, in exercise of their power of judicial review did not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on account of malafide, unreasonableness, arbitrariness or unfairness etc. If the policy cannot be faulted on any of these grounds, the policy cannot be said to be invalid. Courts cannot question the wisdom of the government in taking a policy decision. Generally policy cannot be tested in a court of law. The government is entitled to lay down its policy which cannot be subjected to judicial review except in the circumstances mentioned above. Reference in this regard may be had to the judgements of Hon''ble Supreme Court in the cases reported in Subhash Photographics and Others Vs. Union of India (UOI) and Others, , Delhi Science Forum and others Vs. Union of India and another, , Ekta Shakti Foundation Vs. Govt. of NCT of Delhi, , Krishnan Kakkanth Vs. Government of Kerala and others, , State of Rajasthan and Others Vs. Lata Arun, , State of Himachal Pradesh and Another Vs. Padam Devi and Others, , State of Himachal Pradesh and others etc. Vs. Ganesh Wood Products and others, etc., , M/s. Ugar Sugar Works Ltd. Vs. Delhi Administration and Others, , The State of Maharashtra and Another Vs. Lok Shikshan Sansatha and Others, , M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others, , State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc., and 26) BALCO Employees Union (Regd.) Vs. Union of India and Others, , Gyan Prakash Vs. Union of India (UOI) and Others, , Ram Singh Vijay Pal Singh and Others Vs. State of U.P. and Others, .

22. In the light of the above discussion, I do not find any infirmity in the impugned order dated 24.6.2014, whereby the representation of the petitioner was rejected. Apart from this, the writ petition is also not maintainable for mandamus for out of turn promotion in the absence of any legally protected right of the petitioner and the law laid down by Hon''ble Supreme Court in the case of C. Krishna Reddey (supra), S.I. Ram Charan (supra) and People's Union for Civil Liberties (supra).

23. In result, the writ petition fails and is hereby dismissed. However, there shall be no order as to costs.