

(1999) 09 AHC CK 0061
In the Allahabad High Court
Case No : C.M.W.P. No. 30899 of 1998

Satya Pal Singh and others

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 30-09-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 4 AWC 3294 : (1999) AWC 3294 : (1997) 75 FLR 328

Hon'ble Judges : O.P. Garg, J

Bench : Single Bench

Advocate : Yogesh Aggarwal, for the Appellant;

Judgement

O.P. Garg, J.—With a view to boost the morale and to promote enthusiasm, devotion to duty and by way of incentive to the members of the Police force, the State of U. P. in Home (Police) Anubhag-1, has issued a Government Order dated 3.2.1994. Annexure-1 to the writ petition for out of turn promotion in case a Police Officer/official shows indomitable courage and valour, commitment and dedication to duty during the course of his employment. The petitioners. Satya Pal Singh and Natthu Singh who are Police Constables and Devendra Kumar and Sudesh Gupta who are Sub-Inspectors in Civil Police are claiming out of turn promotion in the following circumstances.

2. There was a dreaded and notorious criminal Amar Pal, who had let loose a reign of terror in the district of Ghaziabad in particular, and the surrounding areas in general. A special party, comprising Station Officer. Sharad Pratap Singh, Constable Gyanendra Kumar and Constable Ashok Kumar, respondent Nos. 6, 7 and 8 was constituted to apprehend the said desperado with a view to contain his criminal activities. On getting a tip from an informer that Amar Pal is likely to be available at the house of one Dr. Subodh Chaudhary in the local limits of P. S. Muradnagar. district Ghaziabad, a party under the leadership of Sharad Pratap Singh, Station Officer, consisting four petitioners and respondent Nos. 7 and 8 as well as Rajesh Kumar. Constable organised the raid. The said party was

successful in annihilating Amar Pal in an encounter which had taken place on 12.5.1997. Illicit arms and ammunitions were also seized. A Magisterial enquiry was conducted into the said episode. The Senior Superintendent of Police, Ghaziabad, sent a citation dated 11.12.1997, Annexure-5 to the writ petition in which the names of all the members of the raiding party, including the petitioners were recommended for out of turn promotion. The recommendation was considered by the Dy. Inspector General of Police who referred back the matter to the S.S.P., Ghaziabad with the query whether it would be appropriate to grant out of turn promotion to as many as 8 persons who were involved in one single incident of extermination of a criminal. The letter of the D.I.G, dated 19.12.1997 is Annexure-6. The S.S.P. Ghaziabad. in his turn, referred the matter to the Additional Superintendent of Police, Rural Area for submission of his report. The report of the Circle Officer. Modinagar dated 11.11.1997 was obtained, a copy of which is Annexure-R.A. 2 to the rejoinder-affidavit. On the basis of the report of Circle Officer, Modinagar, the Additional S.P, [Rural Area) submitted his report on 19.11.1997. copy whereof is Annexure-R.A. 1 to the rejoinder affidavit. S.S.P., Ghaziabad. sent a revised citation on 24.12.1997, Annexure-8 to the writ petition, recommending the names of Sharad Pratap Singh, Station Officer, Gyanendra Kumar and Ashok Kumar, Constables respondent Nos. 6. 7 and 8 for out of turn promotion. He dropped the names of the petitioners for out of turn promotion. Ultimately, the respondent Nos. 6, 7 and 8 were granted out of turn promotion after the approval of Director General of Police, dated 18.7.1998, Annexure-13 to the writ petition.

3. The petitioners have alleged that the revised citation submitted by the S.S.P., Ghaziabad, ignoring the names of the petitioners was arbitrary and that he had adopted an attitude of pick and choose from amongst the members, who were associated with the raiding party, which was deputed to apprehend the notorious criminal Amar Pal. It is stated that the various acts and participation of the petitioners in the episode cannot be distinguished on any ground with that of respondent Nos. 6, 7 and 8 as the indomitable courage and valour, commitment and dedication to duty as well as bravery exhibited by the petitioners could not, in any manner, be under estimated. By means of the present writ petition under Article 226 of the Constitution of India, the petitioners have prayed that the order dated 18.7.1998 passed by the Director General of Police. granting out of turn promotion to respondent Nos. 6. 7 and 8 be quashed, and the respondents be commanded to grant out of turn promotion and to confer all benefits and privileges on the petitioners from the date the aforesaid respondents were promoted.

4. Two counter-affidavits have been filed in the case--one on behalf of the department--respondent Nos. 1 to 5. and the other on behalf of the respondent Nos. 6, 7 and 8. The pleas taken in both the counter-affidavits are almost similar. It is alleged that out of turn promotion has been granted to the persons whose role was found better in the encounter ; that the respondent Nos. 6, 7 and 8 have been given out of turn promotion for their display of indomitable courage

and valour, commitment and dedication to duty in the incident/encounter. Amar Pal was gunned down by the fire shot by respondent Nos. 6, 7 and 8. It is alleged that It is not necessary that all the members, who have participated in the encounter, should be given out of turn promotion and that the petitioners though were not granted out of turn promotion, have received certificates of appreciation and the cash award. The plea that the S.S.P., Ghaziabad has resorted to pick and choose method in sending the revised citation has been refuted. It is stated that it is wrong to suggest that the respondent Nos. 6, 7 and 8 have been granted promotion in an arbitrary. Irrational and artificial manner by adopting the practice of pick and choose. In reply to the counter-affidavits, a rejoinder-affidavit has been filed on behalf of the petitioners.

5. Heard Sri Yogesh Agarwal, learned counsel for the petitioners as well as learned standing counsel at considerable length.

6. It is an indubitable fact that the petitioners were the members of the party which was organised to combat and contain the criminal activities of Amar Pal and to apprehend, the notorious and wanted criminal who had confined himself in the house of Dr. Subodh Chaudhary. The stand taken by the petitioners, in nutshell, is that since an identical role was assigned and played by each one of the members of the raiding party, the petitioners should have been allowed promotion, out of turn, like the respondent Nos. 6, 7 and 8. as they could not be discriminated in the matter. It was also urged that the preferential treatment, which has been given to the respondent Nos. 6, 7 and 8 was the result of hostile discriminatory and partisan attitude adopted by the departmental authorities. Sri Yogesh Agarwal further urged that there have been instances in which a large number of persons, involved in a particular encounter, have been granted out of turn promotion in the Police Department. The instances of such promotions have been given in paragraph 11 of the writ petition. Copies of the orders of such Policemen, who were promoted in the other episodes are Annexures-14 and 15 to the writ petition. In one case of encounter of one Ambrish, seven Policemen were given out of turn promotion while in another case of encounter of Illam Singh, eight Policemen were granted the said benefit. On the strength of these precedents, Sri Yogesh Agarwal contended that the Dy. Inspector General of Police of the range was not justified in making a query to the effect that whether it would be proper to grant promotion to all the 8 members of the raiding party in a single encounter and consequently, the revised citation submitted by the S.S.P., Ghaziabad, was bad in law as it was afflicted by the vice of arbitrariness. Sri Agarwal, learned counsel for the petitioners further strenuously urged that since the departmental authorities have denied out of turn promotion to the petitioners in an arbitrary and capricious manner, by resorting to pick and choose practice, this Court can straightaway direct the promotion of the petitioners, out of turn, from the date the respondent Nos. 6, 7 and 8 were promoted. The learned counsel for the petitioners, however, gave up the prayer during the course of arguments, that the out of turn promotion of respondent Nos. 6 to 8 be quashed as according to him, the petitioners are not going to get any relief by

quashing of promotion of those respondents. He, therefore, confined his prayer only to the extent that the petitioners be ordered to be promoted out of turn on the same ground, on which the respondent Nos. 6 to 8 have been promoted.

7. In support of his contention that this Court can straightaway pass an order for promotion of the petitioners, out of turn, reliance was placed by Sri Yogesh Agarwal on the decisions of the Apex Court in *Vijay Kumar, I.A.S. Vs. State of Maharashtra and Others*, ; *Smt. Kamla Gaiind v. State of Punjab and others*. 1990 SCSR 282 ; *M/s. Prick India Ltd. and another v. State of Haryana and others* : AIR 1994 SC 2410 ; *State of Maharashtra Vs. Manubhai Pragaji Vashi and others*, , as well as decision of this Court in *Sushil Chandra Srivastava v. State of U. P. and others* (1996) 1 ESC 396. I have thoroughly studied and scrutinised the various observations made in the decisions, aforesaid. The gamut of these rulings, in short, is that when a governmental action is under challenge on the ground of arbitrariness, unfairness or unreasonableness, it is the duty of the Government to place reasons before the Court for passing such orders and when, *prima facie*, a plea of discrimination is made out, the burden to prove is on the State to show that it is not so or that a valid and permissible classification exists for differential treatment meted out to Government servants. There should be nexus between basis of classification and the object to be achieved.

8. There can be no quarrel with the proposition of law laid down in the aforesaid decisions relied upon by the learned counsel for the petitioners. The core question for determination is whether the petitioners are entitled, as of right, to out of turn promotion on the basis of their participation with other A.W.C. 207 members of the raiding party in the encounter, which culminated in the annihilation of the notorious criminal, Amar Pal. In my view, mere participation of the petitioners in the encounter would not furnish an indefeasible right to claim promotion out of turn. It is true that the petitioners did take part in the encounter as they were actively associated with the raiding party ; nevertheless, it is the subjective satisfaction of the departmental authorities to determine whether a particular employee who has been the member of the raiding party is entitled to out of turn promotion or not. Such satisfaction is to be arrived at with reference to the role assigned to the various members of the raiding party and the valour and courage exhibited by them and their situation and location at the crucial time. Some members are in the proximity and in the range of firing, while some are at considerable distance from other members to keep vigil and their participation may not be as dangerous and hazardous as it was in respect of the members who were in the closest possible proximity of the desperado who was sought to be apprehended. To quote an example, in a war. hundreds of soldiers, with their Commanding Officer and other officers take cudgels with the enemy and move together. They are all contributing their mite to challenge the enemy side. The participation of each one of the soldiers and officers is alike. If gallantry award is given to the head, who was in the command or to those soldiers who were in proximity, other members cannot, as a matter of right, claim that they should also be treated in the same manner. There has, of necessity, to be a

distinction in the selection of the awardees. The award would lose its importance and significance if it is given to every one of the members in the normal course. In the instant case, it has come on record that the notorious criminal died on account of the fires shot by respondent Nos. 6 to 8 who, it appears were in the closest possible proximity of Amar Pal. Originally, the respondent Nos. 6 to 8 were charged of the duty to apprehend Amar Pal dead or alive. The petitioners were detailed to join the party by way of re-enforcement. It is not that the distinctive services rendered by the petitioner have gone unnoticed and unrecognised. They have been Issued certificate of appreciation by the departmental authorities and have also been paid cash award. The two petitioners who are Sub-Inspectors, have been paid Rs. 4.000 each while the other two Constable-petitioners were paid Rs. 2.250 each. This should have been an endearing solace to the petitioners as their services have been duly recognised and appreciated by the departmental authorities.

9. In the facts and circumstances of the case, I am of the view that the petitioner did not have an innate right to claim promotion out of turn. The departmental authorities have ignored the case of the petitioners and have granted out of turn promotion to the respondent Nos. 6 to 8 on objective consideration of the entire matter. The controversy raised by the petitioners is not justiciable. The writ petition, therefore, turns out to be devoid of any merit and substance and is accordingly dismissed.