
(2012) 02 AHC CK 0131
In the Allahabad High Court
Case No : Service Single No. - 5870 of 2010

Shiv Ram Kushwaha

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 06-02-2012

Acts Referred:

Citation : (2012) 02 AHC CK 0131

Hon'ble Judges : Devendra Kumar Upadhyaya, J

Bench : Single Bench

Judgement

Hon"ble Devendra Kumar Upadhyaya, J.—By means of the instant writ petition, the petitioner seeks indulgence of this Court for getting him promoted on the post of Company Commander in PAC with effect from the year 1994-1995 and to grant him all consequential benefits.

2. Since the affidavits in the writ petition have been exchanged, the Court proceeds to decide the matter finally.

3. Heard Sri Virendra Singh, learned counsel for the petitioner and learned Standing Counsel appearing for the respondents.

4. The petitioner, who has been claiming out of turn promotion to the post of Platoon Commander on the basis of excellence achieved by him in All India Police Games in 1987 and 1988, filed writ petition before this Court bearing W.P.No. 5023 (S/S) of 1995 which was decided finally by means of judgment and order dated 09.05.1996 wherein it was directed that the petitioner be promoted as Platoon Commander in pursuance of the recommendation made in the letter dated 13.08.1991 and thereafter he be sent for training within one month from the date of such promotion.

5. In pursuance of the order passed by this Court in the aforesaid writ petition, the petitioner"s case for out of turn of promotion was considered on the post of Platoon Commander and accordingly, vide order dated 05.03.1997 he was

promoted on the said post. In the meantime, it appears that the petition for review of the judgment and order dated 09.05.1996 was also filed by the petitioner before this Court which was dismissed vide order dated 13.01.2004 observing therein that case of the petitioner has been considered by the competent authority and promotion order has also been passed on 05.03.1997 and since then the petitioner is working as Platoon Commander, as such the review petition deserved to be dismissed. Thereafter, the petitioner filed another writ petition bearing W.P.No. 904 (S/S) of 2004 praying therein that he be given promotion on the post of Platoon Commander w.e.f. 1991 and further that all other consequential benefits including benefit of promotion on the post of Company Commander be also accorded to him. The said writ petition was disposed of by this Court by means of order dated 11.08.2004 providing therein that the Government shall take a decision in light of recommendation sent by the PAC, Headquarters. In compliance of the aforesaid order dated 11.08.2004 passed by this Court, the State Government considered the matter and passed an order on 10.02.2005 giving relaxation in the selection process and eligibility conditions for the purpose of grant of out of turn promotion to the petitioner w.e.f. 13.08.1991. In view of the aforesaid order passed by the State Government on 10.02.2005, the Director General of Police, PAC passed an order on 16.02.2005 providing promotion to the petitioner on the post of Platoon Commander w.e.f. 13.08.1991.

6. However, it appears that the petitioner's grievance regarding fixation of pay treating him to have been promoted on the post of Platoon Commander w.e.f. 13.08.1991 and arrears of salary etc. accrued on account of said promotion and further, his case for promotion on the post of Company Commander, was not redressed which resulted into filing of another writ petition before this Court, namely, W.P. No. 1687 (S/S) of 2009. The said writ petition was also decided on 19.03.2009 with a direction to the competent authority to consider and decide the controversy with regard to consequential benefits of service to the petitioner. In compliance of the aforesaid order dated 19.03.2009, the Additional Director General of Police, PAC has considered and decided the case of the petitioner vide order dated 18.05.2009 which is under challenge in this writ petition.

7. The grievance of the petitioner has been thus two folds; (1) his out of turn promotion w.e.f. 1991 and all monetary consequential benefits (2) his promotion to the post of Company Commander w.e.f. 1994-1995.

8. I have perused the order dated 18.05.2009 whereby the case of the petitioner has been considered by giving reasons and it has been held that petitioner's promotion on the post of Platoon Commander has been dated back w.e.f.13.08.1991 and arrears accrued on account of aforesaid dating back has also been paid to him. It has also been held that after completion of eight years satisfactory service, he has been given time-bound pay scale and arrears. Thus, so far as the grievance of the petitioner relating to dating back his promotion on the post of Platoon Commander and consequential monetary benefits is

concerned, the same stands redressed to the satisfaction of the petitioner. So far as the claim of the petitioner for promotion on the post of Company Commander w.e.f. 1994-1995 is concerned, the impugned order clearly mentions that the petitioner has been promoted in the year 1997 on the post of Platoon Commander and was sent for training of Sub Inspector, Armed Police. After completing the said training he appeared in the selection training course of reserved Sub-Inspector twice held in the year 2001 and 2002 but he could not qualify, rather failed in these two attempts. It has also been said in the impugned order that once he cleared selection held for Sub-Inspector Training Course in the year 2006 he was subjected to practical training of period of a 11 and a half months and thereafter as per provisions contained in para 435 of the Police Regulations he has been given benefit of promotion on the post of Company Commander w.e.f. 31.02.2008.

9. Contention of learned counsel for the petitioner that had he be given promotion initially w.e.f. 1991 itself, he may have opportunity to appear in the selection for training course for reserved Sub-Inspector prior to the year 2001-2002 and thereafter he may have passed the same. Accordingly, he may have been promoted on the post of Company Commander in the year 1994-1995.

10. As regards the grievance of the petitioner regarding dating back his promotion on the post of Company Commander is concerned, the issue needs consideration by this Court as to whether in the light of provision contained in para 435 of the Police Regulations, the petitioner is entitled for being given the benefit of dating back his promotion on the post of Company Commander.

11. During the midst of dictation of this judgment in the Court, the Court asked the learned counsel for the petitioner as well as learned Standing Counsel as to how para 435 of the Police Regulations will govern the field for promotion on the post of Company Commander in PAC. On the said question, learned counsel appearing for the parties pray for and are granted one week's time to study the matter.

12. Accordingly, list this case after expiry of the aforesaid period for further hearing.