
(2001) 02 AHC CK 0048
In the Allahabad High Court
Case No : Writ Petition No. 1873 (S/B) of 1999

Surendra Singh

APPELLANT

Vs

State of U.P and others

RESPONDENT

Date of Decision : 15-02-2001

Acts Referred:

Citation : (2001) 2 AWC 1106 : (2001) 89 FLR 562 : (2001) 3 UPLBEC 2069

Hon'ble Judges : I.M. Quddusi, J

Bench : Single Bench

Advocate : Akhilesh Kalra, for the Appellant; C.S.C., for the Respondent

Final Decision : Allowed

Judgement

M. Quddusi, J.—By means of this writ petition, the petitioner has challenged the order dated 2nd September, 1999, putting the result of promotion of the petitioner on the post of Inspector of Police in a sealed cover.

2. The necessary facts draped in brevity are that the petitioner was enrolled as Constable in U. P. Police on 13.3.1975 and after completing 5 years service, he appeared for selection to the post of Sub-Inspector and on 1.6.1980, the petitioner was selected accordingly. After completing the training, the petitioner joined as Sub-Inspector w.e.f. 1.6.1981 and out of 1,200 candidates, the petitioner was figured at S1. No. 9 in the list. It has been averred that the petitioner had received 112 cash awards and as many as 76 good entries. These awards were granted sometimes by the Inspector General of Police and sometimes by the Deputy Inspector General of Police. He has completed refresher course between 24.4.1987 to 23.5.1987 at P.T.C. Moradabad. It has been urged that as per the Police Regulations applicable on the post of inspectors from the post of Sub-Inspectors, the Director General of Police is required to prepare a list of selected Sub-Inspectors, approved for inclusion of their names in C. I. List-11 and after inclusion of the names, these inspectors are sent for training and then are promoted to the post of Inspectors. Lastly, the selections

were held in the year 1991 and thereafter, no selection was held in spite of the fact that as per the requirement, the C. I. List-II should be prepared every year. The petitioner was called for interview on 29.5.1997 while posted as Station Officer of Police Station. Jagdishpur district Sultanpur. He was informed during the interview that his record of refresher course was not available and, therefore, two marks of the petitioner were deducted on account of non-availability of the refresher course before the Selection Board. The result of C. I. List-II was published on 17.6.1997 but the petitioner's name was not included in the list.

3. Feeling aggrieved, the petitioner filed representation on 8.7.1997 praying therein that he should have been awarded two marks of refresher course, pursuant to which, the Inspector General, Lucknow Zone vide letter dated 5.8.1997 requested the I. G. Administration to send all the material relating to all the appreciation, prizes, good entries awarded to the petitioner.

4. Ultimately, the petitioner filed a Writ Petition No. 5700 (S/S) of 1997 which was disposed of vide order dated 10.3.1999 directing the authorities to consider the representation of the petitioner taking into consideration the report of the Superintendent of Police, Sultanpur dated 24.11.1997. It has been stated in para 25 of the writ petition that instead of adding two marks to the total marks already awarded to the petitioner, the respondent though found the petitioner suitable but ordered the result of the petitioner to be kept under sealed cover in view of the charge-sheet filed on 22.3.1999.

5. Learned counsel for the petitioner has strenuously urged that on the relevant date, i.e., 29.5.1997, there was no charge-sheet against the petitioner and for the inaction of the respondents authorities, the petitioner should not have been penalized because if on 29.5.1999, two marks of the refresher course would have been added/awarded to him by the Selection Committee, the petitioner would have been declared promoted.

6. In the counter-affidavit filed on behalf of the respondents. It has been admitted in para 5 thereon that the petitioner has completed refresher course from P.T.C. Moradabad. In para 7, it has been admitted that record pertaining to refresher course of the petitioner was not available before the departmental Selection Committee. In para-9, it has been mentioned that the name of the petitioner has been recommended for inclusion in the C. I. List-II but due to submission of charge-sheet against the petitioner on 22.3.1999, result has been kept In sealed cover.

7. Learned counsel for the petitioner has placed reliance on the case of W.P. No. 35034 of 1998, Mahboob Alam Khan v. State of U. P. and others, operative portion of which runs as under:

"In the result, the writ petition succeeds and is allowed. Order dated 1.8.1998 passed by the respondent No. 2 (Annexure-18 to the writ petition) is quashed. Respondents are directed to open the sealed cover with regard to promotion of the petitioner and pass appropriate orders for promotion of the petitioner with

effect from the date his juniors were promoted and maintain his seniority in the promotion list within one month from the date of production of a certified copy of this order is produced before the respondent No. 2. Parties shall bear their own costs."

8. The Apex Court in the case of Union of India Vs. K.V. Jankiraman, etc. etc., in which it has been held in para 17 of the report as under:

"There is no doubt that there is a seeming contradiction between the two conclusions. But read harmoniously, and that is what the Full Bench has intended, the two conclusions can be reconciled with each other. The conclusion No. 1 should be read to mean that the promotion, etc. cannot be withheld merely because some disciplinary/ criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge memo/charge-sheet has already been issued to the employee..."

9. I have carefully gone through the facts and circumstances of the case and I am of the opinion that undisputedly, the name of the petitioner could not be included in the C. I. List-II by the departmental Selection Committee held on 29.5.1997 for the reason that the record pertaining to the refresher course of the petitioner was not available before the Selection Committee. Thus, it is clear that on 29.5.1997 there was nothing against the petitioner. Had he been granted two marks of the refresher course, he would have been selected/promoted as the last candidate who had been selected had obtained 72.25 marks and the petitioner is shown to have obtained 71.25 marks irrespective of the fact that two marks of his refresher course were not added and if the aforesaid two marks had been added, the petitioner would have got 73.25 marks making him eligible for promotion.

10. In view of the discussions made above, the writ petition is allowed. The impugned order dated 2.9.1999 passed by the Deputy Inspector General of Police (Establishment), Allahabad, is quashed. The respondents-authorities are directed to open the sealed cover with regard to the promotion of the petitioner keeping in view the position prevailing, as on 8.7.1997, the date of declaration of the result as on that date, there was nothing adverse against the petitioner in the light of the observations made above, within a period of six weeks from the date of production of a certified copy of this order before the competent authority.