

(2004) 12 J&K CK 0012

In the Jammu And Kashmir High Court

Case No : SWP No's. 1018 of 2000, 1373, 2063 and 2178 of 2003, 1373, 1471, 2609, 2703 and 2847 of 2002, 12 and 383/01 and 766 of 2004

Tilak Raj Thakur and Others

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 23-12-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 1 JKJ 615

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Advocate : D.C. Raina, R. Pant, S.K. Shukla, S. Kour, M.S. Qureshi, Ajay Abrol, Ruchi Bhakhri and Sunil Sharma, for the Appellant; B.S. Salathia, AAG, for the Respondent

Judgement

Permod Kohli, J.

SWP No. 1425/03, LPA (SW) No. 441/01, SWP No. 1435/95

1. Petitioners in all these writ petitions are police officials serving in the Jammu and Kashmir Police in various categories. They have projected a

common cause for seeking out of turn promotions in the police department on the basis of their exceptional role in combating militancy and acts of

bravery, efficiency etc.

2. Before dealing with the individual cases on the basis of allegations contained in the writ petitions, it is relevant to note that out of turn promotions

in the Police Department is provided under Rule 400 of the Police Manual only. Said rule is quoted hereunder:

400. SPECIAL PROMOTION TO RECIPIENT OF THE PRESIDENT'S POLICE MEDAL:

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Any Constable or head Constable (Senior Grade) who is awarded the President's or Police Medal may be considered for promotion to the next

higher rank if he is found otherwise suitable.

3. From the facts as pleaded in different writ petitions, it becomes apparent that out of turn promotions granted so far are not covered by the

above quoted rule but on some other considerations reference to which shall be made at the appropriate stage. Therefore, the claims of the

petitioners have to be examined not only in view of the above rule but on other norms and criterion, if any, laid down by the Government. Facts of

each case are being briefly noticed: --

SWP No. 1018/ 2000.

4. Petitioner in this case on being recruited as Constable in the year 1975 came to be promoted as Head Constable in the year 1982. He was

posted in Police Station, Marwah in the year 1991. On the intervening night of 6th/7th December, 1991 Police Station, Marwah was attacked by

armed militants. Petitioner claims to have displayed exceptional bravery in repulsing the militants attack and even chased the militants, who

escaped leaving behind some arms and ammunitions which were recovered. Based upon the afore-said role of the petitioner he was recommended

for Police Medal in the year 1994 and again in the year 1995 and 1996. However, petitioner received the Police Medal in the year 1997 from the

President of India. Based upon award of Police Medal, the petitioner represented for 'out-of-turn' promotion under Rule 400. His case was

recommended by the DIG Police as also by the IGP Police Jammu Zone, Jammu. In the meanwhile, the petitioner came to be promoted as

Assistant Sub Inspector on 16-6-1998 on his own turn. The claim of the petitioner for out of turn promotion however, came to be rejected by

respondent No. 2 vide the impugned order No. 2700 of 1999 dated 20-8-1999. It is this order which has been challenged.

In the reply filed by the respondents award of Police Medal to the petitioner has been admitted. It is stated that 'out of turn' promotion is granted to

police official on the basis of out-standing performance when the department is fully satisfied and the case is thoroughly examined by the Board of

Officers. On scrutiny of the record nothing special has been found in the case of the petitioner, hence his claim is not justified.

JODH LAL v. State: SWP No. 2063/03.

5. Petitioner in this case was serving as Head Constable from 1979. In the year 1990 he was posted in Counter Intelligence Wing of CID where

he was required to maintain the secrecy. Though he claimed to have worked in Counter Intelligence Wing, but no formal order has been passed

showing him in the said Wing of the police for the purposes of secrecy and security and he was shown to have worked as Steno/Typist. It is stated

that he collected important and sensitive information against the dreaded militants during 8 years of militancy in Kashmir and based upon this

information which was forwarded to his immediate officer i.e. Superintendent of Police a large number of militants were killed and nabbed. His role

has been acknowledged in letter dated 22-3-1997. Petitioner has earned 83 Commendation Certificates with cash rewards for his outstanding

performance. His case was recommended for out of turn promotion by the Superintendent of Police, CIF, CIK in the year 1994 and in the year

1996 by the Addl Supdt of Police. He was also in the hit-list of militants. Since his name was not considered he filed a writ petition No. 2499/98

which was decided vide order dated 18-12-1998 with a direction to the respondents to consider him for out of turn promotion as Assistant Sub

Inspector. On being denied the consideration he filed another writ petition SWP No. 791/2000 which also came to be disposed of with the similar

direction. The claim of the petitioner has been rejected vide the impugned order No. 3126 of 2003 dated 10-9-2003.

6. In reply, it is stated that pursuant to the directions of the Court the case of the petitioner was examined at Police Head Quarter. Petitioner was

posted as Typist in CID, whereas the private respondents were given promotions purely on operational ground and on separate recommendations

for exhibiting extra-ordinary performance. Petitioner's claim was not found in such recommendation and accordingly vide a speaking order No.

3126 of 2003 dated 10-9-2003 his case was rejected.

HAQ NAWAZ SWP NO. 2703/ 2002

7. Petitioner in this case was posted as SHO Police Station, Darhal between the period August, 1997 to 1998. Said area having been infested with

militancy, the petitioner claims to have captured a large number of militants and recovered huge quantity of arms and ammunition. Based upon his

performance and anti-militant operations, his case was recommended by the then Superintendent of Police, Rajouri vide his letter No. 3060-62/C

dated 8-6-1999. Even one Colonel Vijay Kumar also wrote letter of appreciation to the DIG Police, Rajouri-Poonch range in the year 1999.

Petitioner was awarded the Director General of Police's Commendation Medal in the year 1997. It is alleged that despite his case having been

recommended he was not given out of turn promotion and same benefit has been conferred upon number of other persons by adopting pick and

chose policy. Petitioner has referred some cases where out of turn promotions have been granted in the police department as contained in

Annexure A with the writ petition.

Sheetal Prasad v. State: SWP No. 2609/02.

8. Petitioner in this case was working as Selection Grade Constable and posted at Srinagar. He opted for his participation in almost all the major

operations undertaken by the SOG against the militants. Based upon his performance he was allowed one Out of Turn Operation vide PHQ Order

No. 1131/97 dated 13-5-1997 as Head Constable. It is stated that even as Head Constable he voluntarily joined SOG Baramulla and again

exhibited his exemplary sense of duty, professionalism and courage during various anti-militancy operations. Some of the instances given by the

petitioner's participation are contained in para 6 of the writ petition. As per the details he was party to killing of a number of militants and recovery

of arms and ammunition on various occasions in the year 1997. It is alleged that on the basis of his performance his name was recommended for

out of turn promotion from Head Constable to Asstt Sub Inspector by the Superintendent of Police (Operation) Baramulla vide his No. SOG

(P)/98/REC-2/2079 dated 8-12-1998. Even the DIG Range Baramulla further recommended the case of the petitioner alongwith others for out of

turn promotion. However, the case of the petitioner has been rejected on the ground that he has already earned Out of Turn Promotion. Petitioner

has referred to certain other police officials who have been allowed more than one out of turn promotions. It is stated that the petitioner has been

discriminated in the matter of granting second out of turn promotion to him. It is further stated that the petitioner was one of the member of the

Team who performed anti-militancy operations.

Parlahad Singh v. State ;SWP No. 2178/03

9. Petitioner in this case was serving as SGC and posted in District Pulwama. He claims to have participated in various anti-militancy operations as

he had volunteered his services for Operational Group of Pulwama District in February, 1997. Superintendent of Police (Operation) Pulwama vide

his letter No. OPS/P-1/23-25 dated 3-1-2003 sent the Citation (Recommendation) of the petitioner to the Sr. Supdt of Police, Pulwama for out

of turn promotion as Head Constable. Petitioner has listed some events where he had participated in various anti-militancy operations. All these

pertain to the year 2002. Even the DIG Police SKR Anantnag recommended the case of the petitioner for out of turn promotion vide his letter

dated 18-2-2003. Inspector General of Police also recommended his case vide letter No. KZ/CS/Pul/KZ/CS/OTP Pul/20 dated 24-5-2003 to

the Director General of Police for Out of Turn Promotion. It is alleged that the respondents have not considered the case of the petitioner and on

the other hand a large number of other persons have been given Out of Turn Promotions including respondents No. 8 to 10. Respondents No. 9 &

10 have been given two out of turn promotions. Petitioner has also given details of his participation in anti-militancy activities. He has also been

given a Citation and cash reward at various occasions.

10. Respondents in their brief reply admitted that the petitioner was given cash reward number of times. Regarding his claim for out of turn

promotion, it is simply stated that on account of individual facts and circumstances of his case he could not be granted out of turn promotion. It is

stated that the petitioner has been suitably rewarded for acts of his bravery and he cannot claim out of turn promotion as a matter of right.

Vishal Sharma v. State ; SWP No. 1373/03.

11. Petitioner in this case while serving as Sub Inspector and posted at Police Station, City Jammu killed one terrorist during the 'Fidayeen' attack

on Raghunath Temple, Jammu. It is claimed that his act of bravery was widely appreciated by the public and police department. He was promised

out of turn promotion by the then Superintendent of Police, City North, Jammu who recommended his case for out of turn promotion. The matter

is still under consideration. It is further stated that some of the persons who were responsible for making recoveries of arms and ammunitions

simply participated in anti-militancy operations, have been allowed out of turn promotions, whereas the petitioner who killed a militant risking his own life, has not been given the same promotion. The representation filed by the petitioner has not been given any consideration.

12. Respondents in their short- reply admitted the participation of the petitioner in Raghunath Bazar encounter. It is stated that the petitioner was one of the member of the Team, which successfully conducted the encounter at Raghunath Temple. It is also admitted that the general public appreciated the role of J&K Police. On this the case of the petitioner was recommended for suitable reward. Petitioner and some other Members of the Team have been granted cash reward besides President/ Police Madels. It is further stated that out of turn promotion cannot be claimed as a matter of right.

Farooq Ahmed v. State: SWP No. 1471/2002.

13. While being posted petitioner claims to have participated in encounter with militants at Obaripora, District Poonch and succeeded in eliminating the militants. Petitioner also came to be injured in this attack and was referred to Govt. Medical College, Jammu for treatment. It is alleged that he is entitled to out of turn promotion in accordance with the scheme formulated by the State in this regard.

14. In the counter filed by the respondents, it is stated that the petitioner while working as a police constable was one of the participant in the police party comprising of 14 personnels, which killed the militants on 1/ 2 Oct 2001 at Uripora and recovered arms and ammunition. SHO Police Station, Poonch recommended to DIG Range Rajouri- Poonch for cash reward and an amount of Rs. 25,000/- was given as a token of encouragement. Petitioner has been given the highest amount of Rs. 4000/- through Sr.Suptd of Police, Poonch vide his order No. 382 of 2002 dated 14-3-2002/ It is further stated that none of the Members of the Team have been recommended or granted out of turn promotion.

Respondents have also placed reliance on the judgment dated 16-3-2002 of this Court in LPA(SW) No. 441/01 titled Maqbool Hussain Shah v.

State of J&K and Ors. It is stated that the petitioner cannot claim out of turn promotion as a matter of right.

Madan Lal v. State; SWP No. 383/2001

15. While serving as Head Constable in police, the petitioner was on leave on 12-9-1999 to his house at village Drakad (Hiranagar). At about 8.30 PM two Pak Trained militants entered into the village and asked for shelter and meals in the house of one Bimla Devi. Son of Bimla Devi provided food to them and in the meanwhile Bimla Devi informed her neighbour regarding the presence of militants. One neighbour of Bimla Devi informed the villagers including the petitioner. Petitioner rushed to spot and managed to snatch AK-56 rifle from one of the militants and one pistol from another. One militant also tried to hurl grenade on the villagers but was over powered by the petitioner. Petitioner locked both the militants in a room and asked the villagers to bring the police party. Subsequently Army came and recovered a large quantity of arms and ammunitions as detailed in para 7 of the writ petition. Authorities issued a letter of appreciation in favour of the petitioner. Even the local MLA recommended the case of the petitioner for out of turn promotion. Respondent No. 2 however, vide order No. 1508 of 2000 dated 26-5-2000 sanctioned cash reward of Rs. 10,000/- which was disbursed to the petitioner. It is however, stated that respondents have granted out of turn promotions to a large number of police personnel. Petitioner has placed on record copies of the various orders whereby the out of turn promotions have been granted to various persons. However, the petitioner has been denied the similar treatment for out of turn promotion to the post of Assistant Sub Inspector. Claim of the petitioner has been rejected vide communication dated 18-12-2000 on the ground that the petitioner has accepted the rash reward and his case for out of turn promotion is not justified. Respondents however, admitted in reply to paras 3 to 5 that the petitioner had apprehended two Pak trained militants alongwith arms and ammunitions. He was given cash reward. It is further stated that some persons, who are posted with the Ministers as Security Officers and even doing ministerial jobs have been given out of turn promotion. It is also admitted that an MLA recommended the case of the petitioner, but that cannot be made basis for grant of out of turn promotion.

Satpal Singh and Ors. v. State; SWP No. 766/03

17. Petitioners in this case were serving as Head Constables. They have been given commendation certificate and recommended for out of turn

promotion. Even the petitioner No. 1 was given Rs. 10,000/- cash reward. Similarly situated persons named in the petition are said to have been

granted out of turn promotions, whereas the case of the petitioners has not been considered.

Gurdev Singh and Ors. v. State: SWP No. 12/01

18. Petitioners in this case while posted in Kishtwar as Constables launched operation of STF Kishtwar on the intervening night of 27th June,

2000. The team headed by Shalli Singh, Inspector comprises of 10 constables and 7 SPOs. One militant Hakim Din was killed and one AK 47

Rifle and other arms and ammunitions were recovered. Petitioner also suffered injury in that operation. Sub Divisional Police Officer, Kishtwar

recommended for reward for the excellent work done during militancy operation. Respondents No. 7 to 9 have been given out of turn promotions,

whereas the petitioners have been given additional increments. Respondents No. 7 to 9 have been promoted as Selection Grade Constables vide

order No. 3289 of 2000 dated 5-9-2000. It is alleged that though Sr. Supdt of Police Doda had issued an order dated 8-9-2000 recommending

the out of turn promotion of respondents No. 7 to 9 on the basis of an encounter of 21-6-2000 and claimed to have killed four militants, however,

no such encounter took place on the said date. As per the report in the roznamcha undue favour has been given to the respondents No. 7 to 9,

whereas the case of the petitioner for out of turn promotion has not been considered. Some names have been mentioned of some of the officials

who have been given out of turn promotions.

19. In reply, it is stated that the petitioners No. 1 to 7 are working as Constables and petitioner No. 8 as SPO. They are not entitled to out of turn

promotions. Operation in which the petitioners claim to have taken part was undertaken by STF Wing, Petitioners were required to perform the

duty and are not entitled to any such out of turn promotion.

Bishamber Dass v. State, SWP No. 2847/02.

20. In the year 1990 petitioner came to be posted to Police Post, Lakhanpur. On 20-11-2001 while he was on patrolling duty. He intercepted a

jeep which was allowed by other police officials and recovered two AK 56 Rifles, two Magazines; 4 Grenades, Rounds 1397 and arrested two

militants. Case of the petitioner was forwarded for out of turn promotion. He also

preferred a representation. However, his case for out of turn promotion has been rejected and he has been given cash reward of Rs. 10,000/-. On being denied the out of turn promotion, the petitioner filed SWP No. 1267/02 which was disposed of vide judgment dated 13-5-2004 and respondents were directed to take notice of the prayer of the petitioner and dispose of his claim. Claim of the petitioner has been rejected vide order No. 3854 of 2002 dated 21-10-2002. It is this order which has been assailed in the present writ petition. Petitioner has also claimed parity with one Pran Nath, who was given out of turn promotion and rewarded Rs. 10,000/- for arresting two militants.

Mohd Hanif v. State; SWP No. 1373/2002.

21. Petitioner's claim for out of turn promotion has been rejected vide order No. 2982 of 2001 dated 28-8-2001. It is stated that his case was recommended for out of turn promotion for having acted in anti-militancy operation. A large number of police officials have been allowed out of turn promotion, details of which have been given in the writ petition. It is alleged that Circular No. 14-GR of 1990 dated 6-3-1990 enjoins upon the respondents to consider such cases where the performance of the officials is exceptional and the same has been recognized by the superior officers. Petitioner has been discriminated against similarly situated persons whose names have been given in the writ petition.

22. In the counter affidavit filed by the respondents, it is stated that the petitioner while serving as Constable in 9th Bn of Armed Police was given out of turn promotion from constable to the rank of Selection Grade Constable in the year 1994 and after receiving the out of turn promotion he did not perform his duties satisfactorily as a result of which he was reverted back. The reversion order was challenged in SWP No. 268/ 1998 which was disposed of on 23-2-1998 with the direction to treat the writ petition as representation and pass appropriate orders. A speaking order was passed and the petitioner was adjusted in the Security Wing . Petitioner did not ful-fill the norms laid down in Government order No. Home 3(P)/ 2000 dated 6-1-2000 for out of turn promotion. Claim of the petitioner for promotion to the post of Head Constable and then to Assistant Sub Inspector was rejected by passing a speaking order being Order No. 2982/ 01 dated 28-8-2001. Reliance is placed upon the judgment of

this Court in Aabdul Rehman Bhat v. State of J&K and Ors., SWP No. 685/2001 where-under it is observed that this is a matter on which

decision has to be taken by the respondents. It is further stated that no recommendation was ever received in case of the petitioner that he has

performed a commendable job in anti- militancy activities and is entitled to out of turn promotion.

23. From the factual background as noticed above in various writ petitions, there are different categories of petitioners viz --

(i) the petitioners in whose case there are recommendations made by the officers of the rank of Superintendent of Police and above;

(ii) The officials/ petitioners whose cases have been considered and rejected;

(iii) Officials in whose case no recommendation has been made.

However, in case of all the three categories, there are certain common factors--

(i) All the petitioners claim to have participated in anti-militancy operations or other incidents or operations;

(ii) All the petitioners are claiming parity with other similarly situated officials, who have been granted out of turn promotions.

24. After hearing of the case, respondents were directed to produce the norms, governing the out of turn promotions and produce the record

relating to Out of Turn promotions granted from 1990 onwards.

25. Respondents have produced copy of the Government No. Home 3 (P) of 2000 dated 6-1-2000 with the subject,"" Procedure for out of turn

promotion in Police Department"". It may be useful to refer to the procedure laid down in this Government order which is re-produced as under: --

(i) Normally, exceptional/ outstanding performance would be rewarded with awards, medals of even advance increments;

(ii) Out of turn promotion would be considered only for consistently exceptional performance on the anti-militancy front and for this purpose

dossier/citation would be prepared carefully and cross checked before putting final stamp of authenticity by the Director General of Police.;

(iii) The recommendations of the Director General of Police alongwith the dossier/ citation, APR resume and vigilance clearance, the extent of

deviation from the seniority rule, etc, would be placed before the Home Department Selection Committee for consideration/ recommendation;

(iv) The recommendations of the Selection Committee would be placed with prior

approval of the Minister of State, Home Department before the

Chief Minister through Chief Secretary in Coordination for his approval to out of turn promotion in relaxation of rules.

(v) With approval of Hon'ble Chief Minister conveyed through General Administration Department (Coordination) orders would be issued by the

Home Department.

26. As per the details provided as many as 1429 out of turn promotions have been made at different levels right from the post of Constable to the

post of Inspector. Respondents have also furnished a list of as many as 107 Constables, Selection Grade Constables, Head Constables and

Assistant Sub Inspectors, who have been given more than one out of turn promotions.

27. As far the rule position is concerned as noticed above, it is Rule 400 which is the only statutory rule providing for out of turn promotion. In this

Rule only a Police Official of the rank of Constable or Head Constable (Senior Grade) who is awarded the President's or Police Medal can be

considered for promotion to the next higher rank. Respondents as also the petitioners have taken a categorical stand in most of the writ petitions

that due to peculiar situation in the State in the year 1989 and there-after when there was hardly any participation of the local police because of

militancy it was decided to encourage the local police for anti-militancy operations to make the same more effective and successful. With a view to

achieve this object local police officials were given incentives of out of turn promotions on the basis of their exceptional performance on the

militancy front. This emboldened and encouraged the local police without whose involvement it was not possible to fight militancy and terrorism. It

is under these circumstances the State Government adopted the procedure for out of turn promotions.

28. Government order dated 6-1-2000 noticed hereinabove clearly laid down that out of turn promotions will be considered only for consistency

and exceptional performance on the anti-militancy front. It further provides for preparation of dossiers/citations and cross checked before putting

final stamp of authenticity by the Director General of Police. The recommendation of the Director General of Police alongwith the dossier/citation,

APR, resume and vigilance clearance and also the extent of deviation from the

seniority rule is to be placed before the Home Department/

Selection Committee for consideration/ recommendation. The recommendation of the Selection Committee are further required to be placed with

prior approval of the Minister of State, Home Department before the Chief Minister through Chief Secretary in Coordination for his approval to

out of turn promotion in relaxation of rules and final orders are to be passed with the approval of Chief Minister through General Administration

Department (Coordination) by the Home Department.

29. It is argued on behalf of petitioners in some of the petitions that no out of turn promotion is permissible except as provided under Rule 400. As

noticed above Rule 400 prescribe only one category of persons who may be considered out of turn promotion. Rule clearly prescribes that the

cases of Constables/head Constables, who are the recipients of President and Police Medals/ awards may be considered for out of turn

promotions./ Keeping in view the rule position, it is not mandatory that every constable/Head constable who may be recipient of police Medal is

necessarily to be allowed out of turn promotion. However, rule has to be applied objectively and uniformly. In view of the common stand of the

petitioners as also the respondents State that to encourage the involvement of the local police officials on the anti-militancy front, the State

Government formulated a policy of granting out of turn promotion in combating militancy as their involvement was imperative to achieve the object.

Such a policy cannot be said to be bad in any manner. This policy is in addition to the category of people who may be considered for out of turn

promotion as prescribed under Rule 400. It has been revealed from the pleadings that based upon the State Government's policy providing

promotional avenues to the local police officials for out of turn promotion, a large number of local police officials voluntarily opted for STG Group

and other such organizations which are created/ constituted as special Teams to fight militancy.

30. As far as the policy laid down vide Govt. order dated 6-1-2000 is concerned, it provides out of turn promotion in case of such of the officers

whose performance on anti-militancy front was ""consistent and exceptional"". What can be an exceptional act or bravery can only be adjudged and

evaluated by the manner in which the person has behaved and the out come of

the incident/ operation/ encounter. As far as this Court is concerned, it cannot have any such expertise to adjudge and evaluate the same. It is for the competent authority and experts in the field to evaluate.

In addition to that the cases of individuals have to be considered not only on the basis of their performance in a particular event but also their APRs, Vigilance clearance and the extent of deviation from the seniority rule. None of the orders placed on the record in all these writ petitions indicate that all these factors were taken into consideration while granting out of turn promotions to various individuals/ officials. Even in the replies filed in various writ petitions it has not been indicated that the personal profile of the petitioners including their APRs, vigilance clearance and seniority position was ever examined while evaluating their participation in anti-militancy operations. Policy further laid down that all cases of out of turn promotions have to be examined by selection committee constituted for the purpose and even the recommendations of the selection committee are to be approved by the Minister of State, Home Department and by the Chief Minister before an order is issued. Respondent-State has nowhere disclosed to the Court whether all cases of promotions were examined and considered by such a selection committee and approved by the Minister of State and Chief Minister before the orders are issued. Though the respondents/ were/ are to examine the performance of every individual and team of officials and their actions in the anti militancy operations to decide whether they are entitled to be considered for out of turn promotion, but the fact remain that norms have to be applied with uniformity. In some of the writ petitions filed by the ministerial staff the stand of the respondents is that it is only such of the police officials who participate in field in anti-militancy operations are entitled to be considered for out of turn promotions. Such a stand is taken in Jodh Lal's case and his claim was rejected on the plea that a person belonging to ministerial cadre is not entitled to out of turn promotion, whereas Pawan Kumar, Head Constable was granted out of turn promotion even vide order dated 6-8-1996 when he belongs to ministerial cadre.

31. Similarly, in writ petition SWP No. 1018/2000 copy of order No. 308 (c) of 1996 dated 6-8-1996 has been placed on record whereby Head Constable (M) Pawan Kumar working in ministerial cadre has been given out of

turn promotion as Assistant Sub Inspector (M) on the recommendation of Inspector General (CID). In the supplementary affidavit filed before this Court in the afore-said writ petition by the Director general of Police, it is stated that criterion adopted for out of turn promotion was the recommendation of the Field Agency and keeping in view the performance of each individual in fight militancy i.e. killing of the militants or actively taking part in destroying the militant's net work and their hideouts. In reply to the supplementary affidavit, a number of examples have been given to show that promotions have been granted to even such persons who were serving in the ministerial cadre. One Manzoor Ahmed, Sub Inspector (M) belonging to the ministerial cadre has been promoted vide order No. 3 of 1999 dated 1-1-1999. It is stated in some of the cases that only one out of turn promotion is permissible. It is further stated that a number of persons have been granted two or more out of turn promotions, one Jai Pal Singh, who was working as Selection Grade Constable was granted out of turn promotion to the rank of Head constable vide order No. 1234 of 1998 dated 22-4-1998. He was granted further promotion as Assistant Sub Inspector vide order No. 2687 of 1998 dated 14-8-1998. Similarly, one Noor Mohd Selection Grade Constable was promoted as Head Constable vide order No. 3439 of 2000 dated 17-10-2000 and within a period of one month he was further promoted as Assistant Sub Inspector vide order No. 3852 of 2000 dated 25-11-2000.

32. As noticed above as many as 107 persons have been given more than one out of turn promotions. It has also been brought on record that not only the persons who were working in the ministerial cadre, but persons who are engaged as Wireless Operators and drivers have been given out of turn promotions. Copy of order No. 3889 of 2001 dated 10-11-2001 has been placed on record where the drivers and wireless operators have been given out of turn promotions. This was on the ground that some of the officials have worked beyond office hours at the cost of their personal comforts.

33. It has also been brought on record that some officials posted as PSOs with VVIPs have also been given out of turn promotion though they never participated in any anti-militancy operations and there were no such

reports or recommendations in their favour.

34. From the above, it appears that though policy has been framed which may have a laudable purpose, but the question arises has this policy been

implemented in right earnest and genuine persons have been given benefit of the same or the same has been used to promote the officials on the

basis of liking and dis-liking and on consideration other than for which the policy has been formulated.

35. As noticed above some of the petitioners have performed on anti-militancy front with great courage, and dedication. They have been granted

President and Police Medals as well as various cash rewards like the petitioner in SWP No. 1018/ 2000, who was awarded police Medal for

excellent service and also President Medal and citation. Similarly, the petitioner in SWP No. 383/ 2001 has been given cash reward. Similarly,

petitioners in other petitions have been given various cash rewards and other Medals, but they have neither been considered for out of turn

promotion or considered and rejected. No circumstances have been shown how their cases are distinguishable from those who have been granted

out of turn promotions, particularly in some of the cases where the persons have been granted two out of turn promotions within a span of one

month or few months. Therefore, on the basis of the facts noticed, it will not be out of context to say that the policy has not been implemented in

right earnest and with honest approach.

36. In view of the above scenario what is the power of judicial review needs to be examined. The case projected by the respondents is that the

High Court in exercise of the writ jurisdiction cannot exercise power of Judicial review in regard to grant of out of turn promotion and for this

purpose reliance is being placed upon judgment dated 27-5-2004 passed in SWP No. 1425/03 (titled Raj Mohd v. State and Ors.), wherein this

court observed as under: --

The question as to whether the petitioner has done exceedingly well in combating militancy and as to whether the case of the petitioner is similarly

situated with the persons who have been granted the benefit is a matter which could be considered by the respondent authorities. This court in

exercise of its jurisdiction under Article 226 of the Constitution cannot determine as to whether the job done by the petitioner was similar to that of

respondents 9 to 16 who have been given out of turn promotion.

Similarly a Division Bench of this Court in LPA(SW) No. 441/01 (titled Mohd Hussain Shah) vide judgment dated 16-3-2002 held as under:

In other words, out of turn promotion is not a matter of right. It is always to be considered by the appropriate executive authority on the basis of

performance and service profile of the employee.; No writ of mandamus in such a case can be issued. It is always open to the executive authority

to consider such cases and decide each case on its own facts and pass appropriate orders as deemed fit and proper. No writ of mandamus can be

issued in such cases.

37. The writ petitioners on the other hand have relied upon a judgment dated 24-5-1996 of this court passed in SWP No. 1435/95 (titled Parbhat

Singh v. State and Ors.) wherein the following order was passed:

Petitioner's case is that he and Sh Sheikh Mehmood were sailing in the same boat and as a matter of fact, petitioner possessed better merit and

suitability and had performed meritorious and outstanding ventures in apprehending dreaded criminals etc. as against him and that, his case for out

of turn promotion stood also recommended alongwith him. But he had been treated differently and deprived of the promotion.

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I have gone through the record and the letters of the recommendations made by the superior officers in favour of the petitioner which show that the

petitioner's merit and performance was adjudged as better as compared to Sh Sheikh Mehmood, Now, that the state respondent had promoted

Sh Sheikh Mehmood, who was similarly circumstanced from 8-10-1982, a similar treatment cannot be denied to the petitioner in law.

I accordingly allow this petition and direct the State- respondent to accord similar and equal treatment to the petitioner as given to Sh Sheikh

Mehmood to consider him for promotion to the rank of Inspector from 8-10-1982 with all consequential benefits. The process of consideration

shall be finalized within two months from the date of receipt of this order.

38. This judgment was up-held in LPA(SW) No. 199 of 1996 vide its order dated 4-12-1996 and a SLP No. 3300/97 came to be rejected vide

order dated 24-2-1997.

39. As far the power of Judicial Review is concerned, the Apex Court in case Indian Railway Construction Co. Ltd. Vs. Ajay Kumar, held as

under: --

One of the points that fall for determination is the scope for judicial interference in matters of administrative decisions. Administrative action is

stated to be referable to the broad area of governmental activities in which the repositories of power may exercise every class of statutory function

of executive, quasi-legislative and quasi judicial nature. It is trite law that exercise of power, whether legislative or administrative, will be set aside if

there is manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary. At one time, the traditional view in England

was that the executive was not answerable where its action was attributable to the exercise of prerogative power. Professor de Smith in his

classical work Judicial review of Administrative Act, 4th Edn at pp 285-87 states the legal position in this own terse language that the relevant

principles formulated by the courts may be broadly summarized as follows. The authority in which a discretion is vested can be compelled to

exercise that discretion, but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority to which it is

committed. That authority must genuinely address itself to the matter before it; it must not act under the dictates of another body or disable itself

from exercising a discretion in each individual case. In the purported exercise of its discretion, it must not do what it has been forbidden to do, nor

must it do what it has not been authorized to do, It must act in good faith, must have regard to all relevant considerations and must not be

influenced by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to

act, and must not act arbitrarily or capriciously. These several principles can conveniently be grouped in two main categories (i) failure to exercise a

discretion, and (ii) excess or abuse of discretionary power. The two classes are not however, mutually exclusive. Thus, discretion may be

improperly fettered because irrelevant considerations have been taken into account, and where an authority hands over its discretion to another

body it acts ultra vires.

40. Though one view of this Court was that the issue has to be examined by the respondents, there cannot be any dispute about this proposition.

However, where facts have been placed on the record and it appears to the Court that the power has been exercised arbitrarily, irrationally, un-

fairly which results in discrimination and hostile treatment or there has been violation of the prescribed norms and the criterion, the High Court in

exercise of power of judicial review under Article 226 of the Constitution of India can interfere.

41. As noticed above in earlier two cases of out of turn promotions, this Court held that it is for the respondents to consider the circumstances

existing in each case and examined the question of out of turn promotions. These directions and observations were made on the basis of what facts

of those cases. However, keeping in view the detailed facts placed on the record in some of the petitions it cannot be ignored that the respondents

have either not complied the policy or not applied the same in a proper uniform manner and there has been arbitrariness in making out of turn

promotions and also rejecting the claims of some of the petitioners, who are apparently similarly situated. Keeping in view the afore-said

circumstances, I deem it appropriate to dispose of these petitions with the following directions: --

(i) Such of the cases where there has been no recommendation for out of turn promotions by any competent authority as per the norms/ policy

prescribed, such cases may not need any consideration;

(ii) Such of the cases where there has been recommendations of the officers of the rank of Superintendent of Police and above and the petitioners

have participated actively and effectively in anti-militancy operations, such of the cases whether earlier rejected or pending for consideration shall

be objectively examined by the selection committee constituted for the purpose. The Committee shall consider all cases in the light of

recommendations and also taking into consideration similar cases where the out of turn promotions have been granted earlier and make speaking

and reasoned recommendations. The competent authority shall examine the recommendations of the committee and pass appropriate orders in

respect to each of the writ petitioners depending upon the recommendations of the committee.

(iii) In some of the petitions out of turn promotions granted to some of the private respondents have been challenged, it may not be appropriate to disturb these promotions at this stage even if the same are contrary to the prescribed norms. As observed above, it has not been disclosed whether those cases were duly examined by the committee, approved by the Minister of Home Department and the Chief Minister. Without disturbing those cases the claims of the petitioners shall be examined in the light of the observations made hereinabove and appropriate orders passed within a period of six months.

42. Disposed of accordingly.