
(2007) 10 AHC CK 0146
In the Allahabad High Court

Umesh Chandra Pandey

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 01-10-2007

Acts Referred:

Constitution of India, 1950 — Article 136, 226

Citation : (2008) 5 AWC 5040 : (2008) 3 AWC 2939

Hon'ble Judges : Shishir Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Shishir Kumar, J.—By means the present writ petition the petitioner has approached this Court for a writ of certiorari quashing the impugned order dated 13.12.2004 (Annexure 10 to the writ petition). Further a writ in the nature of mandamus directing the respondents to consider the claim of the petitioner for out of turn promotion to the rank of Inspector on the basis of recommendation made by the Inspector General of Police Allahabad Zone, Allahabad dated 6.7.2002 and a recommendations of the Superintendent of Police, City Allahabad dated 4.1.2002, Senior Superintendent of Police, Allahabad and Deputy Inspector General of Police, Allahabad Range, Allahabad dated 19.6.2002.

2. Petitioner on the basis of advertisement in the year 1987-88, appeared in the examination for appointment to the post of Sub-Inspector. The petitioner was not sent for training, as such, the petitioner and another similarly situated persons filed a Writ Petition No. 18930 of 1989 and the writ petition was allowed on 15.3.1991 and this Hon"ble Court had directed that remaining 39 vacancies for the sessions 1987-88 shall be filled up from the remaining candidate of the select list. Petitioner completed the training and was given appointment on the post of Sub-Inspector in the year 1994.

3. Petitioner submits that according to Para 403 of the Uttar Pradesh Police Regulation, the appointment to the rank of Inspector are being made by the

Deputy Inspector General by promotion on post of Sub Inspector on the basis of recommendation of Inspector General of Police (Establishment). The State Government had issued a Government Order on 3.2.1994 for providing out of turn promotion to the Sub-Inspectors of Civil Police to rank of Inspectors of Civil Police for their outstanding performance. Subsequently, procedure has been provided in another Government Order dated 10.2.1994 in continuation of the Government Order dated 3.2.1994.

4. Petitioner was posted as Station Officer of Police Station Attarsuiya, District Allahabad and during this period, the petitioner gundown harden criminal namely Samer Bahadur Singh alias Sajju Kana and an award to that effect was given to the petitioner. During that period the petitioner has done various outstanding performance and on that basis the authorities who are empowered under the Government Order has recommended the claim of the petitioner. The petitioner has also annexed the copy of achievements which he has performed during this period are being reproduced below:

mi fu- uk0iq0 mes"k pUnz ik.Ms; }kjk fd;s x;s dk;ksZ dk laf{kIr fooj.k tuin bykgkckn

dze- la0

eq0v0la0

/kkjk

Fkkuk

dk;Z fooj.k

1-

330@99

395] 397 Hkk-n-fo-

flfoy ykbu

jk.kk ToSylZ dk inkZQk"k djrs gq, dq[;kr vfHk;qDr jkts"k flag nsosUnz flag mQZ xCcj flag iq= jkeiky flag vkfn 9 vfHk;qDrks dks vFkd iz;kl o ifjJe djus ds ckn fxjQ~rkj fd;k ftlls fot; xSl lfoZl ds ekfyd ds ?kj es fnu ngkM+s MdSrh ,oa flfoy ykbUl es ,u0Mh0 JhokLro bathfu;j ds ;gka ywV dh ?kVuk ,oa eksrhyky usg: bathfu;fjax dkyst esa fnu ngkM+s ccyw flag dh luluh[kst gR;k o gR;k es iz;qDr fiLVy 30 cksj dh dh ckenxh o 10]28]000&00 dh lEifRr dh ckenxh es dkQh ;ksxnku A

2-

227@99

41@411 Hkk-n-fo-

dhMxat

"kkfrj okgu pksj ekschu vgen tuin izrkix< o fj;kt vgen tuin izrkix< dks cM+h
esgur ls fxjQ~rkj fd;k o 3 VkVk lweks ,d ek:fr ,d fQ;sV dh ckjkenxh dh

3-

593 ls 595@99

307 Hkk-n-fo- 25 vk0 ,DV 4@5 EXP

,DV

dhMxat

"kkfrj fdLe dk vijk/kh gfjvkse lkgq fuoklh e/kqokiqj bykgkckn dks iqfyl eqBHksaM
es cM+s gh lkgi o /kS;Z dk ifjp; nsrs gq, ekj fxjk;k A reUpk Hkkjh ek=k eas
ftUnk o [kks[kk dkjrwl rFkk ce cjken gqvK A

4-

647 ls 652@99

18@20 NDPS

,DV

fuy@9941@411 Hkk-n-fo-

dhMxat

"kkfrj fdLe ds tgj [kqjkuks dh xSax dk inkZQk" k djrs gq, xSax ds 6vfHk;qDrks ds
lkFk fxjQ~rkj fd;k x;k bl xSax dk eq[; dk;Z vke turk dks izlkn ds :i es ykjtksi ls
fefjr izlkn f[kykdy ywVuk Fkk A dkQh ek=k es lwVdSl ywVs x;s leku rFkk ykjikst
dh cuk yM~Mw ,d ,EcsIMj dkj cjken gqbZ A

5-

144] 145@99

307 Hkk-n-fo- 35 vkElZ ,DV

"kkgxat

"kkfrj fdLe dk MdSr uUgs flag fuoklh HkqtSgjk] fetkZiqj dks gqbZ iqfyl eqBHksaM
esa ekj fxjk;k x;k A blds ikl ,d reUpk o Hkkjh ek=k es ftUnk o [kks[kk dkjrwl
cjken gqvK A

6-

91] 92@2000

307 Hkk-n-fo- 25 vkElZ ,DV

dSaV

"kkfrj fdLe dk yqVsjk@gR;kjk lq"ky mQZ uUpw dks iqfyl eqBHksM+ esa ekj
fxjk;k x;k A blds ikl ls ,d reUpk o Hkkjh ek=k es ftUnk o [kks[kk dkjrwl cjken
gqvk A

7-

201 ls 208@2000

399]402 Hkk-n-fo- 25 vkElZ ,DV ,e0 Ogh0 ,0 4@5 EXP ,DV

dhM+xat

vfHk;qDr lkfcj vyh vius lkFkh;ks ds lkFk jkeckx jsyos LVs"ku ls fyPNoh ,Dlisl V?
su es ywVikV dh ;kstuk cukrs lq; fxjQ~rkj A blds ikl ls 6 reUpk] 2 ce rFkk Hkkjh
ek=k esa ftUnk dkjrwl cjken gqvk A

8-

70] 71] 72@2000

307 Hkk-n-fo- 25 vkElZ ,DV

vrjlqb;k

dq[;kr vij/kh is"ksj gR;kjk lej cgknqj mQZ ITtw duk tks m0iz0 bukeh vij/
kh;ks dh lwph ds la[;k 72 ij 5000 :0 dk bukeh ?kksf"kr Fkk] iqfyl eqBHksaM+ es
ekj fxjk;k x;k A blds ikl ls ,d reUpk o Hkkjh ek=k esa ftUnk o [kks[kk dkjrwl ,d
ghjks LiysaMj eksVj lkbZfdy cjken gqvk A

9-

82] 83@2000

307 Hkk-n-fo- 25 vkElZ ,DV fuy@2000@41@411

vrjlqb;k

"kkfrj okgu pksj v"ker vyh mQZ ccyw olh ds nkSjku eqBHksM+ fxjQ~rkjh ij
dM+kbZ ls iwNrkn djus ij Loa; rFkk vius lkFk;ks }kjk "kgj rFkk vU; tuin ls
nksifg;k okgu pqjkuk budk is"kk Fkk A cM+h esgur ls budh fxjQ~rkjh dh x;h rFkk
buds }kjk crk;s x;s buds lkFkh;ks dks Hkh fxjQ~rkj fd;k x;k A rFkk buds dCts ls
16 nqifg;k okgu cjken fd;s x;s A

10-

86@2000

5@25 vk-,-

vrjlqb;k

vfHk;qDr eV: tks voS/k "kL=ks dks cukus dk dk;Z djuk rFkk "kgj es mudks
cspuk dh fxjQ~rkjh dh x;h mlds ikl ls "kL= cukus ds lHkh QSDV?h esM midj.k
rFkk 12 reUpk 12 cksj] 4 reUpk 315 cksj ds cjken gq, A

11-

90 ls 92@2000

22 NDPS ,DV 60 EXT ,DV

vrjlqb;

vfHk;qDr pqUuw yky jk/ks o jes" k ;kno vU; lkFkh;ks ds fxjQ~rkjh rFkk dCts ls uktk;t xtkk o Hkkax dh Hkkjh ek= es cjenxh dh x;h A dCts ls 315 cksj dh NksVh lh jk;Qy] ghjks gks.M+k rFkk Hkkjh ek=k es ftUnk o [kks[kk dj dkjrwl cjen fd;k x;k A

12-

659] 660@2000

307@34 Hkk-n-fo- 25 vk0 ,DV

vrjlqb;k

nkmn bczkfge @ NksVk "kdhy vUMjoYMZ ekfQ;k fxjksk dk lfdz; lnL; tkosn bdcky mQZ tkosn eksckby fuoklh izrkix<+ dks iqfyl eqBHksaM+ es ekj fxjk;k x;k A dCts ls 315 cksj dh NksVh lh jkbQy] ghjks gks.Mk rFkk Hkkjh ek=k es ftUnk o [kks[kk dkjrwl cjen fd;k x;k A

13-

215@2000

41@411 Hkk-n-fo-

vrjlqb;k

vUrkZTth; okgu pksj "kksHkukFk frokjh tuin jhok e0iz0 o buds vU; lkfFk;ks dh fxjQrkjh rFkk muds dCts ls 11 thi 1 ek" kZy] ,d ek:fr oSu cjen dh x;h A

14-

86@2000

5@25 vk0 ,DV

vrjlqb;k

vfHk;qDr vj"kn dks fxjQ~rkj djds mlds dCts ls 10 reUpk 12 cksj] 5 reUpk 315 cksj o dkjrwl cjen fd;k x;k A

15-

1@01

468] 469] 485] 486] 767] 468] 420 Hkk-n-fo-

vrjlqb;k

vfHk;qDr ulhe vkfn dks fxjQ~rkj djds udyh tkQjkuh Hkksyk tnkZ] chMh=] yky
nUr eatu Hkkjh ek=k es jSij rFkk bUgs cukus ds midj.k vkfn cjken fd;k A

16-

59 ls 62@01

307 Hkk-n-fo- 25 vkElZ ,DV

vrjlqb;k

vfHk;qDr dks cgqr gh lkgfld eqBHksaM+ es xus" k flag] ,tk] rethn vkfn dks
fxjQ~rkj djds muds dCts ls Hkkjh esa fons"kh "kL=] ,d 38 cksj dk fjokYoj] 22 dh
fiLVy] 1 fjfiVj cUnwd 5 xksyh okyh ,l0ch0,y0 xu o 40 dkjrwl cjken dh x;h A rFkk
lsuk ls pqjk;h ,l0,y0vkj0 dh cjkenxh dh x;h A

17-

87@01

16@18@20 ca/kqvk Jfed izFkk mUewyu 1976

vrjlqb;k

vfHk;qDr lqjs" k vkfn ds ?kj ls cM+h esgur ,oa lqjkxjlh djds rfeyukMq ds jgus okys
16 cPpks dks buds dCts ls eqDr djkdj muds ;FkkLFkku Hkstok;k x;k A

18-

43@01

307 Hkk-n-fo- 25 vkElZ ,DV] 41@411 Hkk-n-fo- 44@2001 fuy 2001

vrjlqb;k

bukeh vfHk;qDr jktfd" kksj ij 2500@& dk buke ?kksf"kr Fkk] dks fxjQ~rkj djds
mls ikl ls pksjh dh lqtqdh eksVj lkbfdy ,d 315 cksj dk reUpk o dkjrwl cjken fd;k
x;k A

19-

63@01

5@25 vk0 ,DV

vrjlqb;k

vfHk;qDr t;jke eYykg o "kehe dks fxjQ~rkj djds muds ikl ls 6 reUpk 12 cksj]
Hkkjh ek=k es v/kZfufeZr reUpk] dkjrwl rFkk reUpk cukus dk midj.k cjken fd;k
x;k A

20-

108@01

41@411 Hkk-n-fo-

vrjlqb;k

vfHk;qDr lanhi flag] xq:pju] thryky] ukfte dks fxjQ~rkj djds muds ikl ls pksjh dh
1 ,IysaM+j] 2 ;kegk] 3 lqtqdh] 1 ghjks gk.M+k ?dqy 7 okgu ? cjken fd;k x;k

21-

111] 112] 113@01

60@72

vrjlqb;k

vfHk;qDr jkUpw o nhid ljdkj dks fxjQ~rkj fd;k x;k A muds dCts ls 2 ek:fr dkj rFkk
27 isVh nk: tks fd e/;izns"k dh Fkh cjken fd;k x;k A

22-

126@01

302 Hkk-n-fo- 120 ch 34 Hkk-n-fo-

vrjlqb;k

vfHk;qDr Jherh esudk flag }kjk vius izseh ds lkFk feydj vius ifr ohjsUnz flag dh
gR;k vius gh ?kj es djok nh bl ?kVuk dk vukoj.k cgqr gh esgur ds lkFk fd;k x;k A
gR;k es iz;qDr gkdh] pkdw] buds ikl ls cjken fd;k x;k A

23-

146@01

20 NDPS ,DV

vrjlqb;k

vfHk;qDr nhisUnz tk;loky dks cM+h gh esgur ,oa foosdiw.kZ rjhds ls fxjQ~rkj
djds buds dCts ls 1 VkVk lweks o 6 dqUVy 70 fdyksxzke xkatk cjken fd;k x;k 1
dqUry 20 fdyksxzke xa/kd esa"ku

24-

194] 195] 196@01

3] 4] 5] Exp Act

vrjlqb;k

vfHk;qDr cyjke] fnus"k dsljokuh] jru pUnz ds"kjokuh vkfn dks fxjQ~rkj djds buds
dCys ls 1 dqUry 20 fdyksxzke xa/kd esa"ku] iksVk"k vkfn cjken fd;k x;k A

25-

284@01

41@411] 467] 471] 420 Hkk-n-fo-

vrjlqb;k

vfHk;qDr jktdqekj vkfn dks fxjQ~rkj djds buds dCts ls VkVk lweks] ek"kZy ek:fr
dkj] ek:fr oSu ?dqy 15? okgu cjken fd;k x;k A

26-

297] 298@01

5@25 vkEIZ ,DV

vrjlqb;k

vfHk;qDr HkksykukFk vkfn dks fxjQ~rkj djds buds dCts ls 12 vnn reUpk 12 cksj]
dkjrwl rFkk reUpk cukus dk midj.k cjken fd;k x;k A

27-

45@02

25 vkEIZ ,DV

vrjlqb;k

vfHk;qDr vfuy dqekj dks fxjQ~rkj djds buds dCts ls 2 vnn ,l0ch0ch0,y xu cjken
fd;k x;k A

28-

48@02

41@411 Hkk-n-fo-

vrjlqb;k

vfHk;qDr eqerkt ds dCts ls pksjh ds 2 vnn V?d cjken fd;k x;k A

29-

70@02

41@411] 467] 468] 420 Hkk-n-fo-

vrjlqb;k

vfHk;qDrx.k v:.k dqekj nwcs ,oa d;we dks fxjQ~rkj djds buds dCts ls 4 vnn eksVj
lkbZfdy cjken fd;k x;k A

30-

121] 122] 123] 124@02

307 Hkk-n-fo- 25 vk,-

dhMxat

vfHk;qDr vejiky] lqHkk"k frokjh fuoklh fetkZiqj] }kjk vlygs dh rLdjh djrs le;

idM+k x;k buds ikl ls 1 vnn dkjckbu] 1 vnn 9 ,e ,e dh fiLVy] 8 vnn 6 jkm.m
fjokYoj cjken dh x;h

31-

132@02

302] 304] 412 Hkk-n-fo-

vrjlqb;k

vfHk;qDr vfuy fo"odekZ lurks"k fo"odekZ }kjk iSlS ds ykyp es vkdj lq/kk HkkxZo
dh gR;k xyk nckdj u gks ikus ls vkjh ls xyk jsr fn;k x;k buds dCts ls 13 pkanh ds
fIDds] 1 pwM+h lksus dh rFkk ,d yksgs dh vkjh cjken dh x;h A

32-

82@02

302 Hkk-n-fo-

dhMxat

vfHk;qDr osn izdk"k iVsy] lurks"k dqekj iVsy dks fxjQ~rkj fd;k x;k bUgksus jkt
dye f}osnh ,oa jktk dh gR;k djds yk"k dks Qsad fn;k Fkk bl ?kVuk dk cM+h gh
esgur ds lkFk vukoj.k fd;k x;k A

33-

118@02

13 tqvk vf/k-

dhVxat

CkM+h esgur djds 19 tqvkM+hvks dks fxjQ~rkj fd;k x;kA rFkk buds dCts ls
yxHkx 1 yk[k 4 gtkj :Ik;s dh cjkenxh dh x;h A rFkk vfHk;qDr dks tsy Hkstk x;k A

34-

fuy@02

41@411 Hkk-n-fo-

dhMxat

"kkfrj fdLe ds pksjks ?datj? Hkhe] lRrh vkfn dks iakp Qjkj dks cM+h esgur ls
fxjQ~rkj djds buds dCts ls yxHkx 90 gtkj ewY; ds pkanh ds tsojkr cjken fd;s x;s A

35-

151 ls 154@02

307 Hkk-n-fo- 25 vk0 ,DV

dhMxat

CkM+h gh esgur ls vfHk;qDr ealwu] jkts"k] jktdeqekj] dks fxjQ~rkj djds buds dCts ls ,d cUnwd ns"kh] 12 reUpk] 2 fjokYoj cjken fd;k x;k A

36-

188@02

5@25 vk0 ,DV

25 vkElZ ,DV

dhVxat

vfHk;qDr cMdm o x;k izlkn dks reapk cukrs gq, cM+h gh esgur ls fxjQ~rkj djds buds dCts ls lkr reaps cus gq, o vk/kk ntZu v/kcus reaps rFkk reapk cukus dk midj.k cjken fd;k x;k A

37-

177@02

307 Hkk-n-fo- 25 vkElZ ,DV

18@20 ,u-Mh-ih,-,-

dhVxat

"kkfrj fdLe dk yqVsjk o is"ksoj gR;kjk jkds"k mQZ csch fuoklh Fkkuk dhVxat dks ftlds ?ij 2500@& dk bZuke ?kksf"kr Fkk tks yxHkx 3 lky ls vius dks iqfyl fxjQ~r ls ckgj j[ks gq, Fkk dks cMs+s gh ukVdh; <ax ls ,d lkgfld eqBHksM+ es fxjQ~rkj fd;k x;k A

38-

7] 8@02

25 vkElZ ,DV

dhVxat

vfHk;qDr Kku ;kno vuwi ds dCts ls 3 reapk 12 cksj cjken rFkk lku ;kno 2500@& dk iqjLdkj ?kksf"kr vijk/kh fxjQ~rkj fd;k x;kA

39-

14] 15@03

18] 20 ,u-Mh-ih,-l- ,DV

dhVxat

vfHk;qDr y{ke.k fcUn ds dCts ls 1 dqUry xkatk o 1 lqtqdh xkM+h cjken dh x;h A

40-

125@03

302@201 Hkk-n-fo-

dhVxat

vfHk;qDr f"ko ";ke "kekZ dks fxjQ~rkj dj e`rdk "kkfUr nsOh dh gR;k dk vukoj.k
fd;k x;kA

41-

26@03

13 iz- ,sDV

dhVxat

Tkxnh"k ik.Ms; vkfn 18 vU; vfHk;qDrks ds dCts ls lkoZtfud LFkku ij tqvk [ksyrs
le; idM+s tkus ij 1 yk[k 6 gtkj 5 lS :Ik;s cken fd;k x;k A

42-

35@03

25 vk- ,sDV 4@5 bDlks- ,DV

dhVxat

vfHk;qDr nsos"k feJk ds dCts ls ,d vnn eLdV jk;Qy cken fd;k x;k A

43-

111@03

25 vk- ,DV

dhVxat

vfHk;qDr vkUun esgrj ds dCts ls vlygk cken fd;k x;k A rFkk 2 gR;kvks dk [kqyklk
fd;k x;k tks Fkkuk flfoy ykbUI ls lacaf/kr Fkk A

44-

132 ls 136@03

25 vk- ,DV

dhVxat

vfHk;qDr lat; flag ,oa mlds lkFkh;ks ds dCts ls ftIlh vlygk rFkk ce cukus ds midj.k
cken fd;k x;k bu vfHk;qDrks dk ,d cM+k xSx gS tks lqYrkuiqj] vesBh] izrkix<
vkfn es lfdz; gS A

45-

149@03

9@24@40@48@50@51 ou laj{k.k vf/kfu;e

dhVxat

vfHk;qDr tSdh vgen vkfn 3 uQj ds dCts ls "ksj phrs dh dqy 7 [kky cjken dh x;hA

46-

152@03

302 Hkk-n-fo-

dhVxat

vfHk;qDr iou dqekj dks fxjQ~rkj fd;k x;kA vfHk;qDr vKkr gR;k ds ekeys ls lEcU/kr FkkA e`rd dh yk"k dks tehu es xkM+ nsuk crk;k A

6. On the basis of the aforesaid outstanding performance of the petitioner, the claim of the petitioner for out of turn promotion was recommended by the then S.P. Singh, Superintendent of Police, Allahabad which is annexed as Annexure 4 to the writ petition. Then the claim of the petitioner was also recommended by the Senior Superintendent of Police, Allahabad for awarding out of turn promotion to the petitioner. Regarding the encounter of hardened criminal Samar Bahadur Singh alias Sajju Kana, a magisterial inquiry was held and the City Magistrate has also recommended the claim of the petitioner vide its recommendation letter dated 7.2.2004. On that basis, the Deputy Inspector General of Police has also recommended the claim of the petitioner by its recommendation dated 6.7.2002 (Annexure 6 to the writ petition). The claim of the petitioner has also been recommended by the Inspector General of Police, Allahabad Zone, Allahabad for giving the petitioner out of turn promotion on the basis of outstanding performance of the petitioner vide its recommendation dated 6.7.2002.

7. Petitioner submits that in spite of the aforesaid recommendations and documents, the claim of the petitioner has been rejected vide its order dated 18th March, 2005 (Annexure 10 to the writ petition).

8. It has been submitted by Sri Satya Prakash, learned Counsel for the petitioner that the order impugned is an order without assigning any reason that under what circumstances the claim of the petitioner is being rejected. Further, the learned Counsel for the petitioner submits that the petitioner has been discriminated as the claim of certain persons for out of turn promotion was rejected, and the State Government exercising powers suo moto has promoted those, persons out of turn. A list of the same has been annexed with the writ petition. Further submission has been made by the learned Counsel for the petitioner that various persons who were not having outstanding performance, they have been given promotion out of turn. The petitioner has annexed the copy of one Ajay Prakash Srivastava, who has been promoted on the post of Sub-Inspector vide its order dated 17th March, 2004. Similarly S/Sri Sada Nand Singh, Satyendra Prasad Tiwari, Santosh Kumar Yadav, Yogendra Pal Singh, S.K.S. Pratap, Vinod Singh Sirohi, Aresh Kumar Sharma, Shesh Mani Pathak,

Sanjay Sirohi, Sudhir Kumar Tomer and Devendra Kumar have been given promotion out of turn, though if the comparison is made the performance of the petitioner is better than these persons.

9. But in spite of The aforesaid fact and recommendations by the, competent authority as provided under the Government Order of 1994 petitioner has not been provided out of turn promotion and the claim of the petitioner has been rejected.

10. Learned Counsel for the petitioner has placed reliance upon the various judgements of this Court. The same are quoted below:

(2006) 2 UPLBBC 2790 Prathviraj Chauhan and Anr. v. State of U.P. and Ors.

(2) 2006 (4) ESC 2901 (All) Para 22 Constable No. 126 Rajiv Chandra Kaushik v. State of U.P. and Ors.

22. The purpose of giving out-of-turn promotion is that if a person has shown an extra bravery and courage while eliminating the gangster and was involved in a various recovery of international gang dealing with fake currency, instrumentally in busting a gang of auto lifters and other various works then he is to be considered in view of the Government Order dated 3.12.1994 for out-of-turn promotion. The petitioner on the basis of the aforesaid extra courage has been recommended by the competent authority for giving out-of-turn- promotion. It is also clear from the record that when the petitioner was promoted Un Armed Police on the post of Head Constable, then the competent authority has recommended the case of the petitioner has clearly recommended for transferring the petitioner to civil police and then to grant promotion but the respondent No. 2 without considering all these aspects of the matter without taking the recommendations only on the ground that at the time when the petitioner has shown an extra bravery he was working in the armed police, therefore, he is entitled to be given promotion in the Armed police.

(4) 2001(3) E.S.C. (All.) 1227 Para 9 Krishna Kumar Pandey v. State of U.P.

9. After having examined the object and contents of the Government order, it has now to be seen as to whether any error has been committed by the committee in examining the claim of the petitioner for grant of out of turn promotion. The writ petition asks this Court to review the decision of the committee. The scope of judicial review of assessment made by the departmental promotion committee are well defined. The Apex Court in Badrinath Vs. Government of Tamil Nadu and Others, has laid down in paragraphs 40 and 41 as under:

40. Unless there is a strong case for applying the Wednesbury doctrine or there are mala fides, courts and Tribunals cannot interfere with assessments made by Departmental Promotion Committees in regard to merit or fitness for promotion. But in rare cases, if the assessment is either proved to be malafide or is found based on inadmissible or irrelevant or insignificant and trivial material and if in

attitude of ignoring or not giving weight to the positive aspects of one's career is strongly displayed, or if the inferences drawn are such, that no reasonable person can reach such conclusion, or if there is illegality attached to the decisions, then the powers of judicial review under Article 226 of the Constitution are not foreclosed.

41. While the courts are to be extremely careful in exercising the power of judicial review in dealing with assessment made by Departmental Promotion Committee, the executive is also to bear in mind that in exceptional cases, the assessment of merit made by them is liable to be scrutinised by courts, within the narrow Wednesbury principles or on the ground of mala fides. The judicial power remains but its use is restricted to rare and exceptional situations. We are making these remarks so that courts or Tribunals may not...by quoting this case as an easy precedent interfere with assessment of merit in every case. Courts and Tribunals can neither sit as appellate authorities nor substitute their own views to the views of Departmental Promotion Committees. Undue interference by the courts or Tribunals will result in paralysing recommendations of Departmental Committees and promotions. The case on hand can be a precedent only in rare cases.

11. The main argument raised on behalf of the learned Counsel for the petitioner is that the administrative authority has also bound to record reasons as no reasons have been; recorded rejecting the claim of the petitioner therefore, it will be presumed that the order impugned has been passed without application of mind and without assigning any reason. The learned Counsel for the petitioner has placed reliance upon a Constitutional Bench judgment of the Apex Court in *S.N. Mukherjee v. Union of India* reported in AIR. 1984.

12. A counter affidavit has been filed on behalf of the respondents. In the counter affidavit, it has been submitted that the claim of the petitioner has been considered and as the Committee has not recommended the claim of the petitioner, therefore, no out of turn promotion has been provided to the petitioner. Further it has been stated that the Committee has found that the petitioner does not come within the parameter provided in the Government Orders dated 3.2.1994 and 10.2.1994, therefore, the Committee of Management has rightly rejected the claim of the petitioner. In such a situation, the learned Counsel for the petitioner submits that the writ petition is liable to be quashed.

13. I have heard learned Counsel for the parties and have perused the record.

There was an outstanding performance of the petitioner when he was posted in Allahabad at various police stations and the petitioner has arrested the main accused, who was involved in dacoity of one of the jewellery shop at Civil Lines. In 1999, the petitioner has also arrested one Nabin Ahmad, who was also involved in theft of the vehicles. One Mari Om Sahu. who was a hardened criminal was killed by the petitioner and in other various incidents the, petitioner was involved. The petitioner solves the cases and arrested hardened criminals and

various persons were also gundown by the petitioner.

14. The (authorities in view of the aforesaid fact, has recommended the claim of the petitioner for; out of turn promotion as the petitioner comes under the parameters and guidelines of the Government Order of 1994. But the respondents have not made any subjective satisfaction on the basis of the relevant record. Further it is to be noted that while rejecting the claim of the petitioner, no reasons have been recorded, therefore, legally it will be presumed that order impugned is an order of non-application of mind as now it is well settled that administrative authority while considering the claim of any person has to recorded reason and if no reason has been recorded such order will be treated as non application of mind.

15. It is well settled that an order having civil consequences even though passed by the administrative authority must contain reasons so as to enable the aggrieved party to challenge the reasoning of the administrative authority. In the absence of reasons no foundation can be laid down by the petitioner and only argument, remains is that the order is based upon non-application of mind. In our view if the reasoning of an order passed against. The aggrieved person is not communicated and only a communication regarding decision has been communicated it cannot be assailed by the respondents that the grievance of a person has been decided. In our opinion, it is no order in eye of law and it has no legs to stand.

16. In case of S.N. Mukherjee v. Union of India reported in AIR 1984 the Apex Court has already held as follows:

In view of the expanding horizon of the principles of natural justice, the requirement to record reason an be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework where under jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an administrative authority including exercise of judicial or quasi-judicial junctions the legislature, while conferring tee said power, may; feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with, such a requirement. It may do so by making an express provision to that effect. Such an exclusion can also arise by necessary implication from the nature of the subject matter, the scheme and the provisions of the enactment The public interest under lying such a provision would outweigh the salutary purpose served by the requirement to record the reasons. The said requirement cannot, therefore, be insisted upon in such a case Therefore except in cases where the requirement has been disposed with expressly or by necessary implications, an administrative authority exercising judicial or quasi-judicial functions is required to record the reasons for its decision.

The recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of arbitrariness and assures a degree of fairness in the process of decision-making. The said purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. Therefore, the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It is however not required that the reasons should be as elaborate as in the decision of a Court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicitly so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with, the reasons contained in the order under challenge.

In the case of Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others, the Apex Court has held as under:

The reasons are a harbinger between the mind of the maker of the order to the controversy in question and the decision or conclusion arrived at. They also exclude the chances to reach arbitrary, whimsical or capricious decision or conclusion. The reasons assure an inbuilt support to the conclusion/decision reached. When an order affects the right of a citizen or a person, irrespective of the fact whether it is a quasi-judicial or administrative order, and unless the rule expressly or by necessary implication excludes recording of reasons, it is implicit that the principles of natural justice or fair play require recording of genuine and precise relevant reasons as a part of fair procedure. In an administrative decision, its order/decision itself may not contain reasons. It may not be the requirement of the rules, but at the least the record should disclose reasons. It may not be like a judgement. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicitly so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons. If the appellate or revisional authority disagrees, the reasons must be contained in the order under challenge. The recording of reasons is also an assurance that the authority concerned consciously applied its mind to the facts on record. It also aids the appellate or revisional authority or the supervisory jurisdiction of the High Court under Article 226 or the appellate jurisdiction of the Supreme Court under Article 136 to see whether the authority concerned acted fairly and justly to mete out justice to the aggrieved person.

In the case of Mahabir Prasad Santosh Kumar Vs. State of Uttar Pradesh and

Others, the Apex Court has held as under:

The High Court in rejecting the petition filed by the appellants has observed that the District Magistrate in considering the explanation of the appellants had "considered all the materials" and also that "the State Government in considering the appeal had considered all the materials." We have, however, nothing on the record to show what materials if any were considered by the District Magistrate and the State Government. The High Court has also observed that Clause 7 of the Sugar "Dealers" Licensing Order does not require "the State Government to pass a reasoned order. All that is required is to give an aggrieved person an opportunity of being heard." We are of the view that the High court erred in so holding. The appellants have a right not only to have an opportunity to make a representation, but they are entitled to have their representation considered by an Authority unconcerned with the dispute and to be given information which would show the decision was reached on the merits and not on considerations of policy or expediency. This is a clear implication of the nature of the jurisdiction exercised by the appellate, authority; it is not required to be expressly mentioned in the statute. There is nothing on the record which shows that the representation made by the appellants was even considered. The fact that Clause 7 of the Sugar Dealers" Licensing Order to which the High Court has referred does not "require the State Government to pass a reasoned order" is wholly irrelevant. The nature of the proceeding requires the State Government must give adequate reasons which disclose that an attempt was made to reach a conclusion according to law and justice.

17. In view of the aforesaid fact, I am of the view that the order dated 18th March, 2005 (Annexure 10 to the writ petition) cannot be sustained and is liable to be quashed. The writ petition is allowed. The order dated 18.3.2005 is hereby quashed and the matter is remanded back to the respondent No. 2 to pass appropriate orders in view of the observations made above after considering the Various reports of the authorities which are in favour of the petitioner. The order to this effect be passed by the respondent No. 2 preferably within a period of three months from the date of production of the certified copy of this order.

18. No order as to costs.