

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

**LPASW no. 246/2004
CMP no. 297/2004**

Date of Decision: 01.06.2010

U.O.I and Ors vs. Narinder Pal Singh

Coram:

**Hon'ble Mr. Justice Dr. Aftab H. Saikia, Chief Justice,
Hon'ble Mr. Justice Sunil Hali, Judge**

Appearing Counsel:

For Appellant(s): Mr. K. K. Pangotra, ASGL.
For Respondent(s) : Mrs. Surinder Kour, Advocate

- i) Whether to be reported in Press, Journal/Media : Yes/No
ii) Whether to be reported in Digest/Journal : Yes/No

Per- Hali- J

This appeal has been preferred against the judgment of learned Single Judge dated 22.03.2004 passed in SWP no. 897/2003. While disposing of the writ petition the learned Single Judge directed the respondents to grant promotion to the writ-petitioner as Assistant Commandant with effect from 11.09.2001 when the private respondent was promoted.

In order to appreciate the controversy involved in the present appeal, certain facts are required to be noticed.

The writ-petitioner-respondent was recruited as Sub Inspector on 21.11.1984 and was promoted as Inspector on 25.09.1990. On the basis of his seniority, he became eligible for

promotion as Assistant Commandant in the year 1996. He was not promoted and the reason indicated was that he had not undergone the mandatory Platoon Weapon Course and Company Commander course, which was essential condition for making such promotion. Writ petitioner was sent on deputation to Special protection Group, New Delhi and request was made for relieving him for undergoing the said training course, which was declined by the borrowing department. Various Departmental Promotion Committees were constituted but the petitioner's case was not considered due to the fact that he had not undergone the special training course. In the meanwhile the private respondent R. S. Yadav, who was junior to the petitioner, was promoted as Assistant Commandant on 11.09.2001. The writ petitioner was finally promoted as Assistant Commandant on 28.06.2002.

The grievance set out by the writ petitioner was that despite being eligible and senior he was not deputed for the mandatory training course as a result of which he could not attain the eligibility for being promoted to the higher post. The fault lies with the respondents in this behalf as they were required to depute him for undergoing the necessary training course.

Writ petitioner's further contention was that he had undergone the mandatory training course from January 2001 to April, 2001, but despite that he was not promoted by the respondents when the DPC met in June, 2001.

The stand of the respondents before the writ Court was that petitioner was not eligible for promotion as he had not undergone the mandatory training course, which was the pre-requisite for such promotion. It is further contended by the respondents that even though the writ petitioner underwent the said training course from 29th of January, 2001 to 7th of April, 2001, but he could not be promoted by the Departmental Promotion Committee constituted on 2nd of June, 2001, as according to the instructions issued by DOP&T, New Delhi on 01.02.1999, the crucial date for determining the eligibility of Subedars was 1st of January, 2001. The writ petitioner had not obtained the eligibility as on 1st of January, 2001, which was the date for determination of the eligibility for promotion to the post of Assistant Commandant, as such, his case could not have been considered for promotion.

We have heard the learned counsel for the parties.

The learned Single Judge has allowed the writ petition solely on the ground that the writ petitioner was senior to the private respondent and was required to be considered for

promotion to the post of Assistant Commandant with effect from 11.09.2001, when his junior was promoted.

There is no dispute that writ petitioner admittedly was senior to the private respondent, which fact stands admitted by the respondents also. The issue which was required to be addressed by the learned Single Judge was as to whether the writ petitioner was eligible for promotion on the crucial date. Eligibility would determine his right of promotion to the higher post. The stand of the respondents in this behalf was that the crucial date for determining the eligibility was 1st of January, 2001, and, on that date the writ petitioner had not acquired the eligibility for promotion. This aspect of the matter has not been considered by the learned Single Judge. As a matter of fact, this was the crucial issue which was required to be determined by the learned Single Judge. Seniority may be one of the criterions for promotion but the most important aspect was acquiring the eligibility for such promotion. This issue has been left un-settled by the learned Single Judge.

We, therefore, allow this appeal, set aside the impugned judgment and remand the matter to the learned writ Court, with a request to hear the parties afresh on the issue of eligibility. It is expected that the matter will be disposed of by the learned Single Judge within a period of two months.

Registry is directed to list the writ petition before the writ Court in the first week of July, 2010.

JAMMU:
01.06.2010.
Anil Raina, Secy.