

HIGH COURT OF JAMMU & KASHMIR, JAMMU

SWP No.331/2003

Dated:17.3.2010

Mohd. Amin

vs

State of J&K & ors.

Hon'ble Mr. Justice Mansoor Ahmad Mir, Judge.

Whether approved for reporting? Yes.

For petitioners : Mr. Pranav Kohli, Advocate.

For respondents : Mr. Jagdish Parihar, AAG, for respondents 1 to 3.

Respondents 4 to 10 exparte.

The petitioner has sought indulgence of this Court to issue writ of certiorari quashing Order No.1721 of 2002 dated 22.4.2002 (Annexure "T" to the writ petition). He has further prayed for issuance of writ of mandamus commanding the respondents to promote him as Inspector by granting him out of turn promotion with effect from 20.10.1999 and also to grant all service benefits including seniority, on the grounds taken in the writ petition.

Precisely, the case of petitioner is that he came to be appointed as Sub Inspector in the Police Department in the year 1992-93 and was posted as SHO Police Station Loran in the year 1998. He joined so many operations and fought against anti-national elements with courage and sincere devotion. His

contribution was fully acknowledged by senior army officials who were also fighting militancy in the said area. During that period he was threatened by militants but despite all odds he undeterredly performed his duties and participated in various operations. It is contended that in terms of the policy decision of the Government, an incharge police officer whose performance is outstanding is entitled to out of turn promotion, but the official respondents have not granted the same in his favour despite the fact he was having recommendations and the certificates at his back issued by the competent authority (Annexures "J" & "K"). Further it is contended that his performance was not only outstanding but courageous and more outstanding as compared to the private respondents but out of turn promotion came to be granted in their favour and his case was rejected vide the impugned order. It is averred that the impugned order came to be passed illegally, without application of mind and without considering all the documents/certificates/letter of recommendations.

The official respondents have filed the reply and have resisted the petition on the ground that the case of petitioner was considered and rejected for the reasons that he has not performed in such a way in order to seek out of turn promotion. It is apt to reproduce paras 9 and 10 of the reply herein :

- “9. That in reply to para-9 of the writ petition, it is submitted that the performance of the petitioner was not found so exceptional by the then SSP Poonch that could enable him to be considered for out of turn promotion.
10. That in reply to para-10 of the writ petition, it is submitted that the petitioner’s performance was not so exceptional to grant him out of turn promotion. However, the performance of respondent No.4 to 10 were assessed by the sr. officers and they were given out of turn promotion on their recommendations whereas the case of the petitioner was not recommended for out of turn promotion from any quarter.”

The petitioner has not filed the rejoinder though this Court has specifically granted opportunity to him vide order dated 12.3.2004. It is profitable to reproduce paras 2 & 3 of the impugned order :

“2. Whereas, the then SSP Poonch as well as the DIG Rajouri-Poonch Range while commenting upon the representation stated that though the officer performed well during the period as far as anti-militancy operations are concerned, but his case could not be recommended for out of turn promotion as his performance was not as extra-ordinary and exceptional.

3. Whereas, the representation of the officer viz-a-viz reports of the then SSP Poonch and DIG Rajouri-Poonch was examined at PHQ and it was observed that although the officer has participated in a number of operations during his posting in Rajouri-Poonch Range, but the performance was not as exceptional and extra-ordinary, that could have warranted any out of turn promotion. Out of turn promotions have been given on extra-ordinary performance displayed by an officer beyond his normal call of duty duly assessed by the senior police officers. The performance of the officer could not be found extra-ordinary by his supervisory officers, thus his claim is not maintainable.”

While going through the impugned order one comes to an inescapable conclusion that the official respondents have considered the case of petitioner and after obtaining the status report from the SSP concerned rejected the same. So by no stretch of imagination it can be said that the documents/certificates/recommendations were not considered by the competent authority. It is specifically averred that the case of petitioner was considered and also report was sought from the competent authority-SSP.

To claim right of promotion is not a fundamental right but its consideration is a fundamental right. The case of petitioner came to be considered and rejected. This Court has no such jurisdiction to ask the respondents to promote him. It is the administrative action of respondents which came to be exercised after discussing all the materials, as discussed hereinabove.

The Apex Court in *Indian Railway Construction Co. Ltd. vs Ajay Kumar*, (2003) 4 SCC 579, held that the Court cannot sit as an appellate authority so as to substitute its own view for that of the disciplinary authority. It is apt to reproduce para-15 of the judgment herein :

“15. The court will be slow to interfere in such matters relating to administrative functions unless decision is tainted by any vulnerability enumerated above: like

illegality, irrationality and procedural impropriety. Whether the action falls within any of the categories has to be established. Mere assertion in that regard would not be sufficient.”

Thus the relief sought by the petitioner for issuance of writ of certiorari fails.

It is beaten law of the land that this Court cannot direct the respondents to appoint the petitioner as an Inspector. At the best the Court can direct the respondents to consider his case, provided his case has not been considered or considered but came to be rejected without considering all the material. Applying the test to the instant case, no relief can be granted for the reason that the case of petitioner was considered and rejected, as discussed hereinabove. Thus this writ cannot be granted.

In view of the above, this writ petition is dismissed along with all CMPs.

Jammu
Dated:17.3.2010
(Anil)

(Mansoor Ahmad Mir)
Judge