

**The High Court of Madhya Pradesh
WP 187/2009(S)
Raghvendra Singh vs. State of MP**

Gwalior, dtd. 29/11/2018

Shri M.P.S. Raghuvanshi, Counsel for the Petitioner.

Shri Yogesh Chaturvedi, Govt. Advocate, for the State.

Heard finally.

This petition under Article 226 of the Constitution of India, has been filed seeking the following relief :

"7(i).That, the respondents be directed to grant out of turn promotion to the petitioner on the post of A.S.I. for distinguishable work performed by him as certified by the respondent officials, in respect of incident dt. 14-15/03/2007. It may also be directed to grant such benefit of promotion to the petitioner from the date the other 35 persons have been granted promotion with all consequential benefits i.e., w.e.f. 07-07-2007."

The necessary facts for the disposal of the present petition in short are that the petitioner was holding the post of Head Constable. One notified gang of dacoits Jagjeevan and Paramjeet, was active in dacoit activities and had terror in 4 States. Total reward of Rs.9 lacs was declared by all the four States.

A Secret information was received regarding the presence of the notified gang of Jagjeevan in the house of Heera Singh Parihar in village Gari Bhudhara. Accordingly, the police parties were dispatched. When the dacoits noticed the presence of the police party, they opened fire, causing death of one police inspector, and some of the police personnel were injured. As the dacoits were inside the house, therefore, it was decided to make a hole in the roof. It is pleaded by the petitioner, that along with

Shri J.K.Dixit, Reserve Inspector, Morena, the petitioner climbed on the roof of the house of Heera Singh Parihar, and a hole was made from which the gun shots were fired. After the exchange of firing came to an end, it was found that total 7 dacoits, including Jagjeevan and Paramjeet were killed.

It is submitted that as per Police Regulation 70-A, as the same was in force at the relevant time, 35 police personnel have been granted out of turn promotion, but the petitioner has been denied the benefit of Regulation 70-A without any reason. It is undisputed that the petitioner was also a member of the police party. It is submitted that for denying the benefit of out of turn promotion to the petitioner, no reasons have been assigned by the respondents. It is submitted that in fact the act of the respondents is *mala fide* and arbitrary. It is further submitted that by not granting out of turn promotion to the petitioner and by granting the same benefit to the similarly placed police personnel, the respondents have discriminated the petitioner and thus, their act is violative of Articles 14 and 16 of the Constitution of India.

Per contra, it is submitted by the Counsel for the State that it is true that the petitioner had participated in the operation against the Parihar Gang, but it does not mean that all the members of the police party who participated in the operation to kill or caught the members of the notified dacoit gang Jagjeevan Ram and Paramjeet Parihar. It is submitted that a Magisterial enquiry was conducted and the enquiry officer had pointed out various persons, who had shown extraordinary courage in performing their duties in the operation against the dacoits and their names have been specifically mentioned whereas the name of the petitioner does not find place in the said enquiry report. Thus, for granting out of turn promotion to 35 persons, the

State has relied upon the enquiry report.

Heard the learned Counsel for the Parties.

In the present case, the encounter with the notified gang of Jagjeevan Ram and Paramjeet Parihar took place on 7-7-2007. Regulation 70-A of Police Regulations was in force at the relevant time, however, the same has been omitted in the year 2012.

Regulation 70-A of Police Regulations reads as under :

"70-A.Notwithstanding anything contained in Regulation 70, a Constable may be promoted to the Rank of Head Constable by the Superintendent of Police with the prior approval of the Director General of Police and a Head Constable to the rank of Assistant Sub-Inspector by the Deputy Inspector General of Police with the prior approval of the Director General of Police, if he has distinguished himself in anti-dacoit operations, law and order situations of shooting competitions or in some other field of duty or who has been awarded the President's Police Medal for Gallantry or for meritorious/distinguished services, if he considers him suitable for promotion. Similarly, the Inspector General of Police may promote an Assistant Sub-Inspector to the rank of Sub-Inspector and a Sub-Inspector to the rank of an Inspector on similar grounds if found suitable for promotion and subject to the prior approval of the Director General of Police. The number of Officers promoted under this Regulation shall not exceed 10 per cent."

The participation of the petitioner in the encounter has not been disputed by the respondents. The Magisterial Enquiry Report has been filed as Annexure P/5, on which the respondents have also placed reliance for awarding out of turn promotion to 35 persons. It is the case of the respondents that the name of the petitioner does not find place in the said

enquiry report. The operative part of the enquiry report reads as under :-

"निष्कर्ष:—

दिनांक 14 एवं 15.03.2007 को ग्राम गढिया बुधारा स्थित हीरा सिंह परिहार के मकान में घुसे फरारी, इश्तहारी एवं इनामी डकैत जगजीवन परिहार एवं उसके साथियों की पुलिस द्वारा घेराबन्दी की गई। पुलिस महानिरीक्षक चम्बल रेंज द्वारा स्पष्ट रूप से सूचनाओं का प्रेषण एवं सफल निर्देश प्रेषित किये गए। घटना स्थल पर उप पुलिस महानिरीक्षक चम्बल रेंज श्री डी०सी० सागर, पुलिस अधीक्षक मुरैना डॉ० हरीसिंह यादव के नेतृत्व में पुलिस बल त्वरित रूप से ग्राम गढिया बुधारा पहुँचे। पुलिस अधीक्षक मुरैना डॉ० हरीसिंह ने मौके की रणनीति बनाने उसे क्रियान्वित कराने एवं डकैतों की प्रभावी घेराबन्दी करने व नियंत्रित, लक्षित गोली परिचालन की रणनीति तैयार करने में उत्कृष्ट व सराहनीय कार्य किये हैं। पुलिस महानिरीक्षक चम्बल रेंज श्री विजय यादव का कुशल नेतृत्व प्रभावी एवं कारगर एवं परिणाम मूलक सिद्ध हुआ। डी०आई०जी० श्री डी०सी० सागर ने रणनीति बनाने में सहयोग कर सराहनीय कार्य किए। टी०आई० वीरेन्द्रसिंह भदौरिया जान की बाजी लगाकर डकैतों से लोहा लेते हुए वीरगति को प्राप्त हो गये, उनके अदम्य साहस भरे प्रयासों की सराहना करना लाजमी है। टी०आई० सतीश दुबे एवं टी०आई० के०डी० सोनकिया ने अदम्य साहस एवं कर्तव्य परायणता का परिचय देते हुए जान की बाजी लगाकर घटना स्थल जहाँ कि डकैत घिरे हुए थे, उस मकान में प्रवेश कर डकैतों से लोहा लिया एवं इस दौरान वे घायल भी हुए, उक्त दोनों निरीक्षकों का कृत्य अत्यंत सराहनीय रहा जो उक्त दोनों टी०आई० के कृत्य साहसपूर्ण एवं कर्तव्य परायणता का द्योतक है। एस०टी०एफ० प्रभारी श्री दिलीप सिंह, एस०पी० मुरैना के गनरों एवं ड्रायवरों ने भी इस अभियान के दौरान साहस पूर्ण एवं कर्तव्यपरायणतापूर्ण कार्य किया एवं एस०पी० भिण्ड ने भी इस अभियान में सहयोग दिया। आर०आई० पुलिस श्री दीक्षित ने त्वरित पुलिस बल घटना स्थल पर रवाना करने एवं स्वयं घटना स्थल पर पहुँचकर पुलिस अधीक्षक मुरैना के नेतृत्व में सराहनीय कार्य किया। प्रधान आरक्षक श्री राजेन्द्र सिंह परिहार घायल होने के बावजूद डकैतों से लोहा लेते रहे, जो उनके कर्तव्य परायणता साहस एवं कार्य कुशलता का परिचायक है। आरक्षक रामवरन घायल होने के बावजूद डकैतों से लोहा लेते रहे उनका कृत्य भी कर्तव्यपरायणता एवं साहस का द्योतक है। इस अभियान में अन्य जिन पुलिस कर्मचारीगण, जिन्होंने दायित्व निभाया, साहसिक व कर्तव्य

परायणता पूर्ण कृत्य करने से सराहना के पात्र हैं, जिसका उल्लेख पुलिस अधीक्षक, मुरैना के अभिकथन में अंकित है।

यह तथ्य निर्विवाद है कि डकैत जगजीवन परिहार एवं उसके साथी इशतहारी एवं फरारी थे, जिन पर तीन राज्यों क्रमशः मध्यप्रदेश, उत्तर प्रदेश एवं राजस्थान से इनाम घोषित था। डकैत जगजीवन परिहार एवं उसके साथियों का क्षेत्र में बहुत भय एवं आतंक कायम था। म0प्र0 एवं सीमावर्ती राज्य उत्तरप्रदेश एवं राजस्थान में उक्त डकैतों का आतंक एवं भय था। उक्त डकैतों के मरने से क्षेत्र में लोक परिशांति कायम होना स्वाभाविक है।

उक्त सात डकैतों के मरने से इस क्षेत्र में तथा आसपास व सीमावर्ती राज्य उत्तरप्रदेश एवं राजस्थान में अमन चैन एवं शांति का वातावरण कायम हुआ है एवं पुलिस व प्रशासन के प्रति जनता में विश्वास बढ़ा है।"

Thus, it is clear that in the enquiry report, the names of all the 35 police personnel have not been mentioned. On the contrary, it is mentioned that S.T.F. In-charge Shri Dilip Singh, the Gunners of S.P. Morena and Drivers also discharged their duties with bravery. Thus, the enquiry report has praised several persons, without naming each of them. Thus, in the considered opinion of this Court, the enquiry report alone cannot be made a basis for picking 35 persons and awarding benefit of Regulation 70-A of Police Regulation.

However, out of turn promotion for act of bravery is not a legal right, however, the administrative discretion should not be vitiated by any unreasonableness, irrationality, prejudice, bias or arbitrariness. This Court in the case of **Suresh Pal Singh Vs. State of M.P. & Others**, reported in **2012(1) MPHT 226 (DB)**, has held as under :-

"**12.**We are of the view that out of turn promotion in terms of Regulation 70-A of Madhya Pradesh Police Regulations is not a matter of legal right. It is within the discretion of the Competent Authority of the respondents to grant or not to grant out of turn promotion. But, exercise of

administrative discretion by the Department must not be vitiated by any unreasonableness, irrationality, prejudice or any bias. Since a plea has been taken on behalf of the appellant that the Department has granted out of turn promotion to his juniors in regard to the same act of bravery, we deem it appropriate that ends of justice shall be adequately met in case the case of the appellant for his out of turn promotion is considered by the Department once again limiting only on the point whether any person junior to him has been granted out of turn promotion with regard to the same act of bravery in the incident of encounter that took place on 16th November, 2002. In case, upon such consideration, it is found by the Department that any person junior to the appellant has been granted out of turn promotion, then they should also consider the claim of appellant for his out of turn promotion taking into account the role played by him in the encounter which we have already extracted herein above, but that should again be dependent upon availability of vacancy in the quota of out of turn promotion at the relevant time and, of course, the relevant time is the date when encounter in which the appellant had participated had taken place."

Thus, it is clear that the petitioner cannot claim his out of turn promotion for the act of his bravery, as a matter of legal right, but at the same time, the discretion of the authorities should not be arbitrary and unreasonable.

In the present case, the respondents for denying benefit of Police Regulation 70-A (which stood omitted by Notification dated 11-9-2012 w.e.f. 11-9-2012), has taken a stand that in the Magisterial enquiry report, there is no mention of name of the petitioner. As this Court has already pointed out that in the said Magisterial Enquiry report, the names of all the 35 persons

were not mentioned, who have been granted the benefit of Police Regulation 70-A. Thus, this Court is of the considered view that non-consideration of the case of the petitioner, by the respondents, cannot be approved.

Accordingly, it is directed that subject to the availability of post under 10% quota as provided in the Police Regulation 70-A, the respondents shall consider the case of the Petitioner, for extending the benefit of Police Regulation 70-A. In case, if the respondents are of the view that the petitioner is not entitled for such benefit, then they shall pass a detailed speaking order. Accordingly, the Petitioner is directed to make a fresh representation to the respondents, along with the certified copy of this order, within a period of one month from today. Let the entire exercise be completed within a period of six months from the date of receipt of the fresh representation.

The Petition succeeds and is hereby **Allowed**.

(G.S.Ahluwalia)
Judge