

MOHAMMAD AFTAB MIR
v.
STATE OF J & K & ORS.
(Civil Appeal No. 2815-2816 of 2011)

MARCH 31, 2011

[ALTAMAS KABIR AND CYRIAC JOSEPH, JJ.]

Service Law – Promotion – Out of turn promotion / Accelerated promotion – State of Jammu & Kashmir – Shrine of Hazrat Shaikh Nooruddin Noorani in the town of Charare Sharif – Appellant was SHO, Chadoora Police Station, adjacent to the town of Charare Sharif – Destruction of Charare Sharif shrine in encounter between the Indian troops and armed militants who had laid siege to the shrine – Consequent violent attempts by unruly mobs to enter Charare Sharif through Chadoora – Claim of appellant that he displayed exemplary courage and patriotism as part of his official duties in containing the law and order situation – Placing reliance upon circular dated 6-3-1990 published by State of Jammu and Kashmir, he laid claim for out of turn promotion – Recommendations had been made by senior officers in respect of three police officials including the appellant – Appellant, however, denied out of turn promotion while the other two police officials given such promotion – Circular dated 6-3-1990 provided for accelerated promotion for Government employees whose performance in discharge of their duties and combating militancy was outstanding – Writ petition filed by appellant dismissed by High Court on the ground that the State Government vide subsequent Circular dated 6-1-2000 provided that out of turn promotion could be considered only for consistently exceptional performance on the anti-militancy front – Meanwhile appellant was granted promotion in routine course – Whether promotion should be given to appellant from retrospective effect from the date on

A *which the other two police officials had been given out of turn promotion – Held: The decision of the Single Judge was based on Circular dated 6-1-2000 while the appellant's claim was under the earlier Circular dated 6-3-1990, in relation to incidents which had taken place prior to the promulgation of*
B *the Circular dated 6-1-2000 – Hence, appellant's claim for out of turn promotion require reconsideration in the light of the Circular dated 6-3-1990 and not the Circular dated 6-1-2000 – Case of appellant directed to be reconsidered in accordance with the Circular dated 6-3-1990, for the purpose*
C *of granting retrospective effect to the promotion already granted to him in routine course, and if such retrospective effect is given, to consider such other benefits that he may, thereafter, become entitled to in accordance with law.*

D **Appellant, a Sub-Inspector in the Jammu and Kashmir Police, was posted as the Station House Officer of Chadoora Police Station, adjacent to the town of Charare Sharif where the shrine of Hazrat Shaikh Nooruddin Noorani is situated. In 1995, armed militants laid siege to the aforesaid shrine whereafter a fierce**
E **encounter took place between the Indian troops and the militants, on account of which the entire town of Charare Sharif, including the aforesaid shrine and about 1500 residential houses, were gutted. This triggered off violent protests all over Kashmir and, in particular, in the nearby**
F **areas from where enraged citizens started marching towards Charare Sharif.**

G **The appellant claims to have displayed exemplary courage and at the risk of his life prevented a temple from being desecrated and burnt by an unruly mob of about 3000 people and saved the city from being converted into a battle field. According to the appellant, he successfully resisted violent attempts by unruly mobs and processions of thousands of people to enter Charare**

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Sharif through Chadoora which was under his jurisdiction. In effect, according to the appellant, it was the exemplary courage and patriotism as displayed by him as part of his official duties which prevented the situation from going out of hand in the aftermath of the destruction of the Charare Sharif shrine. It is the appellant's case that in order to gear up its administrative machinery and to effectively deal with the law and order situation, the State of Jammu and Kashmir took a policy decision to provide for accelerated promotion for Government employees whose performance in discharge of their duties and combating militancy was outstanding. A Circular, being No.14-GR of 1990, dated 6th March, 1990, was published by the State of Jammu and Kashmir in this regard.

The Director General of Police gave only the S.H.O., Charare Sharif, and another police official out-of-turn promotion, even though recommendations had also been made in respect of the appellant for such out-of-turn promotion. The appellant filed Writ Petition, in the High Court, for a direction to the Authority concerned to consider and promote the appellant to the rank of Inspector in recognition of his excellent performance. The High Court through an interim order directed the authorities to examine the appellant's case and to inform the Court of the decision taken on the basis of such examination. However, nothing further materialized pursuant to the interim order passed by the High Court and in routine course, the Appellant was granted promotion. Ultimately, a Single Judge of the High Court dismissed the appellant's Writ Petition, and the Letters Patent Appeal was also dismissed by the Division Bench of the High Court.

In the instant appeal, it was contended by the appellant that he was duly covered by the Circular No.14-

- A GR of 1990 dated 6th March, 1990 and his claim to out-of-turn promotion was duly supported by the recommendations by the officers who were present when the Charare Sharif incidents took place. However, the appellant has already been promoted to the post of
- B Inspector on 19th August, 2000, and the only question which survived for consideration before this Court was whether promotion should be given to the appellant with retrospective effect from the date on which S.H.O., Charare Sharif, and the other police official were given
- C out of turn promotion.

Allowing the appeals, the Court

- HELD:1. In the absence of any glaring discrepancy or bias in the decision-making process, ordinarily the
- D Court does not normally take upon itself the task of making a subjective assessment of an officer's performance in relation to matters of promotion and that too of the nature contemplated in the present case. However, at the same time, the Court is also entitled to
- E consider the materials placed before it in order to arrive at a conclusion as to whether an injustice has been caused to the concerned officer. In the present case, both the Superintendent and Senior Superintendent of Police had a chance to observe the Appellant's performance on
- F the ground when the incident was actually taking place and they have recommended that the Appellant should be given out-of-turn promotion. The Director General of Police has also recognized the exemplary performance of the appellant. All such recommendations seemed to
- G suggest that the performance of the Appellant merited special consideration. [Para 10] [715-D-G]

2. While considering the appellant's claim for out-of-turn promotion or accelerated promotion in the Writ Petition filed by him, the Single Judge took special note
- H of the condition, procedure and norms which provided

that out-of-turn promotion would be considered only for consistently exceptional performance on the anti-militancy front. The Judge took note of the fact that except for two episodes, which, in any event, were performed in the usual course of duties, the same did not constitute any consistent exceptional performance on the part of the appellant which would entitle him to out-of-turn promotion. The said view was endorsed by the Division Bench while dismissing the Letters Patent Appeal filed by the appellant. Neither the Single Judge nor the Division Bench of the High Court appears to have given proper attention to the Circular No.14-GR of 1990 dated 6th March, 1990, in relation to the recommendations which had been made by the Superintendent and the Senior Superintendent of Police. [Paras 11, 12] [716-B-E]

3. However, from the materials on record it is quite clear that the claim of the appellant is covered by the policy decision of the Government contained in Circular No.14-GR of 1990 dated 6th March, 1990, which provided an incentive to all Government employees to give their best performance of duties in the service of the people and in meeting the challenge of the anti-national forces to disturb the law and order situation in the State. It is only subsequently that on 6th January, 2000, that a Government Order No.Home-3(P) of 2000 was published by the State in its Home Department regarding the procedure for out-of-turn promotion in the Police Department. It is in the said circular that it has been indicated that out-of-turn promotion could be considered only for consistently exceptional performance on the anti-militancy front and that the recommendations of the Director General of Police, along with the dossier of the concerned employee, along with other formalities and the extent of deviation from the seniority rule, would have to be placed before the Home Department Select Committee for consideration and recommendation which would then

A be placed before the Chief Minister with the prior
approval of the Minister of State, Home Department. [Para
13] [716-F-H; 717-A-C]

B 4. The circular dated 6th January, 2000, directly links
up out-of-turn promotion with the concept of consistently
exceptional performance on the anti-militancy front,
which did not figure in the earlier Circular No.14-GR of
1990 dated 6th March, 1990. Both the Single Judge and
the Division Bench appear to have overlooked the
C difference in the two different circulars and the decision
of the Single Judge is based on the later Circular dated
6th January, 2000, while the Appellant's claim is under the
earlier Circular of 6th March, 1990, in relation to incidents
which had taken place prior to the promulgation of the
Government Order dated 6th January, 2000. [Para 14]
D [717-C-E]

5. It is clear from the documentary evidence on
record that the Respondent State of Jammu and Kashmir
is also alive to the fact that the claim of the appellant has
E to be considered in the light of the earlier Circular dated
6th March, 1990, and not by the subsequent Circular
dated 6th January, 2000. In these circumstances, the
appellant's claim for out-of-turn promotion, on the basis
of the facts disclosed, require reconsideration in the light
F of the Circular dated 6th March, 1990, and not the Circular
dated 6th January, 2000, as has been sought to be done
in his case. [Paras 15,16] [718-C-E]

6. The orders passed by the Single Judge and the
Division Bench of the High Court are set aside and it is
G directed that the case of the Appellant be reconsidered
by the concerned Respondents in accordance with the
Circular No.14-GR of 1990 dated 6th March, 1990, for the
purpose of granting retrospective effect to the promotion
already granted to him on 19th August, 2000, and if such
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retrospective effect is given, to consider such other benefits that he may, thereafter, become entitled to in accordance with law. [Para 17] [718-F-G]

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CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2815-2816 of 2011.

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From the Judgment & Order dated 23.7.2007 of the High Court of Jammu & Kashmir in L.P.A. No. 149 of 2007 and final order dated 24.9.2008 in Review Petition No. 4 of 2007 in L.P.A. No. 149 of 2007.

Manoj V. George, Rifat Ara, Mohd. Irshad Hanif for the Appellant.

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Gaurav Pachananda, Sr. AAG, Sunil Fernandes, Sidhant Goel, Rahil Kohali for the Respondents..

The Judgment of the Court was delivered by

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ALTAMAS KABIR, J. 1. Leave granted.

2. In November, 1990, when militancy was at its height in the State of Jammu and Kashmir, the Appellant was selected for the post of Sub-Inspector in the Jammu and Kashmir Police. In February, 1995, he was posted as the Station House Officer of Chadoora Police Station, adjacent to the town of Charare Sharif in the district of Budgam, which is the convergence point for pilgrims and other visitors to the shrine of Hazrat Shaikh Nooruddin Noorani, situated in Charare Sharif in order to reach the shrine, people have to travel through Chadoora which is the gateway to the shrine. At the time of the Appellant's posting at Chadoora Police Station, his batch-mate, Shaikh Hamidulla, was already serving as the Station House Officer, Charare Sharif.

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3. In between the months of February and May, 1995, armed militants laid siege to the aforesaid shrine prompting the Government to send two units of the army backed by the Border Security Force to flush out the militants from the shrine precincts. The Chadoora Police Station under the Appellant's

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A charge was saddled with the duty of ensuring that more militants and unruly mobs did not enter Charare Sharif town during the said period. On 10th and 11th of May, 1995, in a fierce encounter between the Indian troops and the militants, the entire town of Charare Sharif, including the aforesaid shrine and about 1500 residential houses, were gutted. This triggered off violent protests all over Kashmir and, in particular, in the nearby areas from where enraged citizens in processions and even in unruly mobs starting marching towards Charare Sharif, not only threatening further deterioration in the law and order situation therein, but also threatening to destroy the secular fabric of the Valley by resorting to communal violence. The Appellant claims to have displayed exemplary courage and at the risk of his life prevented a temple at Badipora from being desecrated and burnt by an unruly mob of about 3000 people and the action taken by the Appellant saved Badipora from being converted into a battle field. According to the Appellant, he successfully resisted violent attempts by unruly mobs and processions of thousands of people to enter Charare Sharif through Chadoora which was under his jurisdiction. In effect, according to the appellant, it was the exemplary courage and patriotism as displayed by him as part of his official duties which prevented the situation from going out of hand in the aftermath of the destruction of the Charare Sharif shrine.

4. It is the Appellant's case that in order to gear up its administrative machinery and to effectively deal with the law and order situation, the State of Jammu and Kashmir took a policy decision to provide for accelerated promotion for Government employees whose performance in discharge of their duties and combating militancy was outstanding. A Circular, being No.14-GR of 1990, dated 6th March, 1990, was published by the State of Jammu and Kashmir in this regard. The procedure for accelerated promotion entailed a special report to be obtained about the conduct and performance of the officer concerned which was to be considered by the Promotion Committee. It was also provided that the Government would consider the

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grant of accelerated promotion where the special report brought out outstanding performance on the part of the officer concerned. A

5. On 12th May, 1995, the day after the incident in Charare Sharif, the Inspector General of Police and the Senior Superintendent of Police visited the area to assess the situation. On 10th June, 1995, the Director General of Police gave only the S.H.O., Charare Sharif, Shaikh Hamidulla and Sub-Inspector Sonallah, out-of-turn promotion, even though recommendations had also been made in respect of the Appellant for such out-of-turn promotion. The Appellant has referred to the Letters of Appreciation given by the Commanding Officer of the 12th Bn. Rashtriya Rifles, the Commandant of the 136th Bn. BSF, the Commanding Officer of the 7th Bn. Jat Regiment, Superintendent of Police, Jammu and Kashmir Police and the Senior Superintendent of Police, acknowledging the outstanding role of the Appellant in containing the law and order situation following the destruction of Charare Sharif and, in particular, the shrine of Hazrat Shaikh Nooruddin Noorani and recommending him for accelerated promotion. B
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6. On 7th August, 1996, the Director General of Police issued a Commendation Certificate with cash reward of Rs.2,000/- in recognition of the Appellant's exemplary performance. Thereafter, since nothing further materialized, the Appellant filed Writ Petition, being 5114 of 1996 in the High Court of Jammu and Kashmir, for a direction to the Authority concerned to consider and promote the Appellant to the rank of Inspector in recognition of his excellent performance. On 12th December, 1996, the High Court through an interim order directed the authorities to examine the Appellant's case and to inform the Court of the decision taken on the basis of such examination. Soon thereafter on 1st March, 1997, militants broke into the Appellant's house and killed his father. Recognising the fact that the Appellant had been discriminated against, the Superintendent of Police recommended that F
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A retrospective promotion be given to the Appellant from the date of the order passed in respect of Shaikh Hamidulla and Sub-Inspector Sonauallah. However, nothing further materialized pursuant to the interim order passed by the High Court on 12.12.1996 and on 19th August, 2000, in routine course; the Appellant was granted promotion.

7. Ultimately, the learned Single Judge dismissed the Appellant's Writ Petition on 28th May, 2007, and the Letters Patent Appeal No.149 of 2007 was also dismissed by the Division Bench of the High Court on 23rd July, 2007.

8. On behalf of the Appellant it was urged that he was duly covered by the Circular No.14-GR of 1990 dated 6th March, 1990 and his claim to out-of-turn promotion was duly supported by the recommendations by the officers who were present when the Charare Sharif incidents took place. It was submitted that the task performed by the Appellant at Chadoora was no less significant than the task performed by the Police personnel in Charare Sharif itself and there was, therefore, no reason to discriminate between the Appellant and the Station House Officer of Charare Sharif, particularly when both had been recommended for out-of-turn promotion by the Superintendent of Police (Operations) and the Senior Superintendent of Police, Budgam District, Kashmir.

9. On the other hand, it was submitted on behalf of the Respondent-State that the case of the Appellant for out-of-turn promotion had been duly considered by the authorities at the highest levels and a decision was taken, considering the situation at the ground level on 10th and 11th May, 1995 when Charare Sharif town was gutted. It was contended that the situation in Charare Sharif town itself and in Chadoora were different, in that, within Charare Sharif town the Police were engaged with the militants directly as they had moved into the shrine itself, whereas in Chadoora the duty performed on the said two days was one of containment. Regarding the incident at Badipora, the same was also aimed against communal

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forces who were trying to burn down the temple, but the same also involved containment and not a direct and active confrontation with militants. It was submitted that in the different circumstances, involving the S.H.O. of Charare Sharif and the Appellant, it could not be said that the Appellant had been discriminated against in the matter of out-of-turn promotion.

10. Having considered the submissions made on behalf of the parties and the materials on record, as also the judgments of the learned Single Judge and the Division Bench of the High Court, it does appear that the circumstances prevailing within the town of Charare Sharif and in Chadoora were different during the disturbance and the decision to grant out-of-turn promotion to Shaikh Hamidulla, who was the Station House Officer, Charare Sharif, during those fateful days was fully justified. In the absence of any glaring discrepancy or bias in the decision-making process, ordinarily the Court does not normally take upon itself the task of making a subjective assessment of an officer's performance in relation to matters of promotion and that too of the nature contemplated in the present case. However, at the same time, the Court is also entitled to consider the materials placed before it in order to arrive at a conclusion as to whether an injustice has been caused to the concerned officer. In the present case, both the Superintendent and Senior Superintendent of Police, Budgam District, had a chance to observe the Appellant's performance on the ground on 10th and 11th of May, 1995, when the incident was actually taking place and they have recommended that the Appellant should be given out-of-turn promotion. The Director General of Police has also recognized the exemplary performance of the appellant. All such recommendations seemed to suggest that the performance of the Appellant merited special consideration. Of course, the Appellant has already been promoted to the post of Inspector on 19th August, 2000, and the only question which now survives is whether such promotion should be given retrospective effect from the date on which Shaikh Hamidulla and Sub-Inspector Sonaullah were

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A given such promotion.

B 11. While considering the Appellant's claim for out-of-turn
C promotion or accelerated promotion in the Writ Petition filed
D by him, the learned Single Judge took special note of the
E condition, procedure and norms which provided that out-of-turn
F promotion would be considered only for consistently exceptional
G performance on the anti-militancy front. The learned Judge took
H note of the fact that except for two episodes, which, in any event,
were performed in the usual course of duties, the same did not
constitute any consistent exceptional performance on the part
of the Appellant which would entitle him to out-of-turn promotion.
The said view was endorsed by the Division Bench while
dismissing the Letters Patent Appeal filed by the Appellant
herein.

D 12. Neither the learned Single Judge nor the Division
E Bench of the High Court appears to have given proper attention
F to the Circular No.14-GR of 1990 dated 6th March, 1990, in
G relation to the recommendations which had been made by the
H Superintendent and the Senior Superintendent of Police,
Budgam District. However, the final assessment for giving out-
of-turn promotion lay with Director General of Police and in his
judgment a cash reward of Rs.2,000/- was felt to be appropriate
in recognition of the exemplary services rendered by the
Appellant.

F 13. However, from the materials on record it is quite clear
G that the claim of the Appellant is covered by the policy decision
H of the Government contained in Circular No.14-GR of 1990
dated 6th March, 1990, which provided an incentive to all
Government employees to give their best performance of duties
in the service of the people and in meeting the challenge of the
anti-national forces to disturb the law and order situation in the
State. It is only subsequently that on 6th January, 2000, that a
Government Order No.Home-3(P) of 2000 was published by
the State in its Home Department regarding the procedure for
out-of-turn promotion in the Police Department. It is in the said

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circular that it has been indicated that out-of-turn promotion could be considered only for consistently exceptional performance on the anti-militancy front and that the recommendations of the Director General of Police, along with the dossier of the concerned employee, along with other formalities and the extent of deviation from the seniority rule, would have to be placed before the Home Department Select Committee for consideration and recommendation which would then be placed before the Chief Minister with the prior approval of the Minister of State, Home Department.

14. The aforesaid circular dated 6th January, 2000, directly links up out-of-turn promotion with the concept of consistently exceptional performance on the anti-militancy front, which did not figure in the earlier Circular No.14-GR of 1990 dated 6th March, 1990. Both the learned Single Judge and the Division Bench appear to have overlooked the difference in the two different circulars and the decision of the learned Single Judge is based on the later Circular dated 6th January, 2000, while the Appellant's claim is under the earlier Circular of 6th March, 1990, in relation to incidents which had taken place prior to the promulgation of the Government Order dated 6th January, 2000. In fact, in the Supplementary Affidavit filed on behalf of the State of Jammu and Kashmir on 3rd August, 2010, the said two circulars have been referred to and it has been submitted that the Circular of 6th January, 2000, had been issued in continuation and in addition to the Circular dated 6th March, 1990. It has also been stated that since the Circular dated 6th January, 2010, was issued subsequent to the circular issued in the year 1990, cases which have occurred after the issuance of the 2000 Circular would be subject to the same. It has been categorically stated that the case of the Appellant belongs to the period prior to the issuance of the 2000 Circular and, therefore, he would be governed by the 1990 Circular. Of course, it has also been submitted that the said Circular dated 6th March, 1990, does not confer any legal right on the Appellant nor does it cast any obligation on the State of Jammu

A and Kashmir, since it was only an internal guideline which authorized the State Government to grant out-of-turn promotion in cases where the officials of the Jammu and Kashmir Police display exemplary bravery and courage in confronting terrorists, militants and insurgents. In the said affidavit it has been sought
B to be justified that the case of the Appellant did not merit out-of-turn promotion and he deserved a cash reward which had been duly awarded to him.

C 15. It is clear that the Respondent State of Jammu and Kashmir is also alive to the fact that the claim of the Appellant has to be considered in the light of the earlier Circular dated 6th March, 1990, and not by the subsequent Circular dated 6th January, 2000.

D 16. In these circumstances, we are of the view that the Appellant's claim for out-of-turn promotion, on the basis of the facts disclosed, require reconsideration in the light of the Circular dated 6th March, 1990, and not the Circular dated 6th January, 2000, as has been sought to be done in his case.

E 17. Accordingly, we set aside the orders passed by the learned Single Judge and the Division Bench of the High Court and direct that the case of the Appellant be reconsidered by the concerned Respondents in accordance with the Circular No.14-GR of 1990 dated 6th March, 1990, for the purpose of granting retrospective effect to the promotion already granted
F to him on 19th August, 2000, and if such retrospective effect is given, to consider such other benefits that he may, thereafter, become entitled to in accordance with law. The said exercise should be completed within three months from the date of communication of this order.

G 18. The appeals are allowed.

19. There will be no order as to costs.

B.B.B.

Appeals allowed.