

## Umesh Chandra Pandey Vs State of Uttar Pradesh and Others

**Court:** Allahabad High Court

**Date of Decision:** Oct. 1, 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{klr fooj.k

tuin bykgkckn

dze- eq0v0la0 /kkjk Fkkuk dk;Z fooj.k

la0

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 ckjenxh dh

3- 593 ls 307 Hkk-n-fo- 25 vk0 dhMxat "kkfrj fdLe dk vijk/kh gfjvkse lkgq fuoklh

595@99 ,DV 4@5 EXP e/kqokiqj bykgkckn dks iqfyl eqBHksaM es

cM+s gh lkgl o /kS;Z dk ifjp; nsrs gq, ekj

,DV fxjk;k A reUpk Hkkjh ek=k eas ftUnk o

[kks[kk dkjrwl rFkk ce cjen gqvk A

4- 647 ls 18@20 NDPS dhMxat "kkfrj fdLe ds tgj [kqjkuks dh xSax dk

652@99 inkZQk" k djrs gq, xSax ds 6vfHk;qDrks ds

,DV lkFk fxjQ~rkj fd;k x;k bl xSax dk eq[; dk;Z

vke turk dks izlkn ds :i es ykjtksi ls fefJr izlkn

fuy@9941@411 Hkk-n-

f[kykQj ywVuk Fkk A dkQh ek=k es

fo-

lwVdsl] ywVs x;s leku rFkk ykjkst dh cuk

yM~Mw ,d ,EcsIMj dkj cjen gqbZ A

5- 144] 307 Hkk-n-fo- 35 vkEIZ "kkgxat "kkfrj fdLe dk MdSr uUgs flag fuoklh

145@99 ,DV 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 cjen gqvk A

6- 91] 307 Hkk-n-fo- 25 vkEIZ dSaV "kkfrj fdLe dk yqVsjk@gR;kjk lq" khy mQZ

92@2000 ,DV 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 cjen gqvk A

7- 201 ls 399]402 Hkk-n-fo- 25 dhM+ xat vfHk;qDr lkfcj vyh vius lkFkh;ks ds lkFk

208@2000vkEIZ ,DV ,e0 Ogh0 ,0 jkeckx jsyos LVs"ku ls fyPNoh ,Dlizl

4@5 EXP ,DV VÃ-Ã¿Ã½su es ywViKV dh ;kstuk cukrs lq;

fxjQ~rkj A blds ikl ls 6 reUpk] 2 ce rFkk

Hkkjh ek=k esa ftUnk dkjrwl cjen gqvk A

8- 70] 71] 307 Hkk-n-fo- 25 vkEIZ vrjlqb;k dq[;kr vijk/kh is" ksoj gR;kjk lej cgknqj mQZ

72@2000 ,DV ITtw duk tks m0iz0 bukeh vijk/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 cjen gqvk A

9- 82] 307 Hkk-n-fo- 25 vkElZ vrjlqb;k "kkfrj okgu pksj v"ker vyh mQZ ccyw olh ds

83@2000 ,DV nkSjku eqBHksM+ fxjQ~rkjh ij dM+kbZ ls

fuy@2000@41 @411 iwNrkn djs ij Loa; rFkk vius lkfFk;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 cjen 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

IHkh QSDVÃ~Â¿Â½h esM midj.k rFkk 12 reUpk

12 cksj] 4 reUpk 315 cksj ds cjen gq, A

11- 90 ls 22 NDPS ,DV 60 EXT vrjlqb; vfHk;qDr pqUuw yky jk/ks o jes"k ;kno vU;

92@2000 ,DV lkFkh;ks ds fxjQ~rkjh rFkk dCts ls uktk;t

xktk 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] 307@34 Hkk-n-fo- 25 vrjlqb;k nkmn bczkfge @ NksVk "kdhy vUMjoYMZ

660@2000vk0 ,DV 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@200041 @411 Hkk-n-fo- vrjlqb;k vUrjkZTth; 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

dkjrwI cjen fd;k x;k A

15- 1@01 468] 469] 485] 486] 767]vrjlqb;k vfHk;qDr ulhe vkfn dks fxjQ~rkj djds udyh

468] 420 Hkk-n-fo- tkQjkuh Hkksyk tnkZ] chMh=] yky nUr eatu

Hkkjh ek=k es jSij rFkk bUgs cukus ds

midj.k vkfn cjen fd;k A

16- 59 ls 307 Hkk-n-fo- 25 vkElZ vrjlqb;k vfHk;qDr dks cgqr gh lkgfld eqBHksaM+ es

62@01 ,DV 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 fjfiV]

cUnwd 5 xksyh okyh ,l0ch0,y0 xu o 40

dkjrwI cjen dh x;h A rFkk lsuk ls pqjk;h

,l0,y0vkj0 dh cjenxh dh x;h A

17- 87@01 16@18@20 ca/kqvk Jfedvrjlqb;k vfHk;qDr lqjs" k vkfn ds ?kj ls cM+h esgur

izFkk mUewyu 1976 ,oa lqjxjlh 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 vrjlqb;k bukeh vfHk;qDr jktfd" kksj ij 2500@& dk

,DV] 41@411 Hkk-n-fo- buke ?kksf""kr Fkk] dks fxjQ~rkj djds mlds

44@2001 fuy 2001 ikl ls pksjh dh lqtqdh eksVj lkbfdy ,d 315

cksj dk reUpk o dkjrwI cjen 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] dkjrwI rFkk

reUpk cukus dk midj.k cjen 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

,llysaM+] 2 ;kegk] 3 lqtqdh] 1 ghjks

gk.M+k Ã-Ã-Ã-Ã-½dqy 7 okgu Ã-Ã-Ã-Ã-½ cjen fd;k x;k

21- 111] 112] 60@72 vrjlqb;k vfHk;qDr jkUpw o nhid llnkj dks fxjQ~rkj

113@01 fd;k x;k A muds dCts ls 2 ek:fr dkj rFkk 27

isVh nk: tks fd e;/izns"k dh Fkh cjen fd;k

x;k A

22- 126@01 302 Hkk-n-fo- 120 ch 34vrjlqb;k vfHk;qDr Jherh esudk flag }kjk vius izseh ds

Hkk-n-fo- 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 cjen 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 cjen fd;k x;k 1 dqUry 20

fdyksxzke xa/kd esa"ku

24- 194] 195] 3] 4] 5] Exp Act vrjlqb;k vfHk;qDr cyjke] fnus"k dsljokuh] jru pUnz

196@01 ds"kjokuh vkfn dks fxjQ~rkj djds buds dCys

ls 1 dqUry 20 fdyksxzke xa/kd esa"ku]

iksVk"k vkfn cjen fd;k x;k A

25- 284@01 41 @411] 467] 471] 420 vrjlqb;k vfHk;qDr jktdeqej vkfn dks fxjQ~rkj djds

Hkk-n-fo- buds dCts ls VkVk lweks] ek"kZy ek:fr dkj]

ek:fr oSu  $\tilde{A}_{\frac{1}{2}}dqy$   $15\tilde{A}_{\frac{1}{2}}okgu$  cjen fd;k x;k

A

26- 297] 5@25 vkEIZ ,DV vrjlqb;k vfHk;qDr HkksykukFk vkfn dks fxjQ~rkj

298@01 djds buds dCts ls 12 vnn reUpk 12 cksj]

dkjrwI rFkk reUpk cukus dk midj.k cjen

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 cjen 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

$V\tilde{A}_{\frac{1}{2}}d$  cjen fd;k x;k A

29- 70@02 41 @411] 467] 468] 420 vrjlqb;k vfHk;qDrx.k v:.k dqekj nwcs ,oa d;we dks

Hkk-n-fo- fxjQ~rkj djds buds dCts ls 4 vnn eksVj

lkbZfdy cjken fd;k x;k A

30- 121] 122] 307 Hkk-n-fo- 25 vk-,- dhMxat vfHk;qDr vejiky] lqHkk""k frokjh fuoklh

123] fetkZiqj] }kjk vlygs dh rLdjh djrs le; idM+k

124@02 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"i iVsy] lurks""k dqekj

iVsy dks fxjQ~rkj fd;k x;k bUgksus jkt dye

f}osnh ,oa jktk dh gR;k djds yk"i 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 :lk;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  $\tilde{A}^{\sim}\hat{A}_{\hat{A}}^{\frac{1}{2}}\text{datj}\tilde{A}^{\sim}\hat{A}_{\hat{A}}^{\frac{1}{2}}$  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 307 Hkk-n-fo- 25 vk0 dhMxat CkM+h gh esgur ls vfHk;qDr ealwu] jkts"i]

154@02 ,DV jktdqekj] 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 dhVxat vfHk;qDr cMdm o x;k izlkn dks reapk cukrs

gq, cM+h gh esgur ls fxjQ~rkj djds buds

25 vkEIZ ,DV dCts ls lkr reaps cus gq, o vk/kk ntZu v/kcus

reaps rFkk reapk cukus dk midj.k cjen fd;k

x;k A

37- 177@02 307 Hkk-n-fo- 25 vkEIZ dhVxat "kkfrj fdLe dk yqVsjk o is"ksj gR;kjk

,DV jkds" k mQZ csch fuoklh Fkkuk dhVxat dks

ftlds Ã-Â¿Â½ij 2500@& dk bZuke ?kksf""kr Fkk

18@20 ,u-Mh-ih-, - tks yxHkx 3 lky ls vius dks iqfyl fxjQ~r ls

ckgj j[ks gq, Fkk dks cMs+s gh ukVdh;

ls ,d lkgfld eqBHksM+ es fxjQ~rkj fd;k x;k

A

38- 7] 8@02 25 vkEIZ ,DV dhVxat vfHk;qDr Kku ;kno vuwi ds dCts ls 3 reapk

12 cksj cjen rFkk lku ;kno 2500@& dk

iqjLdkj ?kksf""kr vij/kh fxjQ~rkj fd;k x;kA

39- 14] 15@0318] 20 ,u-Mh-ih-, -l- ,DV dhVxat vfHk;qDr y{ke.k fcUn ds dCts ls 1 dqUry

xkatk o 1 lqtqdh xkM+h cjen 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 nsj 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 lkS :lk;s cjen

fd;k x;k A

42- 35@03 25 vk- ,sDV 4@5 bDliks-dhVxat vfHk;qDr nsos" k feJk ds dCts ls ,d vnn

,DV eLdV jk;Qy cjen fd;k x;k A

43- 111@03 25 vk- ,DV dhVxat vfHk;qDr vkUun esgrj ds dCts ls vlygk cjen

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 25 vk- ,DV dhVxat vfHk;qDr lat; flag ,oa mlds lkFkh;ks ds dCts

136@03 ls ftllh vlygk rFkk ce cukus ds midj.k cjen

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@51dhVxat vfHk;qDr tSdh vgen vkfn 3 uQj ds dCts ls



ou laj{k.k vf/kfu;e "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 IEcfU/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 harden 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 India) 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 India) 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 it 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 harden criminal was killed by the petitioner and in other

various incidents the, petitioner was involved. The petitioner solves the cases and arrested harden 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 been 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 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, of its own accord, 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 facts, 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.