



*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 25.09.2023

Judgment delivered on: 31.10.2023

+ **W.P.(C) 6989/2017**

COMMISSIONER OF POLICE AND ORS. Petitioners

Through: Mrs.Avnish Ahlawat, Standing
Counsel with Mrs.Taniya Ahlawat,
Mr.Nitesh Kumar Singh,
Ms.Laavanya Kaushik, Ms.Aliza
Alam and Mr.Mohnish Sehrawat,
Advocates.

versus

HARINDER SINGH Respondent

Through: Mr.Shanker Raju & Mr.Nilansh
Gaur, Advocates.

+ **W.P.(C) 8060/2017**

HARINDER SINGH Petitioner

Through: Mr.Shanker Raju & Mr.Nilansh
Gaur, Advocates.

versus

COMMISSIONER OF POLICE AND ORS. Respondents

Through: Mrs.Avnish Ahlawat, Standing
Counsel with Mrs.Taniya Ahlawat,
Mr.Nitesh Kumar Singh,
Ms.Laavanya Kaushik, Ms.Aliza
Alam and Mr.Mohnish Sehrawat,
Advocates.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA



J U D G M E N T

ANOOP KUMAR MENDIRATTA, J.

1. Separate Writ Petitions have been preferred by both, the petitioner Harinder Singh as well as respondents Commissioner of Police & Ors. challenging the impugned order dated January 20, 2017 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter, referred to as the ‘Tribunal’) in O.A.No.2936/2012.

For sake of convenience, Harinder Singh and Commissioner of Police & Ors. are referred as petitioner and respondents respectively as appearing in the O.A.

W.P.(C) No.8060/2017 has been preferred by Harinder Singh/petitioner against the impugned order dated January 20, 2017 since the O.A.No.2936/2012 preferred by him was allowed granting him “Out of Turn Promotion” as Head Constable only with effect from the date of filing of the proceedings under Section 482 Cr.P.C. before the High Court of Delhi, whereby the criminal proceedings pending against him were quashed but was denied the benefit of promotion *w.e.f.* June 03, 2003 as granted in the case of Constable Joginder Singh by the respondents.

On the other hand, W.P.(C) No.6989/2017 has been preferred by the respondents/Commissioner of Police PHQ & Ors., challenging the impugned order dated January 20, 2017 passed by the Tribunal whereby the O.A. No.2936/2012 was allowed in favour of the petitioner in terms of para 17.



2. In brief, the case of the petitioner (Harinder Singh) is that he was enlisted in Delhi Police as Constable (Executive) on October 26, 1998. During his short stint in the Special Staff, South District, he alongwith Constable Joginder Singh and other team members under the supervision of Inspector Rajender Singh, the then Incharge, Special Staff, South District started keeping track of movement of the criminals released recently from the jail. Further, the petitioner alongwith Constable Joginder Singh and team members laid a trap and arrested the notorious snatchers on July 09, 2002. At the instance of an accused, the jeweller who was the receiver of the stolen property was also arrested. With the arrest of two snatchers, South District Police solved about 114 cases of murder, attempt to murder, robbery and snatching etc. and also recovered the stolen articles. Subsequently, they also nabbed five members of Jaswant - Babbe Gang on October 05, 2002 from Sheikh Sarai, Malivya Nagar reflecting exemplary courage. In lieu of exemplary performance of the petitioner, DCP, South District recommended the name of the petitioner alongwith Constable Joginder Singh for 'Out of Turn Promotion' to the rank of Head Constable vide citation dated December 16, 2002. On the basis of citation and recommendation of Incentive Committee, Commissioner of Police approved grant of 'Out of Turn Promotion' to the rank of Head Constable to Constable Joginder Singh vide order dated June 03, 2003. However, the name of the petitioner was not recommended by the Incentive Committee since he was involved in FIR No.360/2000 registered under Sections 452/323/506 IPC at PS: Hauz Khas, Delhi and the proceedings were pending.



3. It is further the case of the petitioner that pursuant to quashing of the aforesaid FIR vide order dated February 04, 2011 by the High Court, an order dated March 07, 2011 was issued by the respondents to the effect that no departmental action is warranted against the petitioner and his name be removed from the list of police personnel against whom criminal cases are shown as pending.

4. A detailed representation was thereafter made by the petitioner to the Commissioner of Police for grant of 'Out of Turn Promotion' to the post of Head Constable (Executive) in the year 2011. The respondents vide order dated June 14, 2012 instead of granting 'Out of Turn Promotion' to the petitioner, awarded him 'Asadharan Karya Puraskar' with cash reward of Rs.10,000/-, though vide aforesaid order, several other staff members were granted 'Out of Turn Promotion'.

5. Aggrieved against the denial of 'Out of Turn Promotion' in terms of order dated June 14, 2012, petitioner filed a representation before the Commissioner of Police which was rejected vide order dated July 30/31, 2012.

6. The aforesaid order declining 'Out of Turn Promotion' was challenged by the petitioner by preferring O.A. No.2936/2012 before the Tribunal which allowed the O.A. vide impugned order dated January 20, 2017 in terms of para 17 as under:

"17. In the circumstances and for the aforesaid reasons, I agree with the view expressed by the Hon'ble Judicial Member, and accordingly, the OA is allowed, in terms of para 30 of the view expressed by Hon'ble Judicial Member, which reads as under;



30. In the conspectus of what is discussed above, we therefore hold that in fairness, reasonableness and justice, the applicant is also entitled to equivalent benefits conferred upon Joginder Singh and it is declared that he is so entitled. The impugned order passed is hereby quashed. OA is allowed but with a rider. It is seen that he has approached the Hon'ble High Court only in the year 2011. Therefore, his promotion as a Head Constable will not date back to the earliest date i.e., the date of promotion of Joginder Singh, but will only date back to the date of filing of the proceedings under Section 482 before the Hon'ble High Court of Delhi. Pursuance to this order all the benefits are to be made available to the applicant from this date onwards, within three months next. No costs."

It may also be noticed as observed in the impugned order dated January 20, 2017 that since divergent views were expressed by the members of the Tribunal, the O.A. was placed before the Chairman, Central Administration Tribunal for passing a suitable order. The O.A. was accordingly referred to third Member and stands allowed vide impugned order.

7. During pendency of the Writ Petitions, vide order dated November 26, 2019, this Court further directed that case of petitioner be placed before the Incentive Committee to take a decision on the grant of Out of Turn Promotion/cash reward/Asadharan Karya Puraskar in accordance with law, considering the fact that case of the petitioner was not placed before the Incentive Committee at the stage when 30th July, 2012 order came to be placed before the Commissioner. The case was accordingly reconsidered by the Incentive Committee on December 27, 2019 declining the grant of 'Out of Turn Promotion' and upholding the grant of Asadharan Karya Puraskar as under:



“His case was again reconsidered by the ICM. After careful examination of the entire facts of the case, Committee is of a considered view that his case is not fit for grant of Out of Turn Promotion. The FIR was quashed by the Hon’ble High Court of Delhi keeping in mind, the settlement between the parties. It is not a Hon’ble acquittal. Hence, already granted AKP is in order/justified.”

8. Learned counsel for the petitioner reiterates the contentions raised before the Tribunal and submits that the Tribunal erred in denying the ‘Out of Turn Promotion’ to the petitioner from the back date as granted to Constable Joginder Singh. It is vehemently urged that the role played by the petitioner is in no manner inferior to that of Constable Joginder Singh and the promotion should have been granted on parity *w.e.f.* June 03, 2003, in view of quashing of FIR by the High Court. The petitioner is stated to have been discriminated, by denying ‘Out of Turn Promotion’ from June 03, 2003 as granted to Constable Joginder Singh.

9. It is further contended that petitioner was falsely implicated in FIR No.360/2000 registered under Sections 452/323/506 IPC at PS: Hauz Khas, Delhi due to a personal domestic feud, which stood quashed by the High Court vide Crl. M.C.345/2011. It is emphasized that no adverse inference could be drawn against the petitioner on the basis of said criminal proceedings as they stood quashed and the same is to be treated as honourable acquittal of the petitioner. Further, the name of the petitioner is stated to have been removed from the list of officers against whom the criminal cases were pending and no action was recommended by the department.



The case for grant of ‘Out of Turn Promotion’ to petitioner is further stated to be at parity with Constable Joginder Singh in view of common citation/recommendation by the Deputy Commissioner of Police. It is pointed out that ‘Out of Turn Promotion’ was not recommended by the Incentive Committee merely on account of pendency of criminal proceedings which stood quashed. It is vehemently urged that grant of ‘Asadharan Karya Puraskar’ instead of ‘Out of Turn Promotion’ is inequitable and discriminatory treatment has been meted to the petitioner. It is also pointed out that petitioner could not be faulted for the pendency of criminal proceedings for over nine years. In support of the contentions, reliance is placed upon *Devender Kumar v. Govt. of NCT of Delhi, 2009 (161) DLT 524*, *Govt. of Delhi and Ors. v. Rahul Kumar Singh, 2014 (211) DLT 131* and *Ajay Pal Singh v. Lt. Governor and Ors., 2014 (146) DRJ 331*, *Yogendra Yadav & Ors. v. The State of Jharkhand & Anr., Criminal Appeal No.1205 of 2014* decided by the Hon’ble Supreme Court of India on July 21, 2014 and *Satender Pal & Ors. v. State & Anr., Crl. M.C. 2686/2018* decided by High Court of Delhi on January 25, 2019.

10. The factual position as noticed above is not disputed by the respondents. It is submitted on behalf of the respondents that the case of the petitioner was initially not recommended by the Incentive Committee in 2003 on account of registration of FIR No.360/2000 under Sections 452/323/506 IPC at PS: Hauz Khas, Delhi against the petitioner. However, it is admitted that the name of petitioner was removed from the list of police personnel against whom criminal cases are pending pursuant to quashing of



the aforesaid FIR in the year 2011 and, thereafter, the case was recommended for grant of 'Asadharan Karya Puraskar' instead of 'Out of Turn Promotion' though Constable Joginder Singh recommended by same citation was granted 'Out of Turn Promotion' as Head Constable vide order dated June 03, 2003.

Learned counsel for the respondents contends that O.A. was never filed by the petitioner against the rejection of 'Out of Turn Promotion' by the Incentive Committee in the year 2003 and representation has only been preferred in 2011. It is contended that cause of action never continued in favour of petitioner from 2003 to 2011 and no fault could be found against the decision of Incentive Committee for rejecting the case of the petitioner in 2003 keeping in perspective the Rules and Standing Orders issued on the subject. Further, quashing of FIR against the petitioner is stated to be only pursuant to a settlement between the petitioner and the complainant and could not be treated as honourable acquittal. It is pointed out that the case is *akin* wherein an individual is not selected in police service on account of his involvement in criminal case and, thereafter, on acquittal on account of compromise, the issue cannot be reconsidered for grant of appointment. It is further urged that neither Rule 19(ii) of the Delhi Police (Promotion and Confirmation) Rules, 1980 nor Standing Order No.4/89 creates a right to seek automatic *ad-hoc* 'Out of Turn Promotion'. Placing reliance upon ***The State of Madhya Pradesh & Anr. v. Sanjay Shukla, SLP No.1040 of 2021*** decided on March 27, 2023 by the Hon'ble Supreme Court of India, it is submitted that on the basis of parity, 'Out of Turn Promotion' cannot be



claimed as the acts differ from person to person and officer to officer. Reliance is also placed upon ***Tata Cellular v. Union of India, 1994 (3) Scale 477*** to contend that the Competent Authority neither exceeded its power, nor committed any error of law or abused its power to decide the issue for grant of ‘Out of Turn Promotion’. It is urged that the power of judicial review can only be exercised on the grounds of illegality, irrationality or procedural impropriety. Placing reliance upon ***Commissioner of Police v. Raj Kumar, Civil Appeal No.4960/2021 and connected Appeals*** decided on August 25, 2021 by the Hon’ble Supreme Court of India, it is urged that acquittal or discharge in criminal proceedings would not *per se* enable a candidate to argue that authorities can be compelled to select and appoint him.

11. The reasons recorded by the learned Tribunal in para 10 to 17 may be noticed for reference:

“10. This matter was originally referred to Hon’ble Shri A.K. Bhardwaj, the Hon’ble Judicial Member, as a Third Member reference. The said Hon’ble Member having found that though the Hon’ble Members expressed divergent views but not framed any specific issues for reference, returned the file to the concerned Hon’ble Members. Accordingly, the OA was referred to me thereafter, in view of the retirement of Shri A. K. Bhardwaj, and after framing issues for reference by the concerned Hon’ble Members, which read as under:

“1. What is the effect of an order under Section 482 of CRPC issued by the Hon’ble High Court at Delhi on the culpability or not of an accused?

2. What is the significance of Hon’ble Supreme Court ruling reported in AIR 1999 SC 495 wherein the Hon’ble Apex Court held that if there is a clash between two fundamentals, the



fundamental which will advance the cause of morality and public policy must be chosen?

3. In this context as stated above in (1) and (2), what is the significance of Emperor Vs. Khwaja Nazir Ahmed reported in (1945) 47 Bombay Law Reports, Page 245?

11. I have carefully gone through the complete OA record and the divergent views expressed by the Hon'ble Members of the Division Bench and the issues of reference framed thereunder by them. When this matter is listed for hearing, after reference was made, both the counsel submitted that their respective contentions already on record may be considered and there is nothing further to submit.

12. In my considered view, the short issue involved in the case is the aforementioned 1st issue of reference, as framed by the Hon'ble Members of the Division Bench. Once the said issue is answered, nothing remains in the OA and even there is no necessity to answer the other issues, as they are superfluous and the discussion would be only academic. From the perusal of the pleadings of the OA, it is clear/manifest that Constable Joginder Singh and the applicant were identically placed in so far as their brave acts are concerned, and the Incentive Committee while considering the case of the applicant, after he was acquitted from the Criminal Case, granted him Cash Award instead of 'Out of Turn Promotion' as Head Constable as granted to the said Joginder Singh, in view of his involvement in the criminal case, though it was quashed.

13. The Hon'ble High Court of Delhi vide its order dated 04.02.2011, in Criminal MC No.345/2011 quashed the FIR No.360/2000 under Sections 452/323/506 IPC PS Haus Khas pending against the applicant, in exercise of its inherent powers under Section 482 of Cr.PC, in view of the settlement reached between the parties.

14. Once, an FIR is registered against a person he can be acquitted from the said offence, on many ways. It may be clean acquittal or acquittal on a benefit of doubt etc. or on compounding of the offence. However, quashing of FIR goes to the route of the matter, and it cannot be said that the said person involved with any criminal offence, once the FIR is quashed. The same inference may not be given to all other modes of acquittal from the criminal offence, in view of the nature of the acquittal.



15. *The justification in quashing the FIR, by the Hon'ble High Court of Delhi, was not an issue before this Tribunal. Even the respondents also cannot pass any order considering the fact of involvement or registration of a crime, once the FIR was quashed. The learned counsel appearing for the respondents has not placed any decision contrary to the aforesaid view. Even the Hon'ble Administrative Member, who opined that the impugned action is valid, also, had not considered any such decision. Though the respondents are empowered in spite of the brave acts of the applicant, to deny him the 'Out of Turn Promotion' or even the cash award as was granted to him, on any other ground, if available, but not on the ground that the applicant was involved in a criminal case, once the FIR itself was quashed by a competent Court of law. It is also not the case of the respondents that they have granted only cash award as against the granting of 'Out of Turn Promotion', on par with Shri Joginder Singh, on any ground other than the involvement of the applicant in the aforesaid FIR. It is also not the case of the respondents that the role played by the applicant in arresting the notorious snatchers, namely, Anoop and Sunil Sansi, is in any way inferior to that of Shri Joginder Singh.*

16. *Accordingly, the issue No.1 of the reference was answered in favour of the applicant and against to the respondents. As observed above, in view of answering the Issue No.1, there is no necessity to answer the issue Nos.2 and 3 as the same would be only for the academic purpose and won't serve any useful purpose in this case.*

17. *In the circumstances and for the aforesaid reasons, I agree with the view expressed by the Hon'ble Judicial Member, and accordingly, the OA is allowed, in terms of para 30 of the view expressed by Hon'ble Judicial Member, which reads as under;*

"30. In the conspectus of what is discussed above, we therefore hold that in fairness, reasonableness and justice, the applicant is also entitled to equivalent benefits conferred upon Joginder Singh and it is declared that he is so entitled. The impugned order passed is hereby quashed. OA is allowed but with a rider. It is seen that he has approached the Hon'ble High Court only in the year 2011. Therefore, his promotion as a Head Constable will not date back to the earliest date i.e., the date of promotion of Joginder Singh, but will only date back to the date of filing of the proceedings under Section 482 before the Hon'ble High Court of Delhi. Pursuance to this order all the benefits are to be made available to the applicant from this date onwards, within three months next. No costs."



12. We have given considered thought to the contentions raised. The authorities relied on behalf of the petitioner may be referred in the first instance.

(i) In *Ajay Pal Singh v. Lt. Governor & Ors.* (supra) relied by learned counsel for the petitioner, Ajay Pal/petitioner therein joined Delhi Police as Sub-Inspector (Executive) in 1985 from Sports Quota and participated in various sports events from the time of his appointment. Petitioner won several medals at these events and applied for 'Out of Turn Promotion' to the rank of Inspector. The case of the petitioner was considered at various levels for a continuous period of 12 years but yielded no outcome. In the year 2000, the case of petitioner was forwarded by screening committee for grant of 'Out of Turn Promotion' but the same was rejected. Consequent upon directions by the tribunal, the respondents again considered the case of the petitioner. However, the respondents found the petitioner undeserving of promotion under Rule 19(ii) of Delhi Police (Promotion and Confirmation) Rules, 1980 as he did not have conspicuous achievements and his performance was not of such exceptional order. Petitioner again preferred an O.A. which was dismissed by the Tribunal and was further challenged before this court. Petitioner claimed that he was discriminated by being denied ad-hoc 'Out of Turn Promotion' on unjustified grounds despite fulfilling all the requirements prescribed under Rule 19 (ii) of the Delhi Police (Promotion and Confirmation) Rules, 1980. The stand of the respondent was that the petitioner was not considered fit for promotion as



his performance was not continuous and not of an exceptional order and he had been granted promotion to the post of Inspector on July 16, 2003 which made his request infructuous.

The High Court set aside the order of the Tribunal and observed that declining the request of petitioner for ‘Out of Turn Promotion’ by respondent by stating that the same was not possible to be considered at that particular stage was devoid of any rational basis or logic and further reflects complete non-application of mind. It was also observed that denial of ‘Out of Turn Promotion’ to petitioner when other sportsmen were also promoted within 3-4 years of initial appointment and had similar achievements like the petitioner, results in violation of right enshrined in Article 14 of the Constitution of India. The court further directed the respondents to grant promotion to petitioner from the date of eligibility along with full consequential benefits.

(ii) In *Devender Kumar v. Govt. of NCT of Delhi* (supra), petitioner therein was appointed as Constable in Delhi Police in 1989 and was granted two ‘Out of Turn Promotion’s under Rule 19 (ii) of the Delhi Police (Promotion and Confirmation) Rules, 1980, on June 03, 2003 and March 30, 2006 respectively. The petitioner was a member of the team which successfully nabbed accused Sher Singh Rana from Kolkata, who was involved in murder of Smt. Phoolan Devi (then Member of Parliament) and had escaped from Tihar Jail. DCP concerned therein sent citation for ‘Out of Turn Promotion’ of petitioner to the higher rank along with his other teammates for showing extra-ordinary gallantry. Petitioner and his



teammates were also granted ‘Asadharan Karya Purskar’ with cash prizes. The Incentive Committee after considering the citation granted ‘Out of Turn Promotion’ to the teammates but the same was refused to the petitioner on the ground that he has been granted the benefit of ‘Out of Turn Promotion’ twice on earlier occasions. The order of Incentive Committee was challenged before the Tribunal by way of an O.A. and the same was dismissed. Aggrieved by the same, petitioner preferred a writ petition before this court, which was allowed. It was observed that there is no bar on grant of third ‘Out of Turn Promotion’ to deserving officer who had shown devotion to duty and displayed gallantry. It was further held that since similarly placed teammates were granted ‘Out of Turn Promotion’, petitioner was very well entitled to the same benefit and relevant observations made in para 11 may be beneficially quoted:

“11. Rule 19 of the said rules has statutory force having been framed by the Administrator in exercise of the powers vested in him by virtue of sub-section (1) of Section 147 of the said Act. Accordingly, no circular, guidelines or office memorandum can supplant the substantive rules. No policy can be made contrary to the statutory rules. Accordingly, we are of the view that Respondent could not have denied third out of turn promotion to the Petitioner who was similarly placed vis-à-vis his other teammates named SI Neeraj Kumar, HC Satish Kumar and Ct. Surender Kumar, being part of the same team which nabbed accused Sher Singh Rana.”

(iii) In ***Government of Delhi & others v. Rahul Kumar Singh*** (supra), respondent had approached the Tribunal with a prayer seeking ad-hoc ‘Out of Turn Promotion’ to the post of Inspector and the same was allowed. Respondent along with his team members therein had successfully completed an operation in which gangster Krishan Pehalwan, a member of



notorious gang was pinned down and his other associates were apprehended. The Incentive Committee recommended the names of respondent and SI Dharmender Kumar for grant of 'Out of Turn Promotion', but the same was not granted to them due to non-availability of vacancies. Further, a new committee was constituted and SI Dharmender Kumar was granted 'Asadharan Karya Puruskar', but the respondent was not granted any incentive. The non grant of 'Out of Turn Promotion' was initially challenged by SI Dharmender Kumar and he was granted 'Out of Turn Promotion' by the Tribunal w.e.f. September 14, 2007. Thereafter, respondent seeking parity made a representation which was not acceded to by the petitioners and led to filing of O.A. which was allowed by the Tribunal. The High Court upholding the order of the tribunal dismissed the writ petition preferred by Govt. of NCT of Delhi observing that the role played by respondent was identical to his teammate SI Dharmender Kumar, who was granted 'Out of Turn Promotion' and hence there was no basis for differentiating between the role of both the officers in the encounter, where they were at forefront to nab the dreaded gangster risking their life.

The aforesaid authorities relied on behalf of the petitioner support the proposition that the Courts have intervened and granted benefit by way of 'Out of Turn Promotion', 'Asadharan Karya Puraskar' etc. in terms of policy/standing orders on the grounds of parity, in favour of the officers, wherein the discrimination resulted in violation of Article 14 of the Constitution of India.



13. Reverting back to the facts of the present case, admittedly, the case of petitioner as well as Constable Joginder Singh were recommended for 'Out of Turn Promotion' to the rank of Head Constable recognizing their sense of professionalism and devotion to duty by the then Deputy Commissioner of Police, South District, New Delhi vide common citation. The promotion to the next rank was further effected in case of Constable Joginder Singh vide order dated June 03, 2003. However, the final assessment for giving 'Out of Turn Promotion' to the petitioner after consideration was rejected by the first Incentive Committee in 2003, since the petitioner was facing criminal case bearing FIR No.360/2000 under Sections 452/323/506 IPC, PS: Hauz Khas, Delhi. The petitioner would also have been recommended for Out of Turn Promotion but for the aforesaid proceedings, since role of petitioner and Constable Joginder Singh was at parity. In the facts and circumstances, the petitioner had no option but to await final outcome of the criminal proceedings. A representation dated May 16, 2011 for grant of 'Out of Turn Promotion' was accordingly made by the petitioner after quashing of criminal proceedings by the High Court vide order dated February 04, 2011. There does not appear to be any cogent reason for subsequently scaling down the 'Out of Turn Promotion' to that of 'Asadharan Karya Puraskar' in case of petitioner in 2012 as conveyed vide U.O. dated June 14, 2012 since the role of petitioner was at parity with Constable Joginder Singh.

The justification put up on behalf of the respondents that the Incentive Committee was of the view that police personnel who had just



arrested some snatchers would not deserve grant of 'Out of Turn Promotion' and the same is meant for the officers who have dealt with tougher cases, appears to be clearly discriminatory, whimsical and violative of Article 14 of the Constitution of India as for the same exemplary services Constable Joginder Singh had been granted 'Out of Turn Promotion'.

14. Apart from above, the stand of the respondents that the case of the petitioner is 11 years old and petitioner was involved in a criminal case, which adversely reflected on his career does not stand to reason since the criminal proceedings stood quashed by the High Court. It cannot be ignored that the criminal proceedings emanated on a domestic issue which stands amicably settled and nothing stood proved on record to make an adverse inference as to the conduct of the petitioner. Further, no departmental proceedings appear to have been initiated against the petitioner on the basis of aforesaid criminal proceedings.

It cannot be ignored that the case of the petitioner for 'Out of Turn Promotion' was completely at parity with Constable Joginder Singh, who was also granted 'Out of Turn Promotion' w.e.f. June 03, 2003 and the acts did constitute exceptional performance which merited special consideration. We are of the considered view that the Incentive Committee, while recommending Asadharan Karya Puraskar along with cash reward instead of 'Out of Turn Promotion' failed to correctly appreciate the outcome of quashing of criminal proceeding pending against the petitioner.

It may further be observed that even in respect of offences which are not compoundable, the Court may permit compounding/quashing of the



proceedings under Section 482 Cr.P.C., wherein the offences are entirely personal in nature and do not affect public peace and tranquility or wherein the Court is of the opinion that quashing of such proceedings on account of compromise would bring about peace and would secure ends of justice as held in *Yogendra Yadav & Ors. v. The State of Jharkhand & Anr.* (supra). The objective behind the same is that prosecution would become lame and would be merely an exercise in futility. It may be observed that in trial for criminal offences, the accused is presumed to be innocent unless proved guilty and it is the duty of the prosecution for establishing the *actus reus* of the crime as well as the *mens rea*. When the proceedings are quashed on account of compromise between the parties, the accused stands acquitted for all intents and purposes. It does not strike to logic that a person involved in criminal proceedings even in minor offences despite amicable settlement may be constrained to undertake a regular trial instead of seeking an amicable settlement, on the hypothesis that he would not be deemed to be honourably acquitted and an adverse inference may still be drawn against him despite quashing of proceedings.

In the facts and circumstances of the present case, no adverse inference could have been drawn against the petitioner, thereby denying the benefit for 'Out of Turn Promotion' which was also recommended to Constable Joginder Singh. The only impediment regarding the pendency of criminal proceedings stood obliterated after quashing of criminal proceedings by the High Court.

15. The authorities relied upon on behalf of the respondents may further



be considered. In *The State of Madhya Pradesh & Anr. v. Sanjay Shukla* (supra) relied by learned counsel for the respondents, the respondent therein was serving as Sub-Inspector and claimed 'Out of Turn Promotion' under Regulation 70A of Madhya Pradesh Police Regulations on the ground that he had saved some villagers when the adjoining villages were affected by floods and also sought parity with one of his colleagues namely B.S. Parihar who he claimed was granted Out of Turn Promotion in similar circumstances. The respondent was granted the benefit of Out of Turn Promotion by the High Court but was set aside by the Hon'ble Apex Court in the facts and circumstances of said case observing that the Out of Turn Promotion cannot be claimed as a matter of right and the same can be given in only those cases which fall within the parameters of Regulation 70A.

There is no dispute as to the observations of the Hon'ble Apex Court that the facts differ from person to person, officer to officer and act to act and as such in case of Out of Turn Promotion, there cannot be any parity as a matter of right. However, in the present case it needs to be noticed that by a common citation by DCP, both the petitioner as well as Constable Joginder Singh were recommended for the same exemplary acts. The parity is *per se* discernible from the facts and the only reason for denial at the time of initial consideration by the Incentive Committee was the pendency of criminal proceedings against the petitioner. The aforesaid impediment stands removed after quashing of aforesaid proceedings.

16. In *Commissioner of Police v. Raj Kumar* and connected appeals (supra), relied upon by learned counsel for the respondents, the appellant



therein had challenged the common judgment delivered by High court whereby directions were issued to consider the respondents for appointment to the post of Constable in Delhi Police since the criminal proceedings pending against three of the candidates resulted in acquittal on the basis of compromise between the parties. Hon'ble Apex Court setting aside the order of High Court observed that acquittal of an applicant/candidate arrayed as accused in various offences *per se* would not entitle him or her for consideration for appointment and also referred to principles laid down in *Avtar Singh v. Union of India, (2016) 8 SCC 471*. The Hon'ble Court held that the choice of the employer is greatest when it comes to deciding the suitability of a candidate and each case is to be scrutinized by the concerned public employer, through its designated officials-more so, in the case of recruitment for the police force, which is under a duty to maintain order, and tackle lawlessness, since their ability to inspire public confidence is a bulwark to society's security.

On the face of record, the aforesaid case is distinguishable as it relates to considerations which are relevant at the time of appointment of the respondents in police force and in the aforesaid context it was held by the Hon'ble Apex Court that in relation to certain offences, acquittal or exoneration of an accused candidate *per se* would not entitle him or her to consideration for appointment. The cases in respect of respective candidates were observed to have been rightly considered by the Screening Committee either on account of material witnesses turning hostile or not appearing, the propensity to indulge in such behaviour and considering the



nature of offences. The issue for consideration post regular appointment for promotion is governed in terms of the relevant Rules and Standing Orders in this regard. In the present case, benefit of 'Out of Turn Promotion' has been sought on the grounds of parity and the discrimination by the respondents is clearly in violation of Article 14 of the Constitution of India, which is manifest from record. The authorities relied on behalf of the respondents, as such, are distinguishable.

17. Undoubtedly, an employee enjoys only a right for consideration and cannot claim promotion as a matter of right since the consideration remains within the domain of the Competent Authority in terms of Rule 19(ii) of the Delhi Police (Promotion and Confirmation) Rules, 1980, which have been framed by the Administrator in exercise of the powers conferred under subsection (1) of Section 147 of the Delhi Police Act, along with Standing Orders issued in this regard. However, while considering the case of the applicants, the Competent Authority is mandated to act reasonably, fairly and in public interest. The same may be tested on the anvil of constitutional guarantee of equality as enshrined under Article 14 of the Constitution of India and in case the circumstances reflect a hostile or whimsical discrimination, the cases may be fit for intervention by the Tribunal/Courts. We are of the considered view that the denial of 'Out of Turn Promotion' by the respondents on representation made by the petitioner in 2011 and scaling down the same to grant of Asadharan Karya Puraskar and further reiterating the denial of 'Out of Turn Promotion' by the Incentive Committee vide Minutes of the Meeting dated December 27,



2019 in terms of order dated November 26, 2019 passed by this Court, is without any merits or justifiable reasons, since the case of the petitioner is in complete parity with Constable Joginder Singh within mandate of Article 14 of the Constitution of India. Apparently, nothing adverse has been further brought on record against the petitioner during the intervening period. However, since the 'Out of Turn Promotion' could not be granted to the petitioner on account of pendency of criminal proceedings which is solely attributable to him, the Tribunal, in that sense, is justified in granting the benefit to the petitioner *w.e.f.* the date of filing of proceedings under Section 482 Cr.P.C. instead of the date on which benefit was extended to Constable Joginder Singh. The petitioner shall be accordingly entitled to all benefits from aforesaid date as directed by the Tribunal. The order shall be implemented by the respondents within four weeks from the date of passing of this order.

Accordingly, both the Writ Petitions preferred on behalf of the petitioner as well as respondents {i.e. W.P.(C) No.8060/2017 and W.P.(C) No.6989/2017} are dismissed and the order passed by the Tribunal is upheld. No order as to costs. Pending applications, if any, also stand disposed of.

(ANOOP KUMAR MENDIRATTA)
JUDGE

(V. KAMESWAR RAO)
JUDGE

OCTOBER 31, 2023/v/sd
