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

% *Judgment Reserved on : 15th November, 2010*
Judgment Pronounced on: 10th December, 2010

\+ **W.P.(C) 5528/2010**

GOVT OF DELHI & ORS ..... Petitioners
Through: Ms.Avnish Ahlawat, Advocate with Ms.Latika Chaudhary, Ms.Simran and Mr.Nitesh Kumar Singh, Advocates

versus

HC MANOJ KUMAR ..... Respondent
Through: Mr.Sourabh Ahuja, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

3. Whether the Reporters of local papers may be allowed to see the judgment?
4. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

For orders, see W.P.(C) No.5444/2010.

PRADEEP NANDRAJOG, J.

SIDDHARTH MRIDUL, J.

December 10, 2010
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Signature Not Verified
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HC RAJ KUMAR ..... Respondent
Through: Mr.Sourabh Ahuja, Advocate

W.P.(C) 5446/2010

GOVT OF DELHI & ORS ..... Petitioners
Through: Ms.Avnish Ahlawat, Advocate with Ms.Latika Chaudhary, Ms.Simran and Mr.Nitesh Kumar Singh, Advocates

versus

HC KULDEEP SINGH ..... Respondent
Through: Mr.Sourabh Ahuja, Advocate

W.P.(C) 5458/2010

GOVT OF DELHI & ORS ..... Petitioners
Through: Ms.Avnish Ahlawat, Advocate with Ms.Latika Chaudhary, Ms.Simran and Mr.Nitesh Kumar Singh, Advocates

versus

HC MANOJ KUMAR ..... Respondent
Through: Mr.Sourabh Ahuja, Advocate

W.P.(C) 5465/2010

GOVT OF DELHI & ORS ..... Petitioners
Through: Ms.Avnish Ahlawat, Advocate with Ms.Latika Chaudhary, Ms.Simran and Mr.Nitesh Kumar Singh, Advocates

8-A

versus

HC RAKESH KOTHIYAL ..... Respondent
Through: Mr.Sourabh Ahuja, Advocate

W.P.(C) 5482/2010

GOVT OF DELHI & ORS ..... Petitioners
Through: Ms.Avnish Ahlawat, Advocate with Ms.Latika Chaudhary, Ms.Simran and Mr.Nitesh Kumar Singh, Advocates

versus

SI UMESH BARTHWAL ..... Respondent
Through: Mr.Sourabh Ahuja, Advocate

W.P.(C) 5528/2010

GOVT OF DELHI & ORS ..... Petitioners
Through: Ms.Avnish Ahlawat, Advocate with Ms.Latika Chaudhary, Ms.Simran and Mr.Nitesh Kumar Singh, Advocates

versus

HC MANOJ KUMAR ..... Respondent
Through: Mr.Sourabh Ahuja, Advocate

W.P.(C) 5549/2010

GOVT OF DELHI & ORS ..... Petitioners
Through: Ms.Avnish Ahlawat, Advocate with Ms.Latika Chaudhary, Ms.Simran and Mr.Nitesh Kumar Singh, Advocates

versus

HC SANJEEV SHOKEEN ..... Respondent
Through: Mr.Sourabh Ahuja, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1. Whether the Reporters of local papers may be allowed

to see the judgment?

2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. Since common question arises for consideration in the above captioned writ petitions arguments were heard in all the matters on 15.11.2010 and decision was reserved. The present judgment decides all the writ petitions.

2. Shorn of unnecessary details, the relevant facts are that Section 147 of the Delhi Police Act 1948 empowers the Administrator of Delhi to make rules for recruitment to, and the pay, allowances and other conditions of service of members of Delhi Police. In exercise of the power conferred upon it by Section 147 of Delhi Police Act, 1948 the Administrator framed Delhi Police (Promotion and Confirmation) Rules, 1980 (hereinafter referred to as the "Rules").

3. Rule 5 of the Rules provides that promotions from one rank to another and from lower grade to higher grade in the same rank shall be made by selection tempered with seniority; and efficiency and honesty shall be the main factors governing the selection and that the zone of consideration shall be determined in accordance with the rules and instructions issued by the government from time to time. Rule 19 makes provision for out of turn promotion and the same reads as under:-

> "**19. Ad-hoc promotions –** (i) In special circumstances when there are no approved names on promotion lists, and vacancies exist, the Commissioner of Police, may promote suitable officers in orders of seniority to next higher rank temporarily. Such promotions shall not entitle the officer concerned to claim and right for regular appointment or seniority or for appointment to such or any other equivalent

post and shall be liable to reversion without notice as soon as qualified men become available.

(ii) To encourage outstanding sportsmen, marksmen, officers who have shown exceptional gallantry and devotion to duty, the Commissioner of Police may, with the prior approval of the Administrator, promote such officers to the next higher rank provided vacancies exist. Such promotions shall not exceed 5 per cent of the vacancies likely to fall vacant in the given year in the rank. Such promotions shall be treated as ad-hoc and will be regularized when the persons so promoted have successfully completed the training course prescribed like (Lower School Course), if any. For the purpose of seniority such promotees shall be placed at the bottom of the promotion list drawn up for that year.

(iii) The Commissioner of Police, Delhi for the purpose of posting to the Police Training School and the Recruits Training Centre (DAV IVth Bn. at present) personnel of appropriate merit and talent may grant one rank promotion as incentive purely on emergent basis up to the level of Inspector without conferring on the promotee, any right of seniority and appointment whatsoever even if he may be borne on promotion.

Such promotees shall revert to their substantive rank as soon as they are transferred out of training institutes and ceased to be an Inspector."

4. On 21.09.1999 the Commissioner of Police issued an Office Order regarding the grant of out of turn promotion to the police officers in terms of Rule 19 of the Rules, which reads as under:-

"Henceforth all cases of out of turn promotions when received in PHQ will be first examined by the Committee consisted of the following:

1.	Shri R.S. Gupta, Spl. CP/Ops.	: Chairman
2.	Shri R.P. Singh, Jt. CP/Vig.	: Member
3.	Shri Kanwaljit Deol, Addl. CP/Traffic	: Member
4.	Shri S. Dash, DCP/SO to CP	: Member

The Committee will examine whether the act for which out of turn promotion is recommended involves threat or risk to life of a police personnel concerned. If the act does not concern any bravery or gallantry, it should be examined whether the achievement in question was result of efforts by the individual which may be termed as beyond the call of duty. Another category can be of a person who has been performing consistently outstandingly for quite sometime and deserves encouragement for his extreme hard work and outstanding performance and devotion to duty.

The Committee must ensure that under no circumstances should a police personnel be recommended for out of turn promotion in a routine type of work or for a performance which cannot be categorized as outstanding. The Committee will make minutes of meeting in which such cases are considered. The Committee will come to a conclusion which should be conveyed to me and the minutes signed by the Chairman as well as Members of the Committee. Thereafter the recommendations will put up for final approval of the undersigned."

5. Save and except respondent Umesh Barthwal in W.P.(C) No.5482/10 who is working as Sub-Inspector in Delhi Police the respondents in all the other petitions are working as Head Constable in Delhi Police.

6. On 2.8.2005 HC Raj Kumar the respondent in W.P.(C) No.5444/10 and two other police officers, namely Const.Mohan Chander and SI Ved Prakash had tracked a dreaded inter-state gangster named Janamjay @ Moni and for which they had to spend lot of time, pool in their resources and intelligence and finally to have a face to face encounter with the gangster. On 11.6.2004 HC Kuldeep Singh the respondent in W.P.(C) No.5446/2010 and 3 other police officers, namely Const.Dev Dutt, ASI Rishi Pal and ASI Devender had likewise worked and came face to face in an encounter with another inter-state gangster and his associate i.e. Yaseen and Benani Singh. On

10.5.2005 HC Manoj Kumar the respondent in W.P.(C) No.5458/2010 and another police officer HC Dharamvir had likewise worked out and came face to face in an encounter with another dreaded gangster named Ranbir Rathi. On 27.4.2007 HC Rakesh Kothiyal the respondent in W.P.(C) No.5465/2010 and another police officer named Const.Rajender Singh had likewise worked out and came face to face in an encounter with another inter-state gangster named Sandeep Deswal @ Narsimha. On 6.3.2006 SI Umesh Barthwal the respondent in W.P.(C) No.5482/2010 and 4 police officers named HC Surender Kumar, HC Yashpal, Const.Sunder Lal Gautam and Const.Sunil Kasana had likewise worked out and came face to face in an encounter with another dreaded inter-state gangster named Hemant @ Sonu and his associate Jaswant @ Sonu. On 16.1.2006 HC Manoj Kumar the respondent in W.P.(C) No.5528/2010 and 4 police officers named SI Ramesh Chander, ASI Rajender Singh, Const.Bachchu Singh and Const.Mohd.Iqbal had likewise worked out and came face to face with one Abu Hufeza, a member of terrorist outfit Lashker-e-Toyba. On 27.12.2005 HC Sanjeev Shokeen the respondent of W.P.(C) No.5549/2010 and 4 other police officers named SI Rajender Singh, ASI Devender Singh, HC Bijender Singh and Const.Vinod Gautam came face to face with 3 members of terrorist outfit Jaish-e-Mohammed. It may be noted that in all cases there was an exchange of fire in which the gangsters and the terrorists were killed.

7. Subsequent thereto, Deputy Commissioner of Police/Joint Commissioner of Police, as the case maybe, issued citations for out of turn promotion of the respondents and the police officers associated with them to the respective next higher rank for having exhibited extraordinary good work and exemplary gallant work in the elimination of afore-noted gangsters/terrorists.

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8. Since we would be highlighting the issue commonly urged with reference to the presidential gallantry award conferred upon HC Sanjeev Shokeen, which gallantry award was on the basis of the citation issued pertaining to him evidencing his having exhibited extraordinary good work and exemplary gallantry, we note at this juncture, the citation issued in respect of HC Sanjeev Shokeen. It reads as under:-

> This is a citation for out of turn promotion of SI (Exe.) Rajender Singh Sehrawat, D-3532, PIS No.28820273 to the rank of Inspector, ASI (Exe.) Devender Singh, No.548/SB, PIS No.28871217 to the rank of Sub-Inspector, Head Constable Bijender Singh No.928/PCR, PIS No.28823124 & Head Constable Sanjeev Shaukeen No.1552/T, PIS No.28980038 to the rank of Assistant Sub Inspectors and Constable (Exe.) Vinod Gautam, No.4614/DAP , PIS No.28912279 to the rank of Head Constable for their extraordinary good work and exemplary gallant act that led to a successful joint operation with 50 Rashtriya Rifles (Kumaon) on 27/12/2005 in which three members of banned terrorists organization, Jaish-e-Mohammad (JeM) were killed in police encounter at Khrew, PS Pampore, Distt. Pulwama, Jammu & Kashmir, Two AK-56 Assault Rifles, one AK-47, 6 magazines, 3 Hand grenades, Dictaphones, Rubber stamps or Tehsil Cdr. JeM & Principal HS School, Kakapora, Pulwama, memory stick and other indiscriminating documents were recovered.
>
> A Case vide FIR No.178/2005 dated 27.12.2005 U/s 307 RPC & 7/27 Arms Act was registered at PS Pampore, Distt. Pulwana, J&K in this regard.
>
> ....
>
> **ROLE OF POLICE OFFICERS**
>
> .....
>
> **HC Sanjeev Shaukeen**: He also played a vital role in this operation being with the team member. He visited along with Ct.Vinod Gautam village Khrew many a times, activated his sources and passed many days in the village braving adverse conditions and continued in hospitality. He used all his ability to identify the house of Mohd.Akram Butt and was given the important task

to find out whether the terrorists were inside the house or not. He along with Ct.Vinod Gautam on the pretext of working for a mobile company that is going to start services in valley befriended the people around. He was able to extract information from his sources with the groundwork he did in the village. He came up with concrete information that there is not only Irfan @ Suhail inside the house but also 2 more Pakistani nationals (terrorist of JeM) inside the house.

On 27.12.2005, when the house of Butt Mohalla, Village Khrew, Pompore, where the terrorists were hidden, was condoned off with a two-tier ring. The outer cordon consisted of officials of SOG while the inner cordon consisted of the official of 50 RR and the Special Cell of Delhi Police. HC Sanjeev Shaukeen also taken part in the evacuation of the civilians, who were resided in the cordoned area, so that general public might be safe. The terrorists opened fire upon police party and in retaliation; HC Sanjeev Shaukeen also fired 18 rounds from his AK rifle to check the casualty of raiding party members. The bullets fired by this daredevil terrorist hit to one of the militants who later succumbed to injuries. HC Sanjeev Shaukeen displayed excellent workmanship combined with dedication towards his job deserved to be promoted to the rank of Assistant Sub-Inspector.

....

HC Sanjeev Shaukeen joined Delhi Police on 20.03.1998. He has earned great reputation in the department by doing continuous good work and there is nothing adverse against him. He has an unblemished record during his service tenure of 7 years. During his service period he has earned 5 Commendation Rolls and total cash reward of Rs.2,500/-

....

SI Rajender Singh Sehrawat, ASI Devender Singh, HC Bijender Singh, HC Sanjeev Shaukeen and Ct.Vinod Gautam have a track record of doing continuous good work since their joining Delhi Police. They have exhibited highest degree of self-motivation and professionalism not only in this operation but also throughout their police career. Their previous records speak itself about their skill and devotion to their duties (Annexure C, D, E & F respectively except HC Sanjeev

Shaukeen). SI Rajender Singh Sehrawat is capable of holding the higher rank of Inspector, as he possesses excellent investigative skill, understanding and operational capabilities far beyond that of a Sub-Inspector, ASI Devender Singh is capable of holding the higher rank of Sub-Inspector. HC Bijender Singh and HC Sanjeev Shaukeen are capable of holding the higher rank of Assistant Sub Inspector & Ct.Vinod Gautam have set an example of gallant act, dedication towards his duty, bravery and brilliant work which is more than what is expected from his rank of Constable and very much deserve to be promoted to the next higher rank of Head Constable.

Keeping in view the above mentioned facts and circumstances, I strongly recommend that SI Rajender Singh Sehrawat, ASI Devender Singh, HC Bijender Singh, HC Sanjeev Shaukeen and Ct.Vinod Gautam all of whom without even caring for their lives, courageously faced the desperados, but also saved the lives of their fellow team members and public persons; may be given out of turn promotion to the rank of Inspector, Sub-Inspector, Assistant Sub Inspectors & Head Constable respectively in order to recognize the extra ordinary ad excellent work done by them."

9. Based on the citation the case of the respondents and the other police officers for grant of out of turn promotion to the respective next higher rank was referred to the Incentive Committee constituted in terms of afore-noted order dated 21.09.1999 issued by the Commissioner of Police, which Committee recommended the grant of out of turn promotion to the respective next higher rank to the respondents and the other police officers. The Commissioner of Police approved the aforesaid recommendations of the Incentive Committee.

10. Implementing the approval granted by the Commissioner of Police, all other officers were granted promotion to the next higher rank under Rule 19(ii) of the Rules except the respondents and SI Ramesh Chander and SI Rajender Singh as also HC Surender Kumar, HC Yashpal, HC Dharambir and HC

Bijender Singh. Qua SI Ramesh Chander and SI Rajender Singh it may be noted that they had earned a right to be promoted even otherwise as per their seniority and thus they were promoted under Rule 5. This appears to be the reason why the said two police officers have remained happy where they are. HC Surender Kumar, HC Yashpal, HC Dharambir and HC Bijender Singh appear to have reconciled to their fate, but the respondents do not want fate to decide their future and are litigating to establish their entitlement for further promotion, which was denied to them.

11. Aggrieved by the act of not granting out of turn promotion to the next higher rank, the respondents made various representations to the department but the same were not considered. Be it noted here that all the respondents made last representation to the department in the month of January 2009. In view of the department not paying any heed to their representations, in the year 2009, the respondents filed applications under Section 19 of Administrative Tribunals Act, 1985 before the Principal Bench, Central Administrative Tribunal, New Delhi praying that the department be directed to grant out of turn promotion to them. Vide order(s) dated 03.09.2009/08.09.2009/10.09.2009 passed by the Tribunal the Original Applications filed were disposed of with the direction that the representations made would be disposed of with a speaking order. Subsequent thereto, the case of the respondents for out of turn promotion was once again referred to the Incentive Committee which opined that the respondents were not entitled to be granted out of turn promotion and in so recommending the Committee sought to draw a distinction in the roles played by other police officers vis-à-vis the

respondents pertaining to the incidents when encounters took place.

12. Being relevant, the relevant extracts of the reports of the Incentive Committee which reconsidered the issue may be noted as under:-

(a) HC Raj Kumar the respondent in W.P.(C) No.5444/10.

"The Committee examined the documents connected with the incident in which a police party which included HC Raj Kumar, No.3331/SD had an encounter with Janamjay @ Moni in the area of Saharanpur, UP on 1.8.05 in which connection a case of FIR Nos.261/05 & 262/05 dated 2.8.05 u/s 307 IPC and 25 Arms Act was registered at PS Kotwali, Saharanpur.

On close scrutiny of the case papers, it is found that neither the FIR nor the DD entry No.5 dated 2.8.05 at Special Cell, NDR, Lodhi Colony, New Delhi recorded by Inspector Lalit Mohan nor the Final Report of the case reflect exemplary courage and valour displayed by HC Raj Kumar which warrants out of turn promotion.

The FIR mentions that on receipt of an information about the presence of Janamjay @ Moni in Baraut area, a team under supervision of Inspector Hriday Bhushan, Sub Inspectors Umesh Barthwal, Ved Prakash No.D/3451, V.N. Jha, Amul Tyagi, Head Constables Yudhveer Singh, Raj Kumar No.3361/SD, Yashpal, Manoj and Constables Mohan No.429/SB & Pankaj was sent to develop an information about the criminal conspiracy. On confirmation of his whereabouts ACP Rajbir Singh reached Saharanpur, UP with Inspector Govind Sharma and HC Rajender in order to apprehend Janamjay @ Moni. A team was constituted to be led by ACP Rajbir Singh consisting of the criminal in the vicinity of Shehenshah Diary Chakrata Road, Saharanpur. Various members of the team approached the hideouts from different directions but were fired upon by the criminal. In self-defence, ACP Rajbir Singh, Inspector V.P. Singh Solanki, SI Ved Prakash & Ct. Mohan returned the fire. A portion of the team consisting of Inspector Alok Singh, SI Umesh & HC Raj Kumar opened fire at the ground floor of hideout of the criminal in self defence.

It mentions that during this encounter, ACP Rajbir Singh fired 1 round, Inspector Alok Singh, SHO Kotwali Mandi 1 round, SI Umesh Barthwal 3 rounds, SI Ved Prakash 2 rounds, HC Raj Kumar 2 rounds and Ct. Mohan 2 rounds from their service weapons.

Further FIR and DD are silent about any member of the police party sustaining any bullet injury or the bullets fired by criminals hitting the bullet proof jackets worn by the police officers. Inspector Lalit Mohan recorded DD entry No.5 on 2.8.05 at Special Cell, Lodhi Colony, New Delhi regarding this encounter. The DD entry mentions the details of firing done by the Special Cell police team consisting of ACP Rajbir Singh, SHO Kotwali Mandi and others as mentioned in the FIR. The final report in these two cases does not mention anything beyond the facts mentioned by FIR and DD entry. There is no specific mention of any exemplary valour displayed by HC Raj Kumar.

The Committee found no other document to show that the officer had done any outstanding work to warrant out of turn promotion.

In the light of the above mentioned facts based on the documents the Committee feels that HC Raj Kumar, No.3331/SD does not deserve out of turn promotion in accordance with rule 19(ii) of Delhi Police (Promotion & Confirmation) Rules, 1980 which reads "officers who have shown exceptional gallantry and devotion to duty" may be promoted on out of turn basis by the Commissioner of Police." *(Emphasis Supplied)*

(b) HC Kuldeep Singh the respondent in W.P.(C) No.5446/10.

"The Committee examined the documents connected with the incident in which a police party which included Head Constable Kuldeep Singh .... had an encounter with Yaseen and Vinod @ Benami in the area of Police Station Sangam Vihar, Delhi on 11.6.2004 in which connection a case FIR No.442/04 u/s 186/353/307/34 IPC read with 25 Arms Act was registered at PS Sangam Vihar, Delhi. On close scrutiny of the case papers, it was found that neither the FIR nor the DD entry No.20 dated 11.6.04, recorded by Inspector Lalit Mohan on return at Special

Cell, NDR, Lodhi Colony, New Delhi nor the final report of the case reflect any exemplary courage and valour displayed by HC Kuldeep which warrants out of turn promotion.

The FIR mentions that a team headed by ACP Rajbir Singh consisting of Inspectors Govind Sharma, Hriday Bhushan, Sub-Inspectors Badrish Dutt, Arvind, Umesh Bartwal, Ravinder, Anil, V.N. Jha, Rahul, Asstt. Sub-Inspectors Rishi Pal, Devender, Vikram, Ashok Sharma, Head Constables Kuldeep Kumar....positioned themselves at the scene of the encounter. In the encounter, when criminals opened fire on the police team, the police also resorted to fire in self-defence. In the process, both Yaseen and Vinod @ Benami were injured, who later succumbed to bullet injuries.

The DD entry No.20 made by Inspector Lalit Mohan also mentions that police party was fired upon during the shootout. Seeing no other option, the police party returned fire in self-defence. It further mentions that ACP Rajbir Singh fired 4 and 5 rounds from his service revolver and pistol, respectively, Inspector Hriday Bhushan 6 rounds....In all, 37 rounds were fired by the police party including 5 rounds by HC Kuldeep...

Further FIR and DD are silent about any member of the police party sustaining any bullet injury from firing by the criminals hitting the bullet proof jackets worn by the police officers. The final report of the case prepared on 28.5.07 also does not make any mention of exceptional bravery on the part of HC Kuldeep No.128/SB.

The Committee found no other document to show that the officer had done any outstanding work to warrant out of turn promotion.

In the light of the above mentioned facts based on the documents the Committee feels that HC Kuldeep No.128/SB does not deserve out of turn promotion in accordance with rule 19(ii) of Delhi Police (Promotion & Confirmation) Rules, 1980 which reads "officers who have shown exceptional gallantry and devotion to duty" may be promoted on out of turn basis by the Commissioner of Police." *(Emphasis Supplied)*

(c) HC Manoj Kumar the respondent in W.P.(C) No.5458/10.

"The Committee examined the documents connected with the incident in which a police party which included Head Constable Dharamvir No.263/SB & Head Constable Manoj Kumar, No.3335/T had an encounter with Ranbir Rathi in the area of Police Station Sarita Vihar, Delhi on 10.05.05 in which connection a case FIR No.201/05 u/s 186/353/307 IPC, 25 Arms Act was registered at PS Sarita Vihar. On scrutiny of the case papers, it was found that neither the FIR nor the DD entry No.14 dated 10.5.05 recorded by Inspector Lalit Mohan on return at Special Cell, NDR, Lodhi Colony, New Delhi nor the Final Report of the case reflect any exemplary courage and valour displayed by these officials.

The FIR mentions that the police party consisted of Inspector Hriday Bhushan, Sub-Inspectors Arvind, Umesh Bartwal, Amul Tyagi, V.N.Jha, Pawan Kumar, Chandrika Prasad, Girish Kumar, Asstt Sub-Inspectors Rishi Pal, Head Constables Raj Kumar No.3331/SD, Kuldeep Kumar No.128/SB, Manoj No.335/T, Dharamvir, Rakesh Kothiyal, Rakesh Tomar No.146/SB, Rakesh Ahluwalia No.341/SB, Yashpal No.320/T, Ranjit Kumar No.385/SB, Sukhbir No.475/SB and Constables Mohan, Devi Dayal No.2349/SB, Sunder Gautam No.1803/C, Sanjay No.329/SB, Rajender No.335/SB & Pankaj No.3782/DAP was headed by ACP Rajbir Singh. It also mentions that the gangster fired at the police party which returned fire in self-defence.

The DD entry made by Inspector Lalit Mohan on return to Special Cell, NDR, Lodhi Colony, New Delhi is very brief and mentions that the team was led by ACP Rajbir Singh and the police party was fired upon. In retaliation, the police party opened fire in self-defence. It further mentions that ACP Rajbir Sigh fired 6 rounds from his service revolver, Inspector Hriday Bhushan fired 2 rounds, HC Manoj Kumar 3 rounds from service weapons, HC Dharamvir fired 2 rounds from the weapon, originally issued to SI Umesh Kumar which had been taken by Dharamvir, in this encounter. Inspector Lalit Mohan had fired 5 rounds from his service weapon.

FIR and DD are silent about any member of the police party sustaining any bullet injury or the bullets fired by criminals hitting the bullet proof jackets worn by the police officers. The final report as recorded in this case, which was prepared on 11.1.06, also does not mention the detailed role of HC Dharamvir & HC Manoj Kumar which would justify out of turn promotion to them.

The Committee found no other document to show that the officers had done any outstanding work to warrant out of turn promotion.

In the light of the above mentioned facts based on the documents, the Committee feels that HC Dharamvir and HC Manoj Kumar do not deserve out of turn promotion as per rule 19 (ii) of Delhi Police (Promotion & Confirmation) Rules, 1980 which reads "officers who have shown exceptional gallantry and devotion to duty" may be promoted on out of turn basis by the Commissioner of Police" *(Emphasis Supplied)*

(d) <u>HC Rakesh Kothiyal the respondent in W.P.(C) No.5465/10</u>.

"The Committee examined documents connected with the incident in which a police party which included HC Rakesh Kothiyal, No.139/N had an encounter with Sandeep Deswal @ Narsimha in the area of Police Station Vasant Kunj, New Delhi on 27.04.05 in which connection a case FIR No.271/05 u/s 186/353/307 IPC read with 25/27 Arms act was registered at PS Vasant Kunj, New Delhi. On close scrutiny of the case papers it was found that neither the FIR nor the DD entry No.12 dated 27.04.05 at Special Cell, NDR, Lodhi Colony, New Delhi or the final report of the case reflect any exemplary courage displayed by HC Rakesh Kothiyal which warrant out of turn promotion.

The FIR mentions that a team under the leadership of ACP Rajbir Singh and consisting of Inspectors Lalit Mohan, Govind Sharma, Sub Inspectors Arvind, Umesh Barthwal, Ved Prakash, Amul Tyagi, V.N.Jha, Chandrika Prasad, Girish Kumar, Head Constables Surrender No.299/SB, Rakesh Kumar, 146/SB, Rakesh Kothiyal No.139/SB, Yudhbir No.3678/SD, Manoj 3335/T and Constables Dev Dutt No.336/SB, Devi

Dayal No.2349/SW, Rajender No.335/SB, Pankaj 9782/DAP acted on an information which revealed that Sandeep Deswal would be coming to the area of Police Station Vasant Kunj and the team proceeded to the spot. Sandeep Deswal opened fire on the police party which retaliated in self-defence.

The DD entry mentions about the raiding party and the encounter and firing in self-defence. It further mentions that in the encounter ACP Rajbir Singh fired 3 rounds, HC Rakesh Kothiyal 4 rounds, Ct.Rajender 3 rounds HC Surender 4 rounds, Ct.Rajender 3 rounds HC Surender 4 rounds and Inspector Hriday Bhushan 1 round.

The Committee found no other document to show that the officer had done any outstanding work to warrant out of turn promotion.

The final report was prepared in this regard on 14.12.05 which also does not mention the detailed role of HC Rakesh Kothiyal which would justify out of turn promotion to him.

In the light of the above mentioned facts based on the documents the Committee feels that HC Rakesh Kothiyal No.139/N does not deserve out of turn promotion in consonance with rule 19(ii) of Delhi Police (Promotion & Confirmation) Rules, 1980 which reads "officers who have shown exceptional gallantry and devotion to duty" may be promoted on out of turn basis by the Commissioner of Police" *(Emphasis Supplied)*

(e) <u>SI Umesh Barthwal the respondent in W.P.(C) No.5482/10</u>.

While reviewing the case of SI Umesh Barthwal, the Incentive Committee kept in view the citation and representation of the SI and other documents connected with the incident in which a police party which included Sub Inspector Umesh Barthwal, NNo.D-3650 had an encounter with Hemant @ Sonu in Gurgaon on 7.3.06 in which connection a case FIR No.213 dated 7.3.06 u/s 307/186/353 IPC & 25/27 Arms Act was registered at PS DLF Gurgaon, Haryana. On close scrutiny of the case papers, it was found that neither the FIR nor the DD entry No.18 dated 7.3.06, recorded on arrival at PS Special Cell/NDR, Lodhi Colony and the Final Report of the case reflects any exemplary courage and valour

displayed by SI Umesh which warrants out of turn promotion.

In the FIR, all that is said is that Sub Inspector Barthwal was a membe3r of the team of Special Cell officers and men which went to Gurgaon in search of Hemant @ Sonu and had an encounter with the criminal in which there was an exchange of fire in which Hemant @ Sonu was killed.

In the aforesaid DD entry, it is mentioned that SI Umesh Barthwal fired 5 rounds. It is also mentioned that other officers namely Inspector Lalit Mohan fired 4 rounds, ACP Sanjeev Yadav 3 rounds, Inspector Hriday Bhushan 6 rounds, Sub Inspector Girish Kumar 3 rounds, Constables Sunil Kasana 1 round, Sunder Gautam 2 rounds, Head Constables Surinder 2 rounds and Yashpal 2 rounds from their service weapons. The DD entry also mentions that in the firing ACP Sanjeev Yadav, Inspector Hriday Bhushan and Inspector Lalit Mohan sustained one bullet each on their bullet proof jackets.

In the Final Report, again, there is no mention of any details which would indicate exemplary valour displayed by SI Umesh Barthwal."

The Committee found no other document to show that the officer had done any outstanding work to warrant out of turn promotion.

In the light of the above mentioned facts based on the documents, the Committee feels that SI Umesh Kumar Bbarthwal, No.D-3650 does not deserve out of turn promotion in consonance with rule 19(ii) of Delhi Police (Promotion & Confirmation) Rules, 1980 which reads "officers who have shown exceptional gallantry and devotion to duty" may be promoted on out of turn basis by the Commissioner of Police."

(f) <u>HC Manoj Kumar the respondent in W.P.(C) No.5528/10</u>.

"The Committee examined the documents connected with the incident in which a police party which included HC Manoj Kumar, No.1466/T had an encounter with militant Abu Huzefa in the area of Police Station Pattan, Distt. Baramulla, Jammu and Kashmir on 16.01.06 in which connection a case FIR No.9/06 u/s 307 IPC read with Section 7/27 Indian Arms Act was registered at PS Pattan, Distt.

Baramulla, Jammu and Kashmir. On close scrutiny of the case papers, it has been found that neither the FIR nor the DD entry No.29 dated 16.01.05 at PS Pattan reflect any exemplary courage displayed by HC Manoj Kumar which warrants out of turn promotion.

The FIR mentions that militant Abu Huzefa, a resident of Pakistan, was hiding alongwith other militants in the house of Mohd. Yusuf Bhatt at Village Khore, Sherabad in the area of PS Pattan and was having huge quantity of arms and ammunition. On this information, a police party consisting of Sub-Inspectors Ramesh Chander Lamba, Rajender Singh Sherawat, Kailash Singh Bisht, Asstt. Sub Inspectors Hardwari Lal, No.607/SB, Rajender Singh No.625/SB, Head Constables Manoj Kumar No.1466/T, Bijender Singh No.928/PCR, Sanjeev Kumar No.1552/T and Constables Mohd Iqbal No.1341/DAP, Bachchu Singh No.270/DRP was constituted under the supervision of Inspector Mohan Chand Sharma to arrest the militant. A cordon was laid, civilians were evacuated and militants were asked to surrender. Instead of surrendering, the militants opened fire on the police and army party who fired in self-defence. After the firing stopped, the militant Abu Huzefa was found lying dead inside the premises with AK assault rifle. Some of his associates managed to escape.

DD entry No.29 dated 18.01.05 at PS Pattan, Distt. Baramulla by Sub-Inspector Ramesh Lamba of Spl. Cell/NDR, Lodhi Colony, Delhi in this regard mentioned that the police party in association with SOG, Army and CRPF worked on the information to apprehend the militant. When the police party was fired upon, they fired in self-defence. From the police side Inspector Mohan Chand Sharma fired 28 rounds, Sub-Inspectors Ramesh Lamba 25 rounds, Assistant Sub-Inspectors Rajender Singh 22 rounds, Hardwari Lal 21 rounds, Head Constable Manoj Kumar 20 rounds, Constables Mohd. Iqbal 18 rounds, Bachchu Singh 18 rounds. There is no mention in the DD that any of the police officials sustained any bullet injury in the encounter. There is also no mention of any specific act of valour on the part of HC Manoj Kumar No.1466/T in the DD entry.

The Committee found no other document to show that the officer had done any outstanding work to warrant out of turn promotion.

In the light of the above mentioned facts based on the documents, the Committee feels that HC Manoj Kumar, No.1466/T does not deserve out of turn promotion in consonance with rule 19(ii) of Delhi Police (Promotion & Confirmation) Rules, 1980 which reads "officers who have shown exceptional gallantry and devotion to duty" may be promoted on out of turn basis by the Commissioner of Police."

(g) HC Sanjeev Shokeen the respondent in W.P.(C) No.5549/10.

"The Committee examined the documents connected with the incident in which a police party which included HC Sanjeev Shaukeen, No.1552/T, 805/SB had an encounter with a terrorist Mohd.Akram Bhatt in the area of Police Station Pampore, Jammu & Kashmir on 27.12.05 in which connection a case FIR No.178/05 u/s 307 RPC read with 7/27 Arms act was registered at PS Pampore, Jammu & Kashmir. On close scrutiny of the case papers, it was found that neither the FIR nor the DD entry No.23 dated 6.3.06 at Special Cell, NDR, Lodhi Colony, New Delhi reflect any exemplary courage and valour displayed by HC Sanjeev Shaukeen which warrants out of turn promotion.

The FIR mentions that there was exchange of fire between terrorist Mohd.Akram Bhatt, security forces and police. There is no mention in the FIR regarding composition of the police team or the number of rounds fired by police team and any injury to policemen in the encounter.

DD entry No.23 dated 6.3.06 mentions that there was information about the accused hiding in the area of PS Pampore with two of his associates. To apprehend the terrorist, a team of Rashtriya Rifles and army and police acted on this information. There was exchange of fire between the terrorist and the police party in self-defence. During the shootout, Sub-Inspectors R.S.Sehrawat fired 25 rounds, Kailash 30 rounds, Asstt. Sub Inspector Devender 27 rounds and Head Constables Bijender 13 rounds, Sanjeev 18 rounds from their

service weapons. There is no mention of any specific act of bravery by Head Constable Sanjeev Shaukeen.

The Committee found no other document to show that the officer had done any outstanding work to warrant out of turn promotion.

In the light of the above mentioned facts based on the documents the Committee feels that HC Sanjeev Shaukeen No.1552/T, 805/SB does not serve out of turn promotion in consonance with rule 19 (ii) of Delhi Police (Promotion & Confirmation) Rules, 1980 which reads "officers" who have shown exceptional gallantry and devotion to duty" may be promoted on out of turn basis by the Commissioner of Police."

13. Acting pursuant to the aforenoted recommendations of the reconstituted Incentive Committee, the Commissioner of Police passed order(s) dated 11.12.2009/14.12.2009 holding that there is no ground to grant out of turn promotion to the respondents.

14. The relevant portion of the order passed by the Commissioner pertaining to the respondents may be noted. The same would be as under:-

(a) HC Raj Kumar the respondent in W.P. (C) No.5444/10.

"....The representation/petition as well as contention raised in the O.A. have been perused by C.P., Delhi. HC (Exe) Raj Kumar, No.3331/SD was approved for grant of out of turn promotion on the recommendation of the Incentive Committee held on 14.12.2005. This approval was issued by the then Commissioner of Police, Delhi even though there was no vacancy in the rank of ASI (Exe.) and hence the applicant could not be promoted on out of turn promotion basis for want of vacancy of O.T.P. Quota at the relevant time. There is a clause restricting out of turn promotion to total 5% of the vacancies likely to fall vacant in the given year in the rank. There is no rule which permits issuing of out of turn promotion orders by a competent authority when posts do not exist. Hence, out of turn promotions recommended by an earlier Incentive Committee and approved by the then C.P. when there were no vacancies existing in the rank to which the promotion was to be made, confer no right on an individual. Orders of a Commissioner of Police cannot bound his

successor, may be for years, to grant out of turn promotion.

The case of HC (Exe.) Raj Kumar, No.3331/SD for out of turn was, however, again referred, on 29.10.2009 to the Incentive Committee constituted for this purpose consisting of Special Commissioner of Police as Chairman and two Joint Commissioners of Police, Delhi as Members to review the case of the applicant and other seven police personnel. The recommendations of the Incentive Committee which met on 7-9/12/2009 are as under:-

....

The Commissioner of Police, Delhi has carefully examined the recommendations of the Incentive Committee. He is in full agreement with the recommendations. Merely killing of a wanted criminal in an encounter, per se, does not confer any right upon police officer to a Medal for Gallantry leaving aside an out of turn promotion. In this particular case, there is no specific mention in the FIR of any details regarding any exceptional or exemplary act of gallantry by HC Raj Kumar. He was merely a member of a Special Cell team which was engaged in a joint encounter in coordination with U.P. Police in which Janamjay @ Moni was killed. Besides, HC Raj Kumar who fired 2 rounds, six other police officers of various ranks also engaged in firing. In this encounter none of the members of the police party sustained any bullet hits/injuries. HC (Exe.) Raj Kumar was neither a team leader nor did he exhibit any exceptional act on his part, which distinguishes him from other team members of the police party in considering him for an out of turn promotion. He performed the role assigned to him at par with other members of the police party. In the FIR and DD entry no specific act of valour has been ascribed to the applicant.

In view of this, it does not seem to be a fit case for out of turn promotion. Conferring of an out of turn promotion requires something more than even a single exceptional act of gallantry for such acts of gallantry the Govt. has already instituted Medals including Police Medal for Gallantry, President's Police Medal for Gallantry and even Ashok Chakra has been awarded in the acts of gallantry.

In conclusion, out of turn promotion is not justified in this case."

(b) HC Kuldeep Singh the respondent in W.P. (C) No.5446/10.

"....The representation/petition as well as contention raised in the O.A. have been perused by C.P., Delhi. HC (Exe) Kuldeep, No.128/SB was approved for grant of out of turn promotion on the recommendation of the Incentive Committee held on 29.06.2005. This approval was issued by the then Commissioner of Police, Delhi even though there was no vacancy in the rank of ASI (Exe.) and hence the applicant could not be promoted on out of turn promotion basis for want of vacancy of O.T.P. Quota at the relevant time. There is a clause restricting out of turn promotion to total 5% of the vacancies likely to fall vacant in the given year in the rank. There is no rule which permits issuing of out of turn promotion orders by a competent authority when posts do not exist. Hence, out of turn promotions recommended by an earlier Incentive Committee and approved by the then C.P. when there were no vacancies existing in the rank to which the promotion was to be made, confer no right on an individual. Orders of a Commissioner of Police cannot bound his successor, may be for years, to grant out of turn promotion.

The case of HC (Exe.) Kuldeep, No.128/SB for out of turn was, however, again referred, on 29.10.2009 to the Incentive Committee constituted for this purpose consisting of Special Commissioner of Police as Chairman and two Joint Commissioners of Police, Delhi as Members to review the case of the applicant and other seven police personnel. The recommendations of the Incentive Committee which met on 7-9/12/2009 are as under:-

....

The Commissioner of Police, Delhi has carefully examined the recommendations of the Incentive Committee. He is in full agreement with the recommendations. Merely killing of a wanted criminal in an encounter, per se, does not confer any right upon police officer to a Medal for Gallantry leaving aside an out of turn promotion. In this particular case, there is no specific mention in the FIR of any details

regarding any exceptional or exemplary act of gallantry by HC Kuldeep Singh, No.128/SB, 371/DRP. He was merely a member of a Special Cell team which was engaged in an encounter in which Yaseen and Vinod @ Benami were killed. Kuldeep Singh who fired 5 rounds, six other police officers of various ranks also engaged in bullet hits/injuries. In this encounter none of the members of the police party sustained any bullet hits/injuries. HC (Exe.) Kuldeep Singh was neither a team leader nor did he exhibit any exceptional act on his part, which distinguishes him from other team members of the police party in considering him for an out of turn promotion. He performed the role assigned to him at par with other members of the police party. In the FIR and DD entry no specific act of valour has been ascribed to the applicant.

In view of this, it does not seem to be a fit case for out of turn promotion. Conferring of an out of turn promotion requires something more than even a single exceptional act of gallantry for such acts of gallantry the Govt. has already instituted Medals including Police Medal for Gallantry, President's Police Medal for Gallantry and even Ashok Chakra has been awarded in the acts of gallantry.

In conclusion, out of turn promotion is not justified in this case."

(c) <u>HC Manoj Kumar the respondent in W.P.(C) No.5458/10</u>.

"....The representation/petition as well as contention raised in the O.A. have been perused by C.P., Delhi. HC Manoj Kumar was approved for grant of out of turn promotion on the recommendation of the Incentive Committee held on 25.10.2005. This approval was issued by the then Commissioner of Police, Delhi even though there was no vacancy in the rank of ASI (Exe.) and hence the applicant could not be promoted on out of turn promotion basis for want of vacancy of O.T.P. Quota at the relevant time. There is a clause restricting out of turn promotion to total 5% of the vacancies likely to fall vacant in the given year in the rank. There is no rule which permits issuing of out of turn promotion orders by a competent authority when posts do not exist. Hence, out of turn promotions recommended by an earlier Incentive Committee and

approved by the then C.P. when there were no vacancies existing in the rank to which the promotion was to be made, confer no right on an individual. Orders of a Commissioner of Police cannot bound his successor, may be for years, to grant out of turn promotion.

The case of HC Manoj Kumar for out of turn was, however, again referred, on 29.10.2009 to the Incentive Committee constituted for this purpose consisting of Special Commissioner of Police as Chairman and two Joint Commissioners of Police, Delhi as Members to review the case of the applicant and other seven police personnel. The recommendations of the Incentive Committee which met on 7-9/12/2009 are as under:-

....

The Commissioner of Police, Delhi has carefully examined the recommendations of the Incentive Committee. He is in full agreement with the recommendations. Merely killing of a wanted criminal in an encounter, per se, does not confer any right upon police officer to a Medal for Gallantry leaving aside an out of turn promotion. In this particular case, there is no specific mention in the FIR of any details regarding any exceptional or exemplary act of gallantry by HC Dharamvir Singh & HC Manoj Kumar. They were merely a member of a Special Cell team which was engaged in an encounter in which Ranbir Rathi @ Vishwash Rathi @ Sanjeev was killed. Besides, HC Dharamvir who fired 2 rounds and HC Manoj Kumar fired 3 rounds, three other police officers of various ranks also engaged in firing. In this encounter none of the members of the police party sustained any bullet hits/injuries. HCs (Exe.) Dharamvir and Manoj Kumar were neither team leader nor did they exhibit any exceptional act on his part, which distinguishes him from other team members of the police party in considering him for an out of turn promotion. He performed the role assigned to him at par with other members of the police party. In the FIR and DD entry no specific role has been ascribed to the applicants.

In view of this, it does not seem to be a fit case for out of turn promotion. Conferring of an out of turn promotion requires something more than even a

single exceptional act of gallantry for such acts of gallantry the Govt. has already instituted Medals including Police Medal for Gallantry, President's Police Medal for Gallantry and even Ashok Chakra has been awarded in the acts of gallantry."

(d) HC Rakesh Kothiyal the respondent in W.P.(C) No.5465/10.

"....The representation/petition as well as contention raised in the O.A. have been perused by C.P., Delhi. HC (Exe.) Rakesh Kothiyal, No.139/N, 559/SB was approved for grant of out of turn promotion on the recommendation of the Incentive Committee held on 25.10.2005. This approval was issued by the then Commissioner of Police, Delhi even though there was no vacancy in the rank of ASI (Exe.) and hence the applicant could not be promoted on out of turn promotion basis for want of vacancy of O.T.P. Quota at the relevant time. There is a clause restricting out of turn promotion to total 5% of the vacancies likely to fall vacant in the given year in the rank. There is no rule which permits issuing of out of turn promotion orders by a competent authority when posts do not exist. Hence, out of turn promotions recommended by an earlier Incentive Committee and approved by the then C.P. when there were no vacancies existing in the rank to which the promotion was to be made, confer no right on an individual. Orders of a Commissioner of Police cannot bound his successor, may be for years, to grant out of turn promotion.

The case of HC (Exe.) Rakesh Kothiyal, No.139/N, 559/SB for out of turn was, however, again referred, on 29.10.2009 to the Incentive Committee constituted for this purpose consisting of Special Commissioner of Police as Chairman and two Joint Commissioners of Police, Delhi as Members to review the case of the applicant and other seven police personnel. The recommendations of the Incentive Committee which met on 7-9/12/2009 are as under:-

....

The Commissioner of Police, Delhi has carefully examined the recommendations of the Incentive Committee. He is in full agreement with the recommendations. Merely killing of a wanted criminal in an encounter, per se, does not confer any right

upon police officer to a Medal for Gallantry leaving aside an out of turn promotion. In this particular case, there is no specific mention in the FIR of any details regarding any exceptional or exemplary act of gallantry by HC (Exe.) Rakesh Kothiyal, No.139/N, 559/SB. He was merely a member of a Special Cell team which was engaged in an encounter in which Sandeep Deswal @ Narsimha was killed. Besides, HC (Exe.) Rakesh Kothiyal, No.139/N, 559/SB who fired 4 rounds, four other police officers of various ranks also engaged in firing. In this encounter none of the members of the police party sustained any bullet hits/injuries. HC (Exe.) Rakesh Kothiyal, No.139/N, 559/SB was neither team leader nor did he exhibit any exceptional act on his part, which distinguishes him from other team members of the police party in considering him for an out of turn promotion. He performed the role assigned to him at par with other members of the police party. In the FIR and DD entry no specific role has been ascribed to the applicants.

In view of this, it does not seem to be a fit case for out of turn promotion. Conferring of an out of turn promotion requires something more than even a single exceptional act of gallantry for such acts of gallantry the Govt. has already instituted Medals including Police Medal for Gallantry, President's Police Medal for Gallantry and even Ashok Chakra has been awarded in the acts of gallantry.

In conclusion, out of turn promotion is not justified in this case."

(e) <u>SI Umesh Barthwal the respondent in W.P.(C) No.5482/10</u>.

"....The representation/petition as well as contention raised in the O.A. have been perused by C.P., Delhi. SI (Exe.) Umesh Kumar Barthyal, No.D-3650 was approved for grant of out of turn promotion on the recommendation of the Incentive Committee held on 04.12.2006. This approval was issued by the then Commissioner of Police, Delhi even though there was no vacancy in the rank of Inspector and hence the applicant could not be promoted on out of turn promotion basis for want of vacancy of O.T.P. Quota at the relevant time. There is a clause restricting out of turn promotion to total 5% of the vacancies likely to fall vacant in the given year in the rank. There is no

rule which permits issuing of out of turn promotion orders by a competent authority when posts do not exist. Hence, out of turn promotions recommended by an earlier Incentive Committee and approved by the then C.P. when there were no vacancies existing in the rank to which the promotion was to be made, confer no right on an individual. Orders of a Commissioner of Police cannot bound his successor, may be for years, to grant out of turn promotion.

The case of SI (Exe.) Umesh Kumar Barthyal, No.D-3650 for out of turn was, however, again referred, on 29.10.2009 to the Incentive Committee constituted for this purpose consisting of Special Commissioner of Police as Chairman and two Joint Commissioners of Police, Delhi as Members to review the case of the applicant and other seven police personnel. The recommendations of the Incentive Committee which met on 7-9/12/2009 are as under:-

....

The Commissioner of Police, Delhi has carefully examined the recommendations of the Incentive Committee. He is in full agreement with the recommendations. Merely killing of a wanted criminal in an encounter, per se, does not confer any right upon police officer to a Medal for Gallantry leaving aside an out of turn promotion. In this particular case, there is no specific mention in the FIR of any details regarding any exceptional or exemplary act of gallantry by SI Barthwal was merely a member of a Special Cell team which was engaged in an encounter in which Hemant @ Sonu was killed. Besides, SI Umesh Barthwal who fired five rounds, eight other police officers of various ranks also engaged in firing. Inthis encounter, an ACP and 2 Inspectors sustained one bullet hit each on their bullet proof jackets. It is quite surprising that while the applicant has claimed in his O.A. to be the leader of the police party consisting of the applicant besides HC Surinder, HC Yash Pal, Const. Sunder Lal Gautam and Const. Sunil Kasana, the FIR indicates that the team was led initially by Inspector Lalit Mohan and later, at the spot where Hemant @ Sonu was killed, by Shri Sanjeev Yadav, ACP. Again, while SI Barthwal has ascribed the role of giving repeated directions to surrender to himself, in the FIR this was done by Shri Sanjeev Yadav, ACP.

Again, while SI Umesh Kumar Barthwal and HC Yash Pal have stated to have forced entry by breaking open the door, as per the FIR the police party broke through the door and entered the house. In the FIR no specific role has been ascribed to the applicant. The FIR also, incidentally, has been recorded on the complaint of Inspector Lalit Mohan of Special Cell and not on the complaint of SI Umesh Kumar Barthwal.

In view of this, it does not seem to be a fit case for out of turn promotion. Conferring of an out of turn promotion requires something more than even a single exceptional act of gallantry for such acts of gallantry the Govt. has already instituted Medals including Police Medal for Gallantry, President's Police Medal for Gallantry and even Ashok Chakra has been awarded in the acts of gallantry.

In conclusion, out of turn promotion is not justified in this case."

(f) HC Manoj Kumar the respondent in W.P.(C) No.5528/10.

""....The representation/petition as well as contention raised in the O.A. have been perused by C.P., Delhi. HC (Exe.) Manoj Kumar was approved for grant of out of turn promotion on the recommendation of the Incentive Committee held on 02.08.2006. This approval was issued by the then Commissioner of Police, Delhi even though there was no vacancy in the rank of Inspector and hence the applicant could not be promoted on out of turn promotion basis for want of vacancy of O.T.P. Quota at the relevant time. There is a clause restricting out of turn promotion to total 5% of the vacancies likely to fall vacant in the given year in the rank. There is no rule which permits issuing of out of turn promotion orders by a competent authority when posts do not exist. Hence, out of turn promotions recommended by an earlier Incentive Committee and approved by the then C.P. when there were no vacancies existing in the rank to which the promotion was to be made, confer no right on an individual. Orders of a Commissioner of Police cannot bound his successor, may be for years, to grant out of turn promotion.

The case of HC (Exe.) Manoj Kumar for out of turn was, however, again referred, on 29.10.2009 to

the Incentive Committee constituted for this purpose consisting of Special Commissioner of Police as Chairman and two Joint Commissioners of Police, Delhi as Members to review the case of the applicant and other seven police personnel. The recommendations of the Incentive Committee which met on 7-9/12/2009 are as under:-

....

The Commissioner of Police, Delhi has carefully examined the recommendations of the Incentive Committee. He is in full agreement with the recommendations. Merely death of a wanted terrorist in an encounter, per se, does not confer any right upon police officer to a Medal for Gallantry leaving aside an out of turn promotion. In this particular case, there is no specific mention in the FIR of any details regarding any exceptional or exemplary act of gallantry by HC (Exe.) Manoj Kumar. He claimed to have identified the hideout at the risk of his life. This act was not done by him alone, but by the team. He was a member of a Special Cell Team which was engaged in a joint operation with SOG, Army and CRPF in which a militant Abu Huzefa was killed. Besides, HC (Exe.) Manoj Kumar who fired 20 rounds, eight other police officers of various ranks also engaged in firing. In this encounter, none of the members of the police party sustained any bullet hits/injuries. HC (Exe.) Manoj Kumar was neither a team leader nor did he exhibit any exceptional act on his part, which distinguishes him from other members of the police party in considering him for an out of turn promotion. He performed the role assigned to him at par with other members of the police party. In the FIR and DD entry no specific role has been ascribed to the applicant.

In view of this, it does not seem to be a fit case for out of turn promotion. Conferring of an out of turn promotion requires something more than even a single exceptional act of gallantry for such acts of gallantry the Govt. has already instituted Medals including Police Medal for Gallantry, President's Police Medal for Gallantry and even Ashok Chakra has been awarded in the acts of gallantry.

In conclusion, out of turn promotion is not justified in this case."

(g) HC Sanjeev Shokeen the respondent in W.P. (C) No.549/10.

""....The representation/petition as well as contention raised in the O.A. have been perused by C.P., Delhi. HC (Exe.)Sanjeev Shokeen, No.1552/T, 805/SB was approved for grant of out of turn promotion on the recommendation of the Incentive Committee held on 02.08.2006. This approval was issued by the then Commissioner of Police, Delhi even though there was no vacancy in the rank of Inspector and hence the applicant could not be promoted on out of turn promotion basis for want of vacancy of O.T.P. Quota at the relevant time. There is a clause restricting out of turn promotion to total 5% of the vacancies likely to fall vacant in the given year in the rank. There is no rule which permits issuing of out of turn promotion orders by a competent authority when posts do not exist. Hence, out of turn promotions recommended by an earlier Incentive Committee and approved by the then C.P. when there were no vacancies existing in the rank to which the promotion was to be made, confer no right on an individual. Orders of a Commissioner of Police cannot bound his successor, may be for years, to grant out of turn promotion.

The case of HC (Exe.)Sanjeev Shokeen, No.1552/T, 805/SB for out of turn was, however, again referred, on 29.10.2009 to the Incentive Committee constituted for this purpose consisting of Special Commissioner of Police as Chairman and two Joint Commissioners of Police, Delhi as Members to review the case of the applicant and other seven police personnel. The recommendations of the Incentive Committee which met on 7-9/12/2009 are as under:-

....

The Commissioner of Police, Delhi has carefully examined the recommendations of the Incentive Committee. He is in full agreement with the recommendations. Merely killing of a wanted criminal in an encounter, per se, does not confer any right upon police officer to a Medal for Gallantry leaving aside an out of turn promotion. In this particular case,

there is no specific mention in the FIR of any details regarding any exceptional or exemplary act of gallantry by HC Sanjeev Shokeen. He was merely a member of a Special Cell team which was engaged in an encounter at the house of Mohd. Akram Bhatt in which three members of banned terrorist organization Jaish-e-Mohammed were killed. Besides, HC (Exe.) Sanjeev Shokeen who fired 18 rounds, four other police officers of various ranks also engaged in firing. HC (Exe.) Sanjeev Shokeen was neither a team leader nor did he exhibit any exceptional act on his part, which distinguishes him from other members of the police party in considering him for an out of turn promotion. He performed the role assigned to him at par with other members of the police party. In the FIR and DD entry no specific role has been ascribed to the applicant.

In view of this, it does not seem to be a fit case for out of turn promotion. Conferring of an out of turn promotion requires something more than even a single exceptional act of gallantry for such acts of gallantry the Govt. has already instituted Medals including Police Medal for Gallantry, President's Police Medal for Gallantry and even Ashok Chakra has been awarded in the acts of gallantry.

In conclusion, out of turn promotion is not justified in this case."

15. Aggrieved by the afore-noted order(s) dated 11.12.2009/14.12.2009 passed by the Commissioner denying out of turn promotion to the respondents to the rank of Assistant Sub-Inspector/Inspector the respondents filed applications under Section 19 of Administrative Tribunals Act, 1985 before the Tribunal urging that they had been discriminated against by denying promotion to them under Rule 19 (ii) and questioning the recommendations of the Second Incentive Committee and the consequential order passed by the Commissioner they pleaded that the decision taken by the Commissioner of Police at the first instance could not be reviewed as no power of review was vested in the Commissioner

of Police, who, it was claimed, acted in a quasi-judicial functioning while deciding the issue of grant of out of turn promotions and in support whereof the respondents relied upon the decision of the Supreme Court reported as *Kuntesh Gupta v Hindu Kanya Mahavidyalaya* (1987) 4 SCC 525.

16. Per contra, the stand taken by the department before the Tribunal was that a mistake was committed by the first incentive committee in recommending the respondents for grant of out of turn promotion to the next higher rank as also the Commissioner in approving the said recommendations, which necessitated the review of the earlier order passed by the Commissioner approving grant of out of turn promotion to the respondents. According to the department, Rule 19 postulates that while granting out of turn promotion to the police officers recommended in a particular year it is incumbent upon the department to ensure that out of turn promotion granted in said year should not exceed 5 per cent of the vacancies likely to fall vacant in a particular rank in that year and that the police officers who could not be promoted due to non-availability of vacancies cannot be granted promotion in future years, meaning thereby that the expression "given year" requires to be read as "year of issuance of recommendation for grant of out of turn promotion to a police officer." It was thus pleaded that out of turn promotions could not be granted for two reasons. Firstly, that the respondents had done no act attracting Rule 19(ii) of the Rules; and secondly no vacancies within the 5% quota for out of turn promotions was available in the respective year.

17. Vide judgment and order dated 01.06.2010, the Tribunal allowed the applications of the respondents and has directed the department to consider the respondents for grant of out of

turn promotion to the rank of Assistant Sub-Inspector and Inspector, as the case maybe, on the basis of the recommendations of the first Incentive Committee which were approved by the Commissioner. In a nutshell, it has been held by the Tribunal that:- (i) except in certain exceptional circumstances an administrative authority has no power to review the orders passed by it; (ii) when harmoniously interpreted, Rule 19 postulates that out of turn promotions granted in a year should not exceed 5% of the vacancies which are likely to fall vacant in a given year and not that they should not exceed 5% of the vacancies which are likely to fall vacant in a given year "in a rank"; (iii) the interpretation sought to be given by the department to the expression "given year" occurring in Rule 19 is incorrect and that the correct interpretation of the said expression is that while implementing grant of out of turn promotion in a particular year the department should ensure that out of turn promotions implemented in that year should not exceed 5% of the vacancies likely to fall vacant in that particular year and that the police officers who could not be promoted due to non-availability of vacancies should be promoted in the future years, when the vacancies arise, meaning thereby, that the expression "given year" should be read as "year of implementation of grant of out of turn promotion to a police officer"; and (iv) the aforesaid interpretation of the expression "given year" finds support from the conduct of the department inasmuch as the perusal of the records of the department shows that a number of police officers were promoted not in the years in which they were recommended for grant of out of turn promotion, but in the future years. For a more clear understanding of the

judgment of the Tribunal, it is most apposite to note the following portion of the judgment:-

> "15. It is also trite that a successor to an office being an administrative authority or equivalent rank cannot review the order, which after a policy decision has been taken, unless there has been a change in the policy or some additional factors, mistake, fraud etc. are disclosed. If this course of action is allowed to perpetuate and ratified in judicial review then there would be no sanctity of functioning in the executive and administrative authorities on the drop of hat without any reasonableness and justification with ulterior purposes could alter the decision taken by their counterparts. The exercise of power in such an event would not only be arbitrary, unbridled and unfettered as well. Moreover, in the sanctity of administration and hierarchy of order passed by the Commissioner of Police, recommending the name of the applicant was issued on the *whims and fancies* of exercise of discretion non-judiciously. An incentive committee duly constituted under the rules having recommended the names of the applicants for out of turn promotion, when consciously dealt with by the then Commissioner, having approved it, the only question arises as to what is the justification, which prompted the Commissioner of Police in succession to revoke and disapprove the orders of the earlier Commissioner of Police and to discard the finding of the incentive committee. The only reason which comes-forth is that since the year in which the out of turn promotions were approved no vacancy in the particular ranks was available, as such it necessitated a review incentive committee. The aforesaid conclusion and justification is not only illogical, irrational but is also against the statutory rules.
>
> ....
>
> 19. With the aforesaid principle of interpretation the provisions contained in Rules 19(ii) of the Rules are clear and divided into two parts, one provides out of turn promotion recommended by the Commissioner of Police to a higher rank with prior approval of Administrator in cases where outstanding officers have shown exceptional gallantry and devotion to duty. The methodology to determine exceptional gallantry is no more *res integra* and as ruled by the Full Bench of the Tribunal in **Nasib Singh** (supra) is the incentive

committee. The second part provides methodology to operate such promotion and imposes a limit of 5% of the vacancies, against which out of turn promotions are to be effected, likely to fall vacant in a given year but not in the rank. The aforesaid when construed in its object with a harmonious construction with the first part of the provision it is not the total cadre strength in the rank in which the promotion is made, 5% vacancies are to be reserved for outstanding sportsmen, marksmen, officers who have shown exceptional gallantry and devotion to duty, but it refers to vacancies likely to fall vacant in the given year. The given year has been construed by the respondents as the same year in which out of turn promotions have been recommended by the Commissioner of Police, which does not farther the object of promotion, as once the exceptional gallantry has been shown, it has been ruled accordingly by the incentive committee, which is a committee constituted by the Commissioner of Police. Its finding as to person being fit to be given out of turn promotion cannot be questioned when not based on any fraud, misrepresentation or mistake then such a recommendation would remain available with the respondents to be acted upon, but in any of the year when such promotion is effected, it has to be kept in mind that the promotion should not exceed 5% of the vacancies for that year. Otherwise, if out of turn promotion recommendations is confined to that year, then the very purpose of making a departure as a special provision under Rule 19 would become *otiose.* Out of turn promotion will be dependent not against the same year vacancy but in contingency or future when such vacancy exists, but it has to be ensured that whenever recommendation of Commissioner is to given effect to promoting the officers, 5% of the vacancies likely to fall in that year must not exceed. If the other interpretation as propagated by the respondents is accepted, it would certainly be in violation of the ratio delivered by the Apex Court in **G. Jaya Prasad Rao** (supra)." *(Emphasis Supplied)*

18. Aggrieved by the impugned judgment and order dated 01.06.2010 passed by the Tribunal, the petitioner has filed the

instant writ petitions under Article 226 and 227 of Constitution of India.

19. During the hearing, learned counsel for the petitioner advanced following three submissions:-

A. That the applications preferred by the respondents before the Tribunal were barred by limitation. The first order(s) of the Commissioner approving the grant of out of promotion to the respondents were passed in the years 2005 and 2006. It was argued that the action of the department in not granting out of turn promotion to the respondents in terms of first order(s) passed by the Commissioner should have been challenged by the respondents within a reasonable time of passing of first order(s) by the Commissioner. However the respondents chose to first approach the Tribunal by filing applications only in the year 2009. Counsel submitted that merely because the Commissioner passed the orders dated 11.12.2009/14.12.2009 in compliance of directions given by the Tribunal in the applications filed by the respondents in the first instance the same would not give a fresh cause of action to the respondents to prefer applications before the Tribunal.

B. That the Tribunal erred in holding that except in certain exceptional circumstances an administrative authority has no power to review the order passed by it.

C. That the interpretation given by the Tribunal to the expression "given year" occurring in Rule 19(ii) is fallacious.

20. Per contra, the learned counsel for the respondents supported the impugned judgment passed by the Tribunal and urged that the reasoning of the Tribunal needs no interference.

21. On the issue of the Original Applications being barred by limitation, we find no merit in the said submission. The reason is obvious, in the previous Original Applications filed no such

defence was predicated and obviously the claim was treated as alive. The second round of litigation was necessitated when the Commissioner of Police rejected the recommendations for grant of out of turn promotion. It may be highlighted that while deciding the representations vide order(s) dated 11.12.2009/14.12.2009, the Commissioner of Police never held that the claims were barred by limitation. It may further highlighted that in the counter replies filed before the Tribunal it was never urged that the claims are barred by limitation. It may be highlighted that with reference to the averments made in para 3 of the Original Applications, that the claim before the Tribunal was within limitation, the response of the department is: '*Contents of para 3 of the O.A. being limitation of the O.A. need no reply.*' Lastly the reason this plea was never urged before the Tribunal. We may only add that a plea of limitation can always be waived and issue of limitation does not relate to the inherent jurisdiction of a Court or a Tribunal.

22. We may incidentally note that in an identical factual backdrop, a co-ordinate Bench of this Court in W.P.(C) No.8827/2008 titled '*Government of NCT of Delhi & Ors v Hargian Singh*' decided on 13.10.2009 repelled a similar argument in the following terms:-

> "The issue of limitation is a mixed question of fact and law. To enable the opposite party to effectively meet such a ground it is essential that the party desirous of urging the ground of limitation should fairly and squarely raise the same not only in his pleadings bout also argue the same at the time of personal hearing so as to provide adequate opportunity to the opposite party to meet the same.
>
> In view of the aforesaid discussion we reject the argument of Ms.Ahlawat that the Tribunal ought to have rejected the Original Application on the ground of limitation."

23. Unlike courts, administrators and administrative bodies have the power to take decisions on the basis of broad, general policy considerations. Review, as is understood in functioning of courts, is an entirely different concept; importing element from said concept in administrative functioning, would inject an avoidable rigidity in administrative process. The correct position is that the administrative authorities can change their decisions, if the circumstances so warrant. If, while exercising such power of administrative review, the agency oversteps such limits, or acts illegally, or mala fides, or arbitrarily or its review or modification of previous order is hit by Wednesbury unreasonableness, or other well established grounds, the court can judicially review the same under Article 226 of Constitution of India. In this regards, it is most apposite to note the following observations of Supreme Court in the decision reported as *R.R. Verma v Union of India* (1980) 3 SCC 402. It was observed:-

> "The last point raised by Shri Garg was that the Central Government had no power to review its earlier orders as the rules do not vest the government with any such power. Shri Garg relied on certain decisions of this Court in support of his submission: *Patel Narshi Thakershi* v. *Pradyumansinghji Arjunsinghji*[1]; *D.N. Roy* v. *State of Bihar*[2] and *State of Assam* v. *J.N. Roy Biswas*[3]. All the cases cited by Shri Garg are cases where the government was exercising quasi-judicial power vested in them by statute. We do not think that the principle that the power to review must be conferred by statute either specifically or by necessary implication is applicable to decisions purely of an administrative nature. To extend the principle to pure administrative decisions would indeed lead to untoward and startling results. Surely, any government must be free to alter its policy or its decision in administrative matters. If they are to carry on their daily administration they cannot be hidebound by the rules and restrictions of judicial procedure though of course they are bound to obey all statutory requirements and also observe the principles of natural justice where rights of parties may be affected.

> Here again, we emphasise that if administrative decisions are reviewed, the decisions taken after review are subject to judicial review on all grounds on which an administrative decision may be questioned in a court. We see no force in this submission of the learned Counsel. The appeal is, therefore, dismissed." *(Emphasis Supplied)*

24. Unfortunately, the Tribunal has ignored the aforesaid settled legal position and appears to have been influenced by the stand of the respondents that the Commissioner of Police was exercising quasi-judicial functioning, though we do not find this to be expressly stated by the Tribunal.

25. But we need to still decide, whether the Commissioner of Police exercises an administrative power or a quasi-judicial power while taking a decision under Rule 19(ii) of the Rules.

26. The distinction between administrative and quasi-judicial orders was explained by Supreme Court in the decision reported as *Neelima Misra v Harinder Kaur Paintal* (1990) 2 SCC 746 in the following terms:-

> We find it difficult to accept the reasoning underlying the aforesaid view. Before we consider the correctness of the proposition laid down by the High Court we must, at the expense of some space, analyse the distinctions between quasi-judicial and administrative functions. An administrative function is called quasi-judicial when there is an obligation to adopt the judicial approach and to comply with the basic requirements of justice. Where there is no such obligation, the decision is called 'purely administrative' and there is no third category. This is what was meant by Lord Reid in *Ridge* v. *Baldwin*[3]:
>
> "In cases of the kind with which I have been dealing the Board of Works..... was dealing with a single isolated case. It was not deciding, like a judge in a law suit, what were the rights of the persons before it. But it was deciding how he should be treated — something analogous to a judge's duty in imposing a penalty...
>
> So it was easy to say that such a body is performing a quasi-judicial task in considering and deciding such a matter and to require it to observe the essentials of all

proceedings of a judicial character the principles of natural justice. Sometimes the functions of a minister or department may also be of that character and then the rules of natural justice can apply in much the same way...."

20. Subba Rao, J., as he then was, speaking for this Court in *G. Nageshwara Rao* v. *Andhra Pradesh State Transport Corporation*[4] put it on a different emphasis: (SCR p. 353)

"The concept of a quasi-judicial act implies that the act is not wholly judicial, it describes only a duty cast on the executive body or authority to conform to norms of judicial procedure in performing some acts in exercise of its executive power..."

21. Prof. Wade says:[5]

"A judicial decision is made according to law. An administrative decision is made according to administrative policy. A quasi-judicial function is an administrative function which the law requires to be exercised in some respects as if it were judicial. A quasi-judicial decision is, therefore, an administrative decision which is subject to some measure of judicial procedure, such as the principles of natural justice."

27. Deciding under Rule 19(ii), the Commissioner of Police has no lis before him. A claim by a person under a Statute is considered by the Commissioner purely in exercise of a statutory power which is administrative in nature.

28. There is another very important aspect of the matter which has escaped the attention of the Tribunal while passing the impugned judgment. Rule 19(ii) postulates that the Commissioner may grant out of turn promotion to the deserving police officers with the <u>prior approval of the Administrator.</u> In the instant case, when the then Commissioner passed order granting sanction for out of turn promotion to be granted to the respondents he had not obtained the approval of the Administrator. Thus, the first order remained an inchoate order for the reason to be treated as an order granting out of turn promotion the condition precedent of approval of the

administrator was missing. The order has thus to be treated not as one under Rule 19 (ii) but merely has a recommendatory order.

29. At the heart of the debate is the issue whether the Incentive Committee constituted at the second stage has returned correct findings or is it a desperate attempt to wriggle out of a situation and what is the meaning of the expression, '*given year*' in Rule 19(ii). We deal with the latter first.

30. As already noted herein above, the interpretation given by the Tribunal to the expression in question has two limbs. The first limb of the interpretation is that Rule 19(ii) postulates that out of turn promotions granted in a year should not exceed 5% of the vacancies which are likely to fall vacant in a given year and not that they should not exceed 5% of the vacancies which are likely to fall vacant in a given year "in a rank". The Tribunal has read the expression "such promotions shall not exceed 5 per cent of the vacancies likely to fall vacant in the given year in the rank" as "such promotions shall not exceed 5 per cent of the vacancies likely to fall vacant in the given year."

31. No intelligible reason whatsoever is forthcoming from the impugned judgment as to why the Tribunal has interpreted the statute as making redundant the words "in a rank" which find place in Rule 19(ii). It is settled law that unless compelling reasons require, no words of a statute or a Section have to be made redundant. The Rule cannot be read by making redundant the words "in a rank" for the simple reason the Rule envisages promotion to the next higher rank and thus the expression "in a rank" is integral to the Rule the remainder of which cannot operate do hors a rank.

32. The second limb of the interpretation given by the Tribunal is that the expression "given year" is required to be read as

"year of implementation of grant of out of turn promotion to a police officer". On the other hand, according to the department, the expression "given year" is required to be read as "year of issuance of recommendation for grant of out of turn promotion to a police officer."

33. The expression 'given year' is found in the sentence '*Such promotions shall not exceed 5% of the vacancies likely to fall vacant in the given year in the rank*'. It is apparent that the sentence contemplates promotions to be given in a rank and further imposes a limit by prescribing that promotions shall not exceed 5% of the vacancies. The only area of debate is to the year for which the limit of 5% vacancies capable of being filled up under Rule 19(ii) i.e. which is the year contemplated by the Rule. The expression, likely to fall vacant, guides us that it is the future which is to be the guiding factor for the reason when one talks of an event '*likely*' to happen it has to be in the future and cannot be in the present or the past. Thus, at least one thing is clear that the year for which 5% vacancies have to be identified has to be the year after when the act of bravery or gallantry was performed. It could be the year next; or is it any other year other than the year next. It has to be factored that the process of identifying the eligible persons is a time consuming process inasmuch as an Incentive Committee has to screen large number of cases and make recommendations which have to be perused by the Commissioner of Police and sent for approval to the administrator, who in turn has to apply his mind and then a final decision taken. It is settled law that while interpreting a statute, if the language permits, the practicality of the situation to which the Rule has to be applied has to be kept in mind. It is settled law that a statute has to be interpreted to further the object. The object of Rule 19(ii) is to

reward gallantry and bravery and indeed it acts as an incentive to a police officer, in discharge of his duties, that if he puts in more than what is normally required in the discharge of his duties and even at the cost of personal safety, he would be rewarded. Thus, the Rule has to be interpreted, as long as the language permits, to preserve and implement the beneficial right which accrues to a police officer and not in a manner where the right is recognized but is left unenforced due to technicalities. Keeping in view the pre-noted principles the expression *'Such promotions shall not exceed 5% of the vacancies likely to fall vacant in the given year in the rank'* is capable of being read as limiting 5% quota to the vacancies which fall vacant in any given year i.e. the right, on being crystallized, for its implementation has to await existence of 5% vacancies allocable for the quota in each year, meaning thereby the department has to satisfy the claim as and when it can be accommodated within the 5% vacancies accruing in the given year i.e. the year in which the promotion is made. We find that the department has itself been interpreting and implementing the Rule as is expounded by us. The same is evidenced with respect to a response to a query sought from the petitioner under Right to Information Act by the respondent. Information sought was to inform the date when the Incentive Committee gave the recommendation, the date on which the Commissioner granted approval and the date of promotion. The response submitted in a tabular form reads as under:-

"DETAIL OF POLICE OFFICIALS WHO WERE GRANTED OUT OF TURN PROMOTION DURING THE YEAR – 2006

SL. No.	Rank	Name & No.	Date of ICM	Date of approval by CP	Date of Promotion
1.	**SI (Exe.)**	**Akhileshwar, D/884**	**27/01/2004**	**29/01/2004**	**02.01.2006**
2.	**SI (Exe.)**	**Arvind Kr., 12, 15 &**	**27/04/2002**	**02.01.2006**	

		D/2750	**16/04/2002**		
3.	**SI (Exe.)**	**Arvind Kr., D/842**	**13/10/2004**	**21/10/2004**	**02.01.2006**
4.	**SI (Exe.)**	**Ranbir Singh, D/3443**	**15/09/2004**	**16/09/2004**	**02.01.2006**
5.	**SI (Exe.)**	**Sanjay Dutt, D/2736**	**13/02/2001**	**13/02/2001**	**02.01.2006**
6.	**SI (Exe.)**	**Jitender Singh, D/3782**	**25/10/2005**	**25/10/2005**	**30.03.2006**
7.	**SI (Exe.)**	**Rajpal Dabas, D/882**	**14/12/2005**	**14/12/2005**	**19.06.2006**
8.	**SI (Exe.)**	**Ved Prakash, D/3451**	**14/12/2005**	**14/12/2005**	**19.06.2006**
9.	**SI (Exe.)**	**Raj Kr, D/3467**	**14/12/2005**	**14/12/2005**	**20.10.2006**
10.	**ASI (Exe.)**	**Devender, 616/88**	**29/06/2005**	**29/06/2005**	**30.03.3006**
11.	**ASI (Exe.)**	**Harish Chander, 372/D**	**24/06/2005**	**24/06/2005**	**30.03.2006**
12.	**ASI (Exe.)**	**Rajiv Kakker, 616/88**	**25/10/2005**	**25/10/2005**	**30.03.2006**
13.	**ASI (Exe.)**	**Rishi Pal, 647/88, 1188/D**	**29/06/2005**	**29/06/2005**	**30.03.2006**
14.	ASI (Exe.)	Kamal Singh, 1582/D		31.07.2006	31.07.2006
15.	ASI (Exe.)	Devender Singh, 548/88	02/08/2006	03/08/2006	31.08.2006
16.	ASI (Exe.)	Krishan Lal, 1223/D	02/08/2006	03/08/2006	31.08.2006
17.	ASI (Exe.)	Parmod Kr., 663/88	02/08/2006	03/08/2006	31.08.2006
18.	ASI (Exe.)	Rajinder Singh, 625/88	02/08/2006	03/08/2006	31.08.2006
19.	ASI (Exe.)	Ranvir Singh, 662/88	02/08/2006	03/08/2006	31.08.2006
20.	**HC (Exe.)**	**Ashok Kr., 1207/8D**	**07/06/2005**	**07/06/2005**	**30.03.2006**
21.	**HC (Exe.)**	**Chiranji Lal, 36/DRP**	**04/06/2005**	**04/06/2005**	**30.03.2006**
22.	**HC (Exe.)**	**Devender Kr., 235/NE, 247/SB**	**22/12/2004**	**22/12/2004**	**30.03.2006**
23.	**HC (Exe.)**	**Devender Singh, 91/Cr.**		**10/02/2005**	**30.03.2006**
24.	**HC (Exe.)**	**Hira Lal, 139/SB**	**15/03/2005**	**15/03/2005**	**30.03.2006**
25.	**HC (Exe.)**	**Kewal Krishan, 49/Cr.**		**17/06/2005**	**30.03.2006**
26.	**HC (Exe.)**	**Rajinder Singh, 471/SB**	**13/10/2004**	**13/10/2004**	**30.03.2006**
27.	Ct. (Exe.)	Gulveer Sigh, 4437/DP	12/04/2006	12/04/2006	28.04.2006
28.	Ct. (Exe.)	Pankaj Sharma, 9782/DAP	12/04/2006	12/04/2006	28.04.2006
29.	Ct. (Exe.)	Bijender Kr.,	12/04/2006	12/04/2006	17.05.2006

		921/C			
30.	Ct. (Exe.)	Khalid Ahmad, 3103/SD	12/04/2006	12/04/2006	17.05.2006
31.	Ct. (Exe.)	Surender Kr., 1397/SD	12/05/2006	12/05/2006	17.05.2006
32.	Ct. (Exe.)	Bachu Singh, 270/DRP	02/08/2006	03/08/2006	31.08.2006
33.	Ct. (Exe.)	Devender Kr., 489/SB	02/08/2006	03/08/2006	31.08.2006
34.	Ct. (Exe.)	Mohd. Iqbal, 7341/DAP	02/08/2006	03/08/2006	31.08.2006
35.	Ct. (Exe.)	N.K. Pavithran, 467/DRP	02/08/2006	03/08/2006	31.08.2006
36.	Ct. (Exe.)	Ombir Singh, 1702/W	02/08/2006	03/08/2006	31.08.2006
37.	Ct. (Exe.)	Vinod Kr., 4614/DAP	02/08/2006	03/08/2006	31.08.2006
38.	Ct. (Exe.)	Babulal Meena, 2340/E		30/11/2006	30.11.2006
39.	Ct. (Exe.)	Suresh Chand, 1829/E		30/11/2006	30.11.2006
40.	Ct. (Exe.)	Anil Kumar, 1277/NW	04/12/2006	05/12/2006	15.12.2006
41.	Ct. (Exe.)	Azad Singh, 322/DRP	04/12/2006	05/12/2006	15.12.2006
42.	Ct. (Exe.)	Bhoop Singh, 2242/SD	04/12/2006	05/12/2006	15.12.2006
43.	Ct. (Exe.)	Jai Pal Singh, 2446/SD	04/12/2006	05/12/2006	15.12.2006
44.	Ct. (Exe.)	Munesh Kr., 976/SD	04/12/2006	05/12/2006	15.12.2006
45.	Ct. (Exe.)	Sunder Lal, 444/SB	04/12/2006	05/12/2006	15.12.2006
46.	Ct. (Exe.)	Sunil Kr., 287/SB	04/12/2006	05/12/2006	15.12.2006
47.	Ct. (Exe.)	Vinay Pal Singh, 19063/NW	04/12/2006	05/12/2006	15.12.2006

DETAILS OF POLICE OFFICIALS WHO WERE GRANTED OUT OF TURN PROMOTION DURING THE YEAR-2007

SL. No.	Rank	Name & No.	Date of ICM	Date of approval by CP	Date of Promotion
1.	SI (Exe.)	Kailash Bisht, D/726	19/04/2006	19/04/2006	08.05.2007
2.	SI (Exe.)	Pawan Kr., D/1187	14/12/2005	14/12/2005	08.05.2007
3.	SI (Exe.)	Vivekanand Jha, D/3944	12/04/2006	12/04/2006	08.05.2007
4.	SI (Exe.)	Naresh Kr., D/3773	In pursuance of the judgment of the Hon'ble Delhi High Court in WP (C) No.11732/2005		04.05.2007
5.	ASI (Exe.)	Mohinder		09.08.2007	07.11.2007

		Singh, 3026/SW & (4482/D)			
6.	HC (Exe.)	Rakesh Kr., 341/SB	23/06/2006	23/06/2005	08.05.2007
7.	HC (Exe.)	Ranjit Kr., 385/SB	23/06/2005	23/06/2005	08.05.2007
8.	HC (Exe.)	Manoj Kr., 320/E		10/05/2007	19/05/2007
9.	HC (Exe.)	Rajbir Singh, 385/SB		19/07/2007	19/07/2007
10.	Ct. (Exe.)	Kailash Chand, 2213/SD		13/01/2007	13/01/2007
11.	Ct. (Exe.)	Dushyant, 1269/W		17/01/2007	18.01.2007
12.	Ct. (Exe.)	Mahesh Kr., 1884/C		21/02/2007	22.02.2007
13.	Ct. (Exe.)	Virender Singh, 1723/E		10/05/2007	10.05.2007
14.	Ct. (Exe.)	Balmiki Mishra, 1147/W		28/05/2007	28.05.2007
15.	Ct. (Exe.)	Sanjay Kr., 1825/SW		27/08/2007	29.08.2007
16.	Ct. (Exe.)	Satpal Singh, 306/Cr.	12/04/2007	16/04/2007	24.07.2007
17.	Ct. (Exe.)	Surender Kr., 443/SB	24/04/2007	26/04/2007	24.04.2007"

34. It is apparent that out of turn promotions have been given to as many as 25 police officers in years subsequent to the year when the act of gallantry was performed as also the year in which the Commissioner granted approval to the recommendations of the Incentive Committee. To highlight, SI Arvind Kumar at serial No.2 of the list of persons who were granted out of turn promotion in the year 2006 was recommended for promotion on 16.4.2002 and the Commissioner gave the necessary approval on 27.4.2002. He was promoted on 2.1.2006.

35. This takes us to the last leg of the matter i.e. whether the findings returned by the second Incentive Committee that no act of bravery was performed by the respondents are correct.

36. As noted by us above the department took a stand that the respondents could not be promoted inasmuch as no

vacancy was available in the year next after the Incentive Committee recommended the citation for gallantry. A plea was also taken that the respondents performed no act of gallantry/bravery and for which reliance was placed on the findings returned by the second Incentive Committee.

37. The response of the respondents was that knowing that the first stand taken was on shaky wicket, a desperate attempt was made to get over the problem by turning turtle and saying that the respondents performed no gallantry/bravery.

38. In para 8 above we have noted the language of the citation pursuant whereto respondent Sanjeev Shokeen, on being recommended by the Delhi Police, was awarded the Presidential Award for Bravery. The Presidential notification reads as under:-

> "No.203-Pres/2007- The President is pleased to award the Police Medal for Gallantry to the undermentioned officers of Delhi Police:-
>
> **NAME AND RANK OF THE OFFICERS**
> **S/Shri**
> **1. Kailash Singh Bisht, Sub Inspector**
> **2. Rajinder Singh Sherawat, Sub Inspector**
> **3. Devender Singh Assistant Sub Inspector**
> **4. Bijender Singh Head Constable**
> **5. Sanjeev Shoukeen Head Constable**
> **6. Vinod Gautam Constable**
>
> **Statement of service for which the decoration has been awarded**
>
> ....
>
> **SHRI SANJEEV SHOUKEEN, HEAD CONSTABLE**

> HC Sanjeev Shaukeen took position on one side of the house. One of the militant ran towards HC Sanjeev firing indiscriminately in order to flee from the spot. The die hard officer without caring for his life confront with the JeM militant who was equipped with sophisticated Assault rifle and hand grenade, fired 18 rounds from his service Assault rifle and neutralized the terrorist. HC Sanjeev endangered his life for the safety of his team members and displayed the most personal bravery and gallantry of the highest order on the face of terrorism.
>
> ....
>
> In this encounter S/Shri Kailash Singh Bisht, Sub Inspector, Rajinder Singh Sherawat, Sub Inspector, Devender Singh, Assistant Sub Inspector, Bijender Singh, Head Constable, Sanjeev Shoukeen, Head Constable and Vinod Gautam, Constable displayed conspicuous gallantry, courage and devotion to duty of a high order. (*Emphasis Supplied)*
>
> ...."

38. We find it strange that Sanjeev Shokeen would earn a Presidential Award for Bravery and for the act for which his fellow colleagues likewise earned the Presidential Award for Bravery and now for unexplainable reasons the department turns around and says that Sanjeev Shokeen is not entitled to be put at par with his colleagues, all of whom except HC Bijender Singh, have been granted out of turn promotion. There is another interesting circumstance which we need to highlight. Save and except SI Umesh Barthwal the respondent of W.P.(C) No.5482/2010 who seeks a promotion to the post of Inspector, all other respondents who are litigating and such of whom who are not litigating but were denied the promotion are holders of the rank of a Head Constable and seek promotion to the post of Assistant Sub Inspector. It appears to be a case where not many vacancies are available to the post of Assistant Sub-Inspector and for which the department is trying to wriggle out by taking a stand, which we note is contrary to the manner in

which the petitioner had been acting in the past. This circumstance and in particular the facts pertaining to HC Sanjeev Shokeen casts a serious doubt on the bona fide of the decision taken by the second Incentive Committee. We have noted in the various paragraphs above the reasons of the second Incentive Committee and to the reader it becomes apparent that the conclusion arrived at by the second Incentive Committee is based on the reasoning that in the FIR and the contemporaneous DD entry recorded qua the incidents, the role of the respondent was not evidencing any act of bravery.

39. It is settled law that a DD entry is a cryptic recording of information received at the Police Control Room/Police Station and likewise an FIR is not an encyclopedia and does not contain the minute details pertaining to the incident in respect whereof the information is recorded. It is apparent that the Incentive Committee has ignored relevant and vital material which was considered by the previous Incentive Committee. It is apparent that the Commissioner Police has mechanically approved the recommendations of the second Incentive Committee and we once again highlight the case of HC Sanjeev Shokeen and would not hesitate to put it on record that during arguments, learned counsel for the petitioners could just not submit even a sentence to justify the recommendations of the second Incentive Committee.

40. In view of the above discussion, the impugned order passed by the Tribunal which has set aside the orders dated 11.12.2009/14.12.2009 passed by the Commissioner denying out of turn promotion to the respondents is affirmed. The Commissioner Police is directed to reconsider the matter as directed by the Tribunal and while so doing it is hoped and

expected that the Commissioner would be guided by the observations and findings returned by us.

41. The writ petitions are accordingly disposed of in above terms.

PRADEEP NANDRAJOG, J.

SIDDHARTH MRIDUL, J.

December 10, 2010
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