

Court No. - 10

Case :- SPECIAL APPEAL DEFECTIVE No. - 120 of 2023

Appellant :- Jitendra Singh Bhadauria

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Home Civil Sect.
Lko. And Others

Counsel for Appellant :- Shesh Ram Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Pritinker Diwaker, Acting Chief Justice

Hon'ble Rajan Roy, J.

Since there is no objection from the respondents to the application for condonation of delay, being allowed, the application for condonation of delay (CMA No. 1 of 2023) is hereby allowed and the period of delay as pointed out by the Registry is condoned.

Heard.

This is Special Appeal under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952 challenging the judgment dated 20.01.2023 passed by the Writ Court in Writ A No. 22206 of 2019.

The appellant herein preferred the abovementioned writ petition challenging an order dated 22.07.2019 by which his claim for out of turn promotion was declined. As a consequential relief appellant herein had sought his out of turn promotion to the post of Head Constable w.e.f. the date similarly situated persons had been given such benefit on the basis of training completed by the petitioner w.e.f. 20.03.2006 to 05.07.2006 held at 35th Battalion, PAC, Lucknow.

The writ Court has disposed of the petition taking into consideration the stand of the respondents that the petitioner was not entitled to be promoted out of turn as per the Rules known as उत्तर प्रदेश नागरिक पुलिस/प्रादेशिक सशस्त्र कान्स्टेबुलेरी में कुशल खिलाड़ियों की भर्ती एवम् पदोन्नति नियमावली, 2011 (hereinafter referred as the 'Rules 2011') as he had not undergone requisite training which was a precondition for such promotion.

Considering the said stand of the respondents, the writ Court has held that this cannot be a reason for refusing promotion to the petitioner as it is the responsibility of the respondents to provide training that is required for the purpose of such promotion. There was nothing on record to show that the respondents had ever called the petitioner for any such training or the petitioner had refused to participate in the same. It has held that once the petitioner is entitled for out of turn promotion under the Rules 2011, it is the duty of the respondents to provide any such training that is required for promotion. Accordingly, with these observations, the concerned respondent has been directed to ensure that required training is provided to the petitioner and his claim for promotion under the Rules 2011 is decided on merits. This exercise has been ordered to be completed within a period of four months. Being aggrieved, this appeal has been preferred by the petitioner.

Learned counsel for the appellant has raised only one argument before us that is the appellant-petitioner had already undergone such training w.e.f. 20.03.2006 to 05.07.2006, therefore, he was not required to undergo any fresh training,

but, the learned Single Judge while deciding the writ petition has lost sight of this relevant fact resulting in the impugned judgment by which he is required to undergo training once again with a corresponding obligation upon the respondents to ensure such training. The submission is that the learned Single Judge has passed the judgment ignoring the relevant facts and issues involved in the writ petition.

We have perused Rules 24(1) and 34(2) of the Rules 2011, copy of which is available on record. We find that under Rule 24(1) of the Rules 2011 an initial training is envisaged for those who have been directly recruited under the said Rules which are applicable for recruitment of Skilled Sportsman, by way of direct recruitment. This training is of fourteen weeks.

Learned counsel for the appellant has referred to this provision to contend that this fourteen weeks training he had already undergone in the year 2006, therefore, he is not required to undergo training once again. However, we find that the petitioner is claiming out of turn promotion and Rule 24(1) relates to direct recruitment. After such direct recruitment on the initial post there is a provision for out of turn promotion of Skilled Sportsman and this provision is contained in Rule 34 of the Rules 2011. Rule 34(1) clearly provides that for out of turn promotion of Skilled Sportsman the mandatory eligibility condition is successful completion of regular training program. The words used in the Rules which are in hindi are "मौलिक प्रशिक्षण कार्यक्रम" which is distinct from the words "प्रारंभिक प्रशिक्षण" used in Rule 24(1) referred earlier.

Sub-Rule (2) of Rule 32 of the Rules 2011 further provides that ordinarily a Skilled Sportsman would be eligible for out of turn promotion to the higher rank when he has successfully completed the prescribed regular training for said rank which obviously is a reference to the higher rank and that he fulfills all other eligibility condition in this regard. We, thus, find that the Rules envisage two types of training (i) initial training at the time of direct recruitment which is mentioned in Rule 24(1) of the Rules 2011 and the other (ii) regular training for the purposes of out of turn promotion to the higher rank and this is envisaged in Rule 34.

In this view of the matter, the contention of appellant's counsel that the appellant has already undergone training does not appear to be sound. Moreover, we find that he has not annexed any such document to show that he has undergone any training in the year 2006 or 2007.

In any case, such training was provided to him w.e.f. 20.03.2006 to 05.07.2006 after his appointment on the post of Constable on 23.07.2005 and this is referable to Rule 24(1) which is not relevant for the purposes of out of turn promotion to the higher rank of Head Constable for which regular training is prescribed under Rule 34 as a prerequisite eligibility condition. Reliance placed by the appellant's counsel in this regard to an interlocutory order, copy of which is annexed at page No. 97 of the appeal, also does not help his cause as in the said order the learned Single Judge in another writ petition had merely asked the respondents therein to show the provision under which the petitioner if they had already

undergone training were being asked to undergo the same again. We have already referred such provision which is contained in Rule 34 of the Rules 2011. The writ Court has already directed the respondents to ensure that required training is provided to the appellant-petitioner and thereafter his claim for promotion under the Rules 2011 is decided on merits.

We, therefore, decline to interfere in the matter in this intra Court appeal and ***dismiss*** it as lacking in merit.

[Rajan Roy, J.] [Pritinker Diwaker, ACJ.]

Order Date :- 16.03.2023

Santosh/-