

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

LPA No.54/2024 in
SWP No.2270/2010
CM No.1494/2024
CM No.1495/2024

01. UT of Jammu and Kashmir through Additional Chief Secretary, Home Department, Government of UT of J&K, Civil Sectt., J&K, Jammu.
02. Director General of Police, J&K, Jammu.
03. Deputy Inspector Genral of Police, Doda-Udhampur Range.
04. Sr. Superintendent of Police Doda. Petitioner(s)/Appellant(s)

Through :- Mrs. Monika Kohli, Sr.AAG.

V/s

Pritam Singh S/o Dhayan Singh R/o Village Bharthi Dhosa,
Tehsil Bhallessa Gandoh, District Doda (J&K). Respondent(s)

Through :- Mr. Navneet Dubey, Advocate.

**Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE MOHD. YOUSUF WANI, JUDGE**

**ORDER
(26.11.2024)**

01. The Union Territory of J&K and three others are in appeal against an order and judgment dated 15.06.2023 passed by learned Single Judge of this Court ("the writ Court") in SWP No.2270/2010 titled '*Pritam Singh V. State of J&K & Ors.*', whereby the writ Court has allowed the petition of the respondent and has directed the appellants herein to accord absorption in favour of the respondent as Constable in Jammu & Kashmir Police with retrospective effect from 03.06.2003 with notional monetary benefits and all prospective benefits from the date he is absorbed as Constable in J&K Police. The appeal is, of course, delayed by more than 06 months. There is some explanation tendered by the appellants to explain this delay.

02. Learned counsel for the respondent does not join issue on limitation and submits that judgment, otherwise, is perfectly in consonance with law and deserves to be upheld.

03. We have considered the rival submissions and we are of the considered opinion that in the larger interest of justice, it would be in the fitness of things to condone the delay. The application is, thus, allowed and the delay in filing the appeal is condoned.

04. We have considered the appeal finally with the consent of the parties and we do not find any legal infirmity in the judgment impugned.

05. The short grievance that was projected by the respondent in the writ petition was that on 08.10.2002, when he along with Gautam Singh SPO and Constable Nazakat Ali along with the contingent of CRPF were deployed for securing the polling station booth No.4, Town Hall, Doda City undergoing State Assembly election polling, one fidayeen disguised in Khakhi uniform emerged on the main entrance of the polling booth and threw a grenade which was followed by cross firing between the fidayeen and the security contingent including the petitioner and his colleagues from J&K Police. As a result of this action, the fidayeen was killed. However, two personnels of CRPF also lost their lives. Police Constable Nazakat Ali and SPO Gautam Singh received injuries. The respondent, however, remained unhurt in the incident. An FIR in this regard was also registered in the Police Station, Doda.

06. As per the policy of Department of Home, the appellants in recognition of the exemplary courage shown by the respondent and two others which resulted in killing of the fidayeen, recommended Constable Nazakat Ali for promotion by one rank and SPO Gautam Singh for his permanent absorption as Constable in J&K Police. The respondent was, however, granted cash award only.

07. Feeling aggrieved and discriminated at the hands of the appellants, the respondent filed SWP No.2270/2010 claiming his right to be regularized as Constable on a par with Gautam Singh. It was the case pleaded by the respondent that the attack by the fidayeen was repelled by the entire contingent of J&K Police along with CRPF personnels and, therefore, there was no material with the appellants to come to a conclusion that the role played by the respondent in repelling of the attack by the fidayeen was in any manner less than that of SPO Gautam Singh. This plea has been accepted by the writ Court. The writ Court has found the respondent similarly situated with SPO Gautam Singh and has, thus, found the denial of appointment to the respondent as Constable discriminatory. Vide judgment and order impugned dated 15.06.2023, the writ Court has allowed the writ petition of the respondent and directed the appellants herein to accord absorption in favour of the respondent as Constable in the J&K Police retrospectively with effect from 03.06.2003 with notional monetary benefits and all prospective benefits from the date, the respondent is actually absorbed as Constable. It is this judgment of the writ Court which is called in question in this appeal.

08. Having heard learned counsels for the parties and perused the material on record, we are of the considered opinion that the judgment passed by the writ Court is legally and factually correct and does not call for any interference in this appeal.

09. Indisputably, the respondent was one of the J&K Police personnels who repelled the attack by the fidayeen on 08.10.2002 at the polling station Doda. It is, however, a different matter that in the grenade attack, SPO Gautam Singh and Constable Nazakat Ali from amongst J&K Police suffered injuries and the respondent escaped unhurt. However, there is nothing on record to show that the role played by the respondent was in any manner inferior to or less than the role

played by Constable Nazakat Ali and SPO Gautam Singh. All the three along with the CRPF contingent were under the attack of the fidayeen. All of them participated in the action which ultimately resulted in killing of the fidayeen. Before the fidayeen was killed, he hurled a grenade on the Police party in which two CRPF personnels lost their lives, whereas Constable Nazakat Ali and SPO Gautam Singh received injuries. It was good fortune of the respondent that he escaped unhurt but that does not mean that he had not participated in the operation or that his role in the operation in any manner was in any way less than Nazakat Ali and SPO Gautam Singh. The writ Court has very correctly appreciated the issue and issued the directions in terms of the judgment impugned. However, as is pointed out by Mrs. Monika Kohli, learned Sr.AAG that the operative portion of the judgment is somewhat contradictory in the sense that; at one place the writ Court while allowing the petition has directed that the prospective benefits would be available to the respondent from the date he is actually absorbed as Constable in J&K Police, whereas at other place; it says that the respondent would be entitled to notional monetary benefits with effect from 03.06.2003.

10. We have given our thoughtful consideration to this aspect of the matter and we are of the opinion that the word ‘monetary’ between notional and benefits has, inadvertently, come in, where as there could be no term like notional monetary benefits as is understood in service jurisprudence. As a matter of fact, the intention of the writ Court is clearly and unequivocally evident from reading of para 10 of the judgment. The writ Court intended to grant notional benefits to the respondent with effect from 03.06.2003 and monetary benefits prospectively from the date he is absorbed as Constable in the J&K Police.

11. For the foregoing reasons, we uphold the judgment passed by the writ Court with the modification that the respondent shall be entitled to be appointed

as Constable retrospectively with effect from 03.06.2003. He shall be entitled to only notional benefits with effect from 03.06.2003 and shall be entitled to monetary benefits only from the date of judgment, i.e. 15.06.2023. Let an order in this regard be passed by the appellants within a period of two months from today.

12. Disposed of.

(MOHD. YOUSUF WANI)
JUDGE

(SANJEEV KUMAR)
JUDGE

Jammu
26.11.2024.
Eva

Whether the order is speaking?

Yes/No

Whether the order is reportable?

Yes/No

