
(2012) 08 MP CK 0045

In the Madhya Pradesh High Court

Case No : Writ Petition (S) No. 8932 of 2006

Ashok Kumar Jain

APPELLANT

Vs

High Court of Madhya Pradesh

RESPONDENT

Date of Decision : 28-08-2012

Acts Referred:

Citation : (2012) 5 MPHT 132

Hon'ble Judges : Rajendra Menon, J;Alok Aradhe, J

Bench : Division Bench

Advocate : Manoj Sharma, for the Appellant; P.R. Bhave and Mr. B.P. Yadav, for the Respondent

Judgement

Alok Aradhe, J.—In this writ petition, the petitioner has challenged the order dated 28-3-2005, by which adverse remark has been communicated to the petitioner for the period ending 31st December, 2004 as well as the order dated 12-8-2005, by which representation submitted by the petitioner against the adverse confidential report has been rejected. In order to appreciate the petitioner's grievance, few facts need mention, which are stated infra. The petitioner joined the judicial service on 19-11-1987 and was promoted to Higher Judicial Service on 30th January, 2002. The petitioner's services were regularised in Higher Judicial Service vide order dated 15-9-2004. The petitioner at the relevant time was posted at Satna. The routine and surprise inspections were carried out by the District Judge (Vigilance) on 26-7-2004 and 30-9-2004, respectively, in which all the aspects of the petitioner's functioning as judicial officer were scrutinised and nothing adverse against him was found. Till 2004, neither there was any complaint of any sort against the petitioner nor any adverse remark was ever communicated to him. The petitioner had completed 17 years of unblemished service as a judicial officer. However, by order dated 28-3-2005, the adverse confidential report for the period 30-12-2004, which was recorded by the Portfolio Judge was communicated to the petitioner, which reads as under:--

He is a corrupt judicial officer. He is not enjoying good reputation. He deserves to be graded "E".

On receipt of the aforesaid adverse remark, the petitioner submitted a representation on 30-4-2005. Vide communication dated 12-8-2005, the petitioner was informed that his representation against the adverse remark in the annual confidential report for the period ending 31-12-2004 on due consideration has been rejected. In the aforesaid factual background, the petitioner has approached this Court.

2. Learned Counsel for the petitioner while inviting the attention of this Court to the procedure prescribed for filling up the column relating to integrity of judicial officers, submitted that the procedure prescribed for filling up the column relating to integrity was not adhered to in the case of the petitioner. It is submitted that administrative instructions issued by an authority in the absence of statutory rules are binding on the authority. In support of the aforesaid submission, learned Counsel for the petitioner has referred to the decisions of the Supreme Court in *Home Secretary, U.T. of Chandigarh and Another Vs. Darshjit Singh Grewal and Others*, *Babu Verghese and Others Vs. Bar Council of Kerala and Others*, and *Swaran Singh Chand Vs. Punjab State Electricity Board and Others*. It was further submitted that object of making adverse remark is to assess the competence of an officer and the Competent Authority as well as the Reviewing Authority have to act fairly and objectively in assessing the character, integrity and performance of an officer. In support of the aforesaid proposition, reliance has been placed on *M.A. Rajasekhar Vs. State of Karnataka and Another*. It was also urged that petitioner had rendered 17 years of satisfactory service as judicial officer and his integrity cannot become doubtful all of a sudden. Reference in this regard was made to the decision of the Supreme Court in *M.S. Bindra Vs. Union of India and Others*, *Pawan N. Chandra Vs. Rajasthan High Court and Another*, and *Sukhdeo Vs. Commissioner Amravati Division, Amravati and Another*,

3. Learned Counsel for the petitioner also pointed out that note of the Portfolio Judge, which formed the basis of the adverse confidential report against the petitioner was based on the opinion of members of the Bar Association and the same could not form the basis of recording the annual confidential report. Reliance was placed on *J.P.S. Singh Vs. High Court of Judicature at Allahabad and others*, 2000 Lab. IC 414. It was also urged that note written by the Portfolio Judge was not supplied to the petitioner and the Portfolio Judge was the member of the committee which rejected the representation of the petitioner, Therefore, there has been violation of principles of natural justice. In support of the aforesaid proposition, learned Counsel for the petitioner has placed reliance on decision of the Supreme Court in *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, and *5 P. Lai Vs. High Court of Judicature at Allahabad and another*, 1997 Lab. IC 757.

4. On the other hand, learned Senior Counsel for the respondent submitted that

there was material before the Portfolio Judge on the basis of which an adverse entry was made in the confidential report. It was further submitted that in the annual confidential report, even the Competent Authority, i.e., the District Judge has not made any specific entry that the integrity of the petitioner is beyond doubt. It was also-submitted that a committee of 9 Judges considered the representation submitted by the petitioner and Portfolio Judge was only one of the members of the Committee. The decision to reject the representation submitted by the petitioner was taken unanimously. It was pointed out by learned Senior Counsel for respondent that procedure for filling up the column relating to integrity does not apply in the facts of the case as the remark with regard to integrity of the petitioner was recorded by the Portfolio Judge. It was further submitted that the writ petition is misconceived and the petitioner is not entitled to any relief.

5. We have considered the respective submissions made by learned Counsel for the parties and have perused the record. The procedure for filling up the column relating to integrity provides that if there is a doubt or suspicion with regard to integrity of an officer, the same should be left blank and the separate secret note should be recorded and filled up. A copy of the note should be sent together with the confidential report to the next Superior Authority who would ensure that follow-up action is taken up expeditiously. If as a result of follow-up action doubts or suspicions are cleared, the officer's integrity should be certified and an entry should be made accordingly in the confidential report. If the doubts or suspicions are confirmed, this fact should also be recorded and duly communicated to the officer concerned. The procedure prescribed in this regard further provides that if as a result of the follow-up action, the doubts or suspicions are neither cleared nor confirmed, the officer's conduct should be watched for a further period of six months and thereafter, an appropriate action should be taken.

6. In the case of Registrar General, Patna High Court Vs. Pandey Gajendra Prasad and Others, , while emphasising the need for proper recording of annual confidential reports of the judicial officers, the Supreme Court has held that process of evaluation of a judicial officer is intended to contain a balanced information about his performance during the entire evaluation period, and the annual confidential reports play a vital and significant role in the assessment, evaluation and formulation of an opinion on the profile of a judicial officer, particularly relating to matters to disciplinary action and, therefore, the same have to be recorded carefully with due diligence and caution. It has further been held that the annual confidential reports have to be recorded in an objective manner. Similar view has been taken in Bishwanath Prasad Singh Vs. State of Bihar and Others, and High Court of Punjab and Haryana Through R.G. Vs. Ishwar Chand Jain and Another, In J.S.P. Singh (supra), it has been held that merely because of the members of the Bar did not speak highly about a Judge is no ground to give an adverse entry to him. It has further been held that there are many Judges who are very strict and do not succumb to the pressure of

some members of the Bar and thus, become unpopular, but for this reason, no adverse entry can be given to them. The High Court should not be too harsh to Judges of the Subordinate Judiciary. In the case of Amar Pal Singh Vs. State of U.P. and Another, , it has been held that unwarranted comments on the judicial officer creates a dent in the credibility of independence of judiciary and consequently, lead to some kind of erosion and affect the conception of rule of law.

7. In the case of M.S. Bindra (supra), it has been that the maxim "nemo fruit repente turpissimus" (no one becomes dishonest all of a sudden) is not unexceptional but still it is a salutary guideline to judge human conduct. It has further been held that it is not enough that the doubt fringes on a mere hunch. That doubt should be of such a nature as would reasonably and consciously be entertainable by a reasonable man on the given material. Mere possibility is hardly sufficient to assume that an officer is of doubtful integrity.

8. In the light of aforesaid well settled legal principles referred to supra, we may now advert to the facts of the case in hand. From perusal of the note written by the Portfolio Judge, it is apparent that the same is based on the complaints made by the senior members of the Bar, the President of the Bar Association and the members of the State Bar Council. At the end of the note, the Portfolio Judge has observed as under:--

In my opinion, an appropriate enquiry deserves to be ordered in to the serious kind of allegations against Shri A.K. Jain. His "transfer" is immediately required to a place where he is not able to involve in corruption.

Thus, it is apparent that in the opinion of the Portfolio Judge himself, the allegations which were made against the petitioner needed an enquiry. The allegations against the petitioner could have been proved only in an enquiry, which should have been held against him. The Portfolio Judge, therefore, in our considered opinion, could not have recorded the adverse remark with regard to integrity of the petitioner on the basis of the said note. It is relevant to mention here that till 2004, there has been no complaint against the petitioner with regard to his integrity, honesty and impartiality. On the other hand, the petitioner's performance was commended by the District Judge for making the Pilot Project a success in the District. A commendation letter was also issued to the petitioner by the then Chief Justice dated 16-3-2004. The entry in the confidential report for the years 1999, 2000 up to the period ending 31-12-2003 has been good. The disposal statistics for previous five years, i.e., for the period from 1-4-2000 till 31-12-2004 have been above very good. We, therefore, are inclined to agree with the submission made by learned counsel for the petitioner that no one becomes dishonest all of a sudden. In the facts of the case, we find that sweeping adverse remarks made in the annual confidential report casting doubt about the integrity of the petitioner cannot be treated as justified, as there was no basis for the same as the Portfolio Judge himself who has made such an entry was of the opinion that the allegations leveled against the petitioner were

required to be enquired into.

9. Besides that, the note which formed part for the basis of the adverse entry communicated to the petitioner was not supplied to the petitioner. Thus, there has been violation of principles of natural justice in as much as. the material which formed the basis of making an adverse entry was not supplied to the petitioner. Sec: Sukhdeo (supra). Therefore, the petitioner did not have any effective opportunity to submit the representation. The procedure prescribed in the note for filling up the column with regard to integrity in any case, was required to be followed by the District Judge. In the instant case. District Judge has mentioned in Part II of the annual confidential report of the relevant period that he has not received any specific complaint about the integrity of the petitioner. The Portfolio Judge disagreed with the remark of the District Judge on the basis of the note which contained the allegations with regard to integrity of the petitioner and in the opinion of the Portfolio Judge himself required an enquiry. Therefore, in the facts of the case, procedure prescribed in the note for making filling up the column with regard to integrity was required to be followed. Thus, the entry in the confidential report of the petitioner with regard to his integrity was made de hors the procedure prescribed in this regard. In view of the preceding analysis, the impugned orders (Annexures P-1 and P-2) cannot be sustained in the eye of law. Accordingly, the same are hereby quashed.

In the result, the writ petition succeeds and is hereby allowed.