
(2008) 05 J&K CK 0034

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 943/2001

Chaman Lal

APPELLANT

Vs

State & Ors.

RESPONDENT

Date of Decision : 06-05-2008

Acts Referred:

Citation : (2009) 3 JKJ 485

Hon'ble Judges : Nirmal Singh, J

Bench : Single Bench

Advocate : B.S.Salathia, Rahul Pant, Advocates appearing for the Parties

Judgement

1. Petitioner is seeking a writ in the nature of certiorari quashing the adverse remarks recorded in the Annual Performance Report of the petitioner

for the year 19992000, which were communicated him vide communication dated 31st of March'01. Writ is also sought in the nature of mandamus

directing the respondents to consider the case of the petitioner for the post of Chief Prosecuting Officer in ignorance of the aforementioned adverse

entries made in his Report for the period mentioned above.

2. The case of the petitioner is that he came to be appointed as Prosecuting Officer in the year 1984 and was promoted to the post of Senior

Prosecuting Officer in the year 1998. It is stated that after the promotion of the petitioner, he was posted at Kathua and was working under the

control of one Harbhajan Singh, Chief Prosecuting Officer. It is stated that the said officer always appreciated the work and conduct of the

petitioner as Senior Prosecuting Officer and nothing adverse was found against the petitioner. But after the transfer of aforementioned Chief

Prosecuting Officer, respondent No.4 who was also a Senior Prosecuting Officer

like that of the petitioner came to be posted as Incharge Chief

Prosecuting Officer, Kathua, in his own pay and grade. The grievance projected by the petitioner is that after the posting of respondent No.4, he

started harassing the petitioner and with a malafide intention got inserted adverse entries in the Annual Performance Report of the petitioner for the

said period. It is stated that the said adverse entries were initiated by respondent No.3 at the instance of respondent No.4 to deprive the petitioner

of the benefit of next promotion.

3. The further case set up by the petitioner is that while the petitioner and respondent No.4 were undergoing training in the Police Training College,

Udhampur in the year 1984-85, there was an altercation between them due to occupancy of a residential quarter and it was on this basis, later

when respondent No.4 came to be appointed as Incharge Prosecuting Officer, Kathua, where the petitioner was already working as Senior

Prosecuting Officer, the said respondent managed the adverse entries in the Performance Report of the petitioner with a malafide intention.

4. Respondents No.1 and 2 have not filed counter despite number of opportunities granted in this regard.

5. Counter has been filed by respondent No.3 stating therein that the APRs for the period, aforementioned were initiated by respondent No.4

whereby adverse entries have been made against the petitioner. It is stated that the petitioner had on one occasion made a reference in passing

manner about the alleged attitude of respondent No.4. It is further stated that a complaint was received by respondent No.4 also and thereafter the

answering respondent called both the officers i.e. the petitioner and respondent No.4 and advised them to concentrate on their work.

6. In the counter filed by private respondent No.4 it has been stated that the petitioner and the said answering respondent were not posted at one

place except for the period 1999-2000 and as there was no personal interest, the APRs of the petitioner for the said period were rightly recorded

without any malafide intention and this was on the basis of the performance of the petitioner. It is further stated that the APRs of the petitioner

which were initiated by the answering respondent were submitted to the higher authority which accepted the same and it was on the basis of the

adverse entries recorded in the Performance report of the petitioner based on his

work and conduct that the petitioner was denied further

promotion. There is, however, no denial to the fact that the said respondent was also a Senior Prosecuting Officer and was posted at Kathua as

Incharge Chief Prosecuting Officer in his own pay and grade.

7. The facts of the case disclose that respondent No.4 was also a Senior Prosecuting Officer at the relevant point of time but was posted as

Incharge Chief Prosecuting Officer, in his own pay and grade. Thus, the APRs of the petitioner in question have been recorded by an incompetent

authority as the petitioner and respondent No.4 were in the same cadre. When a person is holding a post in Incharge capacity in ' his own pay and

grade, he is not competent to record the APRs of an officer who is placed in the same Cadre/grade. In such a case, only a superior authority can

initiate the APRs. Not only this, a perusal of the facts in the present case reveals that the APRs of the petitioner for the period aforementioned have

been initiated by the respondent No.4 with malafide intention. In para 7 of the writ petition, it has been pleaded as under:

That the respondent No.4 was otherwise also in the habit of ridiculing the petitioner on one pretext or the other in as much as petitioner is a

Scheduled Caste and the respondent No. 4 would always by insinuations tried to lower the morale of the petitioner by referring derogatory

remarks towards the people belonging to the Scheduled Caste. The attitude of the petitioner was always hostile towards the petitioner because of

the aforesaid two reasons, as such, Respondent No.4 immediately after joining as Incharge, Chief Prosecuting Officer, Kathua, started harassing

the petitioner on one pretext or the other

8. In reply to this paragraph, respondent No.4 has stated as under:

That the contents made in para No.4 are denied for want of knowledge. However, it is further submitted that code of conduct demands a well

disciplined and a dedicated continue working by a Police officer. The petitioner if presumably has worked and performed well during the time of

predecessor of the deponent/answering respondent he was further required to perform with the same spirit. The petitioner cannot claim

exoneration from liabilities of his lapses committed during the relevant period. The performance of every public servant during the relevant period

are the only paramount factors for the determination of his performance during

the said period, which the principle has been well adhered by the deponent/answering respondent while initiating petitioner's APRs.

9. A perusal of the reply made to paragraph 4 of the writ petition shows that the respondent No.4 has made no specific denial to the allegations

levelled against him regarding harassment of the petitioner and it has only been stated the contents of para No.4 are denied for want of knowledge

and the rest of the stand taken in para 4 of counter is somewhat theoretical in nature and perusal of the same also shows that respondent No.4 has

admitted that the petitioner had worked with dedication under the control of predecessor of respondent No.4.

10. Petitioner has further pleaded that he was being harassed by respondent No.4 and this fact was brought to the notice of respondent No.3 and

the said respondent, as noticed above, has admitted in his counter that the petitioner had brought this fact to his notice but it was only a passing reference.

11. The further fact, which is pertinent to be mentioned is that the petitioner has taken a specific stand that his APRs prior to the APRs in dispute

and after that are good and there is nothing adverse against the petitioner. It has been further pleaded in para 13 of the petition that the petitioner

was not made aware of the fact that adverse entries have been recorded in his Annual Performance Report and it was only on 26th of April'01,

when the Departmental Promotion Committee met to consider the cases of all eligible persons for promotion to the post of Chief Prosecuting

Officer and when the case of the petitioner was left out from the zone of consideration that the petitioner came to know about the adverse entries

into his APRs. It is further pleaded that even thereafter, the petitioner was not communicated about the adverse entries into his APRs and even

though, respondent No.2 had issued a communication dt. 31st of March'01 in this regard, the same was retained in the office of Senior

Superintendent of Police, Kathua, and this communication was not delivered to the petitioner till the Departmental promotion Committee had met

to consider the cases of eligible candidates for promotion.

12. In reply to the assertions made in paragraph 13 of the writ petition, respondent No.3 has stated in his counter that he came to be transferred as

Senior Superintendent of Police, Jammu on 25th of Aug'2000, however, the

petitioner has been communicated with regard to his adverse APRs by respondent No.2 in the month of March'01. So far as the plea taken by the petitioner that the communication addressed by respondent No.2 regarding adverse entries into the APRs of the petitioner was retained in the office of respondent No.3 is concerned, there is no reply furnished to that effect.

13. As indicated above, respondents 1 and 2 have chosen not to file any counter. Thus, from the pleadings noticed above, it clearly establishes that the APRs of the petitioner were initiated by respondent No.4 with malafide intention so that the petitioner may not get promotion to the next higher post of Chief Prosecuting Officer. The malafide on the part of respondent No.4 is proved from the fact that even after the communication was addressed by respondent No.2 on 31st of March'01, the petitioner was not made aware of the adverse entries in his APRs and the said communication was retained in the office of respondent No.3 and the petitioner was made to know about the said entries only on 28th of April'01, when he came to know that the departmental promotion committee who had met on 26th of April'01, has not cleared his name for promotion. To the said assertion made by the petitioner, there is no rebuttal on the part of respondents. Even otherwise, as indicated above, the respondent No.4 at the relevant point of time being an officer belonging to same cadre as that of petitioner, was not competent to initiate the APRs of the petitioner.

14. Somewhat similar nature of controversy has been decided by this Court in writ petition titled 'Sodagar Mal Khatotra v. State and ors', SWP No. 1339/02, decided on 22nd of Feb'07. In the aforesaid case, the APRs of the petitioner Sodagar Mal Khatotra who was Superintendent of Police were initiated by an officer of the same rank and the said initiation of APRs was held to be not in accordance with the Rules. What was observed in the aforesaid case at page 4 of the judgment is being reproduced below:

.....If this be the position then the petitioner is right in his submission that the APRs of the petitioner have been wrongly initiated by an officer of the same rank of that of the petitioner, and therefore, the same should not have been accepted by the reviewing authority....

Ultimately, it was observed as under:

..... The APRs of the petitioner initiated by respondent No. 3 and reviewed/ approved by the competent authority for the period in dispute,

therefore, cannot stand. The APRs for the period in dispute pertain to 19981999 and 19992000. No officer at this stage will be available to initiate

and review the APRs of the petitioner for the said period, therefore, the APRs of the petitioner prior to the year 1998 are to be taken into

consideration.

For the reasons mentioned above, this petition is accepted with a cost of Rs. 20,000, to be paid by respondents to the petitioner. The APRs of the

petitioner prior to the year 1998 i.e. for the year 1997 shall be taken as the APRs of the petitioner for the disputed period also i.e. 199899 and

19992000 and after taking into consideration the same, the respondents 1 and 2 are directed to release the consequential benefits, if any, in favour

of the petitioner within a period of two months from the date, a copy of this order is made available to the respondents 1 and 2 by the petitioner.

15. Against the aforesaid judgment passed by this court, an appeal bearing LPA No. 117/07 was filed by the respondent State only to the extent

of imposition of cost of Rs. 20,000 which was directed to be paid by the State. A Division Bench of this court while deciding the aforesaid appeal

vide order dt. 7th of Sept'07, directed that it will be open to the concerned authorities to hold a departmental enquiry in the matter to fix individual

responsibility and to take action for realization of the amount of cost from the officer on whom the responsibility may be fixed.

16. In the present case also, the respondent No.4 who was an officer of the same cadre as that of the petitioner was not competent to initiate the

APRs of the petitioner. Even otherwise, as noticed above, the act of respondent No.4 has been proved to be malafide and this has been done just

to debar the petitioner from getting the further benefit of promotion to the post of Chief Prosecuting Officer.

17. For the reasons mentioned above, this petition is allowed with a cost of Rs. 20,000/ to be paid by respondent State to the petitioner with a

liberty to the State to recover the said cost from the officer responsible for initiating adverse entries into the APRs of the petitioner for the period

aforementioned. The adverse entries made in the APRs of the petitioner for the

period in dispute are quashed. The respondent authorities are directed to consider the case of the petitioner for promotion to the post of Chief Prosecuting Officer on the basis of his APRs prior to the disputed period. The petitioner shall also be entitled to all the consequential benefits. Let appropriate order after considering the case of the petitioner for promotion and the consequential benefits as indicated above, be passed within a period of two months from the date a copy of this order is made available to the respondent authorities by the petitioner. Disposed of accordingly.