

(2008) 01 J&K CK 0004
In the Jammu And Kashmir High Court

G.N. Gowhar

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 31-01-2008

Acts Referred:

Citation : (2008) 2 JKJ 281 : (2009) 1 SLR 232

Hon'ble Judges : Bashir. A. Kirmani, J

Bench : Single Bench

Judgement

Bashir A. Kirmani, J.—Petitioner herein, a District and Sessions Judge in State judiciary at the relevant time impugns communication No.

6659/GS dated 14.10.1991 purporting to have been sent to him by Registrar of respondent High Court informing that vide Court order No. 672

of the same date he alongwith another officer, namely, Sh. P. L. Dasi (expired by now), has not been found fit for grant of selection grade and

accordingly seeks quashment thereof besides a direction for grant of selection grade.

2. Before coming to details, it would be appropriate to notice that the writ petition appears to have been admitted way back on 30.10.1991 with

an interim stay on grant of aforesaid, grade to 13th respondent, which on challenge through LPA No. 190/1991 was set aside on 17.03.1992,

however, with a clarification that acceptance of appeal would not, in any manner, effect pendency and continuation of the main writ petition.

Cumulative reading of the Division Bench order thus appears to convey that while order of interim stay was overset, admission of the writ petition

was left intact subsequent where to respondents appear to have been directed to file counter affidavit vide interim order dated 22.04.1998 with last

opportunity for the same given on 07.08.1998 where after vide interim order dated 01.07.1999 the matter has been directed to be listed for

hearing. On 26.07.2006 the matter was heard in part as official records pertaining to petitioner's APRs for 1988-1989, 1989-1990 and 1990-

1991 were not on file. Hearing was completed when the same was filed.

3. Briefly stated, petitioner's case is that his APRs for aforesaid years were not properly recorded which resulted in his assessment as ""average"",

however, never conveyed to him due to which he could not seek review of APRs so recorded only to give undue benefit to some officers

particularly respondent No. 3 over petitioner and the other officer, above named, who were both senior to him. During course of submissions, the

petitioner who himself argued the matter has besides re-iterating the contents of writ petition given his detailed service profile and claiming to be an

award winner and a man of letters also contended that he has been wrongfully victimized by deliberate award of bad APRs.

4. In reply it has been pleaded that on consideration the petitioner was not found fit for grant of selection grade which was so denied to him

particularly because his APRs for two out of three preceding years were found to be ""average"". During course of submissions, respondents'

counsel too has mainly re-iterated the contents of reply and also contended that official records maintained in the matter were self explanatory to

justify denial of selection grade to petitioner. The reply has further been contested by petitioner through his rejoinder wherein besides repeating

most of the pleas taken in writ petition, he has also pleaded that during years to which the APRs under reference pertain he was mostly working on

deputation posts and as per practice the High Court usually did not record APRs of officers on deputation and has questioned their recording in his

case besides denying respondents claim of having sent the APRs to him through registered post. He has also brought on record a photocopy of

letter No. CR3A/F/R2 dated 15.12.1991 whereunder the Senior Post Master of General Post Office in reply to petitioner's query appears to have

informed him that no registered letter had been addressed to him during the year 1991 till the date of letter and accordingly alleged that a wrong

plea had been taken by respondent to justifying their mistakes, etc.

5. I have heard learned Counsel and considered the matter. It appears that in its

meeting of 14.10.1991 respondent High Court considered grant of selection grade to District and Sessions Judges and while considering petitioner's case declined the same to him on the ground that "out of the ACRs for the last three years reports of two years are only "average". They cannot thus be regarded as being possessed of merit. They are declined selection grade", and thereafter considered the comparative efficiency, merit and integrity of other District Judges available within eligibility zone and granted selection grade to respondent officers from the date of order. Previous to that, in its meeting of 26.4.1991 the respondent High Court appears to have deferred petitioner's application for grant of selection grade listed as agenda item No. 7. The record furnished, however, does not indicate as to when the selection grades granted to respondents had become available and why they were not awarded to deserving officers from the date of their availability to the date they were actually awarded. Capitalizing thereupon the petitioner has tried to develop a plea that available selection grades were not considered for grant well in time only to keep them available for favourites which adversely affected his prospects because at all times before the meeting of 14th October, 1991 when the grades were granted he would be eligible in terms of criterion applied because by then his APRs like respondents and other officers were "good" and it were only the APRs of 1990 and 1991, recorded in 1991 and not at the relevant time that he was pushed down to "average". Nothing, however, is available on official records to rebut these pleas. In addition, the petitioner has also and quite vehemently contended that in case his "average" APRs for 1990 and 1991 which though irregularly recorded were found to be adverse in nature the same should have been conveyed to him well in time so that he could represent there against. This plea has no doubt been rebutted by respondent to maintain that APRs were communicated to petitioner through registered post on 15.12.1991, but that gets substantially diluted by the letter of Senior Post Master concerned according to which "after examining the record of current year till date no registered letter had been addressed to Mr. Gowhar, District Judge, Bank Cases, Srinagar so the question of its delivery to him (G. N. Gowhar) does not arise." The letter is dated 15.12.1991 and its contents clearly convey that no registered letter purporting to have been

addressed to petitioner was ever posted by respondent High Court who have not made any effort whatsoever to clarify this aspect of the matter

which, to say the least, appears to be quite conspicuous and unusual because it not only tends to dilute the veracity of reply filed by respondent

Registrar but also strengths petitioner's plea of not having been conveyed the APRs at relevant point of time. All these factors sufficiently indicate

that the anguish and agony expressed by petitioner in his pleadings and during submissions is not wholly unfounded.

6. That takes me to petitioner's challenge against the substance of his APRs pertaining to years 1989,1990 and 1991. Before addressing that

aspect, it would be appropriate to observe that during later part of 1989 and the following years of 1990 and 1991 entire administrative machinery

including district judiciary in Kashmir province was almost dysfunctional due to public disorder created by militancy and in total shambles due to

complete breakdown of the official apparatus to such a level that no official work whatever worth the name was being conducted in the offices and

subordinate courts. This has already been officially admitted and many times judicially noticed. That being so, during years 1990 and 1991, as is

gatherable not only from common knowledge but also from records of subordinate courts, no worthwhile judicial proceedings were being

conducted in any of the courts of district judiciary in Kashmir province. That being so, it is not very clear, not even from the official records

furnished, as to what materials were precisely used of by respondent High Court to record APRs of officers including those of the petitioner.

7. In that backdrop let me advert to petitioner's recorded APRs. In APR file of 1988-89 petitioner figures at Sr. No. 7 of the list of officers in

cadre of District and Sessions Judges and is shown to have been posted as Secretary of Delimitation Commission upto 11.07.1988 and thereafter

as District and Sessions Judge, Kupwara. It would be appropriate to notice here that officers at Sr. Nos. 1,4,5,13,15 and 19 too have been

shown to have been on deputation and as such their APRs have not been recorded while as in case of petitioner who appears to have worked as

District and Sessions Judge, Kupwara from 11.07.1988 the overall assessment has been recorded as ""good"", with knowledge of law and judicial

capacity ""good"", industry and capacity to cope up with heavy work ""good""/""prompt"", disposal of cases and distribution of business and

supervision

over subordinate courts ""good"", attitude towards superiors ""fair"", reputation for integrity and impartiality ""average"", behaviour towards Bar

members ""good"" and general reputation ""average"". Date of recording these APRs is, however, not forthcoming from the official file. According to

APR file pertaining to 1989-1990 wherein petitioner again figures at Sr. No. 7 he has been assessed as ""good"" in so far as knowledge of law and

judicial capacity, industry and capacity to cope with heavy work, promptitude in disposal of cases, supervision over subordinate courts and

distribution of business, attitude towards superiors and behaviour towards Bar and general public is concerned, whereas his reputation, integrity

and net result have been recorded as ""average"" which appears to have been repeated verbatim in APRs of following years, i.e., 1990 and 1991. In

view of the texture of his APRs, as aforesaid, the petitioner has also tried to argue that out of ten items prescribed for assessing officers he has

earned ""good"" in seven even during 1989,1990 and 1991 while regarding remaining two pertaining to general reputation and reputation of integrity

he has been assessed as ""average"" which then was not deemed to be adverse.

So in view of the fact that selection grade was required to be given on basis of merit, efficiency and integrity he could not have been ignored for

grant of the same because no adverse entry existed against him regarding any of the three elements. He has also urged that in view of overall

performance the ""net result"" in his APRs even for 1989,1990 and 1991 was required to be rated as ""good"" and not ""average"". As already said, it is

not very clear as to what materials were used for assessing officers to record their APRs for the years under reference because of the situation

prevalent then wherein almost all the officers of district judiciary were suffering total inertia due to which the variations in their recorded APRs

appears to be attributed to work, promptitude in disposal of cases, supervision over subordinate courts and distribution of business, attitude

towards superiors and behaviour towards Bar and general public is concerned, whereas his reputation, integrity and net result have been recorded

as ""average"" which appears to have been repeated verbatim in APRs of following years, i.e., 1990 and 1991. In view of the texture of his APRs,

as aforesaid, the petitioner has also tried to argue that out of ten items

prescribed for assessing officers he has earned ""good"" in seven even during 1989, 1990 and 1991 while regarding remaining two pertaining to general reputation and reputation of integrity he has been assessed as ""average which then was not deemed to be adverse. So in view of the fact that selection grade was required to be given on basis of merit, efficiency and integrity he could not have been ignored for grant of the same because no adverse entry existed against him regarding any of the three elements. He has also urged that in view of overall performance the ""net result"" in his APRs even for 1989,1990 and 1991 was required to be rated as ""good and not ""average"". As already said, it is not very clear as to what materials were used for assessing officers to record their APRs for the years under reference because of the situation prevalent then wherein almost all the officers of district judiciary were suffering total inertia due to which the variations in their recorded APRs appears to be attributed to subjective perceptions rather than any objective assessment and as such do not appear to have any tangible basis. This phenomenon appears to be specifically applicable to reputation of the officers which ordinarily would emanate only from their judicial functioning which as already said was next only to nothing. This aspect of the assessment thus also appears to have been based conceptions alone.

8. Before parting with the matter it would be appropriate to notice that the case in hand throws up all the important subject of recording APRs of judicial officers who are bound to gain or loose due to them which makes their recording an extremely delicate task to be performed very carefully with a visible element of objectivity totally overriding individual assessments/ opinions/scrutinies which always vary and differ from person to person.

In my considered opinion, it is highly advisable that a definite pattern/method/ mechanism for recording APRs of officers in different cadres of the judicial department be evolved to make the exercise transparent so merit and mettle gets recognition/appreciation.

9. In overall consideration of the matter, I feel that currently the petitioner has suffered without sound reasons. The petition is, therefore, disposed of by providing that respondent High Court would place petitioner with selection grade from the date it was given to his juniors and extend all consequential pecuniary benefits to him as a retired officer. The exercise as such

be completed within a period of six months from now.

10. Copy of this judgment be furnished to Registrar General of the Court.
Disposed of accordingly.