
(2019) 01 RAJ CK 0173
In the Rajasthan High Court
Case No : Civil Writ Petition No. 11353 Of 2017

Ratish Kumar Garg

APPELLANT

Vs

High Court Of Judicature

RESPONDENT

Date of Decision : 22-01-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 01 RAJ CK 0173

Hon'ble Judges : Sangeet Lodha, J;Dinesh Mehta, J

Bench : Division Bench

Advocate : Rakesh Arora, Manoj Bhandari

Final Decision : Allowed

Judgement

Invoking extraordinary writ jurisdiction conferred under Article 226 of the Constitution of India, the petitioner, a member of Rajasthan Higher Judicial Services, has preferred the present writ petition, feeling aggrieved of the communication dated 07.07.2017, vide which the Registrar General had informed that his representation against adverse remarks made in his Annual Confidential Report (hereinafter referred to as 'ACR'), communicated to him vide letter dated 04.09.2015 has been rejected.

The facts stated succinctly are that the petitioner having been selected in the Rajasthan Judicial Services was appointed on the post of Judicial Magistrate on 08.02.1996. He was subsequently promoted to Additional Chief Judicial Magistrate-cum-Civil Judge (SD) on 06.08.2002 and thereafter taken in Rajasthan Higher Judicial Services in the month of April, 2014 on adhoc basis. However, the petitioner's adhoc appointment was not extended and he was reverted back to the Rajasthan Judicial Services. According to the petitioner, the same was done in wake of an adverse entry made in first part of his Annual Confidential Report (ACR) of the year 2014.

The adverse remarks made in his ACR of 2014 were communicated by the

respondent-High Court vide letter dated 4.9.2015, which was received by the petitioner in the first week of October, 2015. The petitioner thereafter proceeded to make a detailed representation dated 19.01.2016 to the High Court through the Registrar General. In the representation aforesaid, the petitioner stated that his work disposal was 289.99% and he had disposed of total 129 main criminal cases, 4 civil suits by compromise and 214 main criminal cases of petty nature in Mega Lok Adalat. With a view to seek expunction of the adverse remarks made in his ACR, he had made various other submissions on the aspects other than the disposal.

The Registrar General in turn vide communication dated 07.07.2017, informed the petitioner that his representation against the remarks recorded in the ACR for the year 2014-I has been considered and rejected. It will be apt to reproduce the entire text of the aforesaid short communication dated 07.07.2017, which runs thus :

"With reference to your above cited matter on the subject, I am directed to say that your representation against the remarks recorded in your ACR for the year 2014-I has been considered and the same has been rejected."

Feeling aggrieved of the said order/communication dated 07.07.2017, treating it to be a rejection of his representation, the petitioner approached this Court by way of filing the present writ petition on 12.09.2017. In response to the notice of writ petition issued, the respondent-High Court has filed a reply and sought to justify the adverse remarks made in petitioner's ACR for the year 2014 (Part-I) while also supporting rejection of his representation.

During the course of hearing of the instant writ petition, it has transpired that the petitioner's representation dated 19.01.2016 filed against adverse remarks had been rejected by the High Court on the ground of limitation. It is to be noticed that formal order of rejection of petitioner's representation has not been placed on the record by any of the parties; for which we were constrained to summon the original record only to find that the petitioner's representation had been rejected by the Sub-Committee on the ground of delay.

We find from the record that the Administrative Committee of the High Court duly approved the rejection of the petitioner's representation. The factum of rejection of petitioner's representation had been, thereafter, intimated to the petitioner by the Registrar General, vide communication dated 07.07.2017, which has been challenged in the present writ petition.

Coming to know the fact that the petitioner's representation had been rejected by the High Court on the ground of delay, the petitioner preferred an application dated 21.01.2019 and tried to explain the delay in filing the representation.

Mr. Rakesh Arora, learned counsel for the petitioner contended that the petitioner has been under bonafide belief that his representation has been rejected on merit and it was only during the course of arguments on 15.01.2019; the

petitioner realised that his representation had been rejected by the High Court on the ground of delay. He submitted that the petitioner received the communication of the adverse entry in his ACR for the year 2014-I vide forwarding letter dated 04.09.2015 which came to be served by the District & Sessions Judge, Baran vide his forwarding letter dated 28.09.2015 addressed to the petitioner. He informed that the same was received by the petitioner in the first week of October, 2015, while he was discharging his duties at Chhabra.

On receipt of the intimation regarding adverse remarks, the petitioner at his earliest made a representation dated 19.01.2016, completely being oblivious of the provision that the representation was required to be submitted within a period of one month from the receipt of the communication of the adverse entry. Learned counsel contended that though there was delay of about 77 days in filing the representation, if the Instructions dated 05.06.2018 issued by the Government of Rajasthan are strictly applied, but then strictly adhering to the instructions, it was incumbent upon the respondent to have cautioned the petitioner to file representation within a period of one month, as mandated in Instruction No.17 (6); which reads thus :

"17. Adverse entries

(6) Any adverse entry recorded in the PAR after it is completely filled up shall be communicated to the person concerned in writing by the authority in whose custody the report is kept, in the prescribed time limit, asking the person to make representation, if so desired, within one month. This communication should be in writing and a record to that effect should be kept in the PAR dossier of the Government servant concerned."

Learned counsel for the petitioner in this regard invited attention of the Court towards letter dated 21.05.2018 sent by Registrar General of the High Court, communicating his remark in the ACR for the year 2017; wherein the following categorical suggestions was made :

"Representation, if any, against the above remarks, should be made directly to the undersigned within one month of receipt of the communication."(emphasis supplied by us)

In light of above noted facts, learned counsel for the petitioner contended that the petitioner's representation cannot be rejected on the ground of laches, as the Registrar General had not required him to file the representation within a period of one month as mandated in Instructions No.17.6 and even if there was a delay, the respondent ought to have called for explanation for such delay before throwing the representation on technical ground of delay.

Advancing his arguments further, learned counsel for the petitioner contended that the reasons for filing the representation belatedly, has now been set out in the application dated 21.01.2018; a perusal whereof leaves no room for doubt that the delay was not deliberate.

Mr. Bhandari, learned counsel for the High Court submitted that the adverse entry made in the petitioner's ACR has been made after due scrutiny of the record and material available. He contended that the petitioner's representation was filed after the expiry of prescribed time and that too without any application seeking condonation of delay accompanied therewith, as such the petitioner's representation was bound to be rejected and has rightly been rejected by the competent authority.

We have heard learned counsel for the parties and perused the pleadings of the parties, the documents filed and the original record as well.

Upon perusal of the record, we find that the petitioner's representation stood rejected by the High Court on the ground of delay. It is pertinent to note that the reason for rejection of petitioner's representation has not been communicated to the petitioner; hence, while filing the writ petition he has confined his case and pleadings to the correctness of adverse remarks made in his ACR. No sooner had the petitioner known the fact that his representation had been rejected on the ground of delay then he has brought on record the relevant facts, including the reasons and explanation for the delay.

Upon perusal of the record, we find that the respondent had not followed the Instruction No.17 (6) of the Instructions dated 05.06.2018 in its letter and spirit. The letter dated 04.09.2016 communicating the adverse remarks to the petitioner did not contain any stipulation regarding the limitation for filing the representation.

Had the Registrar General intimated the petitioner about limitation for filing the representation (as has been done by him in petitioner's own case, while communicating his ACR for the year 2017); the petitioner would have perhaps filed the representation in time and if for any reason, he was unable to file the same in time, he could at least have sought condonation of delay, as provided under Instruction No.17(9) of the Instructions dated 05.06.2018. It will not be out of context to reproduce the said Instruction hereinbelow :

"17(9) Only one representation against adverse remarks, which are recorded in the PAR of the Government servant, should be accepted within the prescribed time. However, the competent authority may, in its discretion, entertain a representation made beyond this time if there is satisfactory explanation for the delay."

Hence, in the facts obtaining in the present case, we are of the opinion that the petitioner's representation ought not to have been rejected on the ground of limitation, without calling for any explanation for delay and/or the Registrar General ought to have asked the petitioner to furnish explanation of the delay.

The delay of 77 days in filing the representation appears to be bonafide and unintentional. According to us interest of justice warrants that the petitioner's representation be decided on merit.

In view of the aforesaid, the writ petition is allowed; the rejection of petitioner's representation by the respondent-High Court on the ground of delay is set aside. The petitioner's representation be decided afresh on merit expeditiously, preferably within a period of three months from the date of receipt of certified copy of this order.