
(1996) 09 AHC CK 0024
In the Allahabad High Court
Case No : C.M.W.P. No. 12015 of 1996

S.P. Lal

APPELLANT

Vs

High Court of Judicature and Another

RESPONDENT

Date of Decision : 13-09-1996

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 4(B)

Citation : (1996) 09 AHC CK 0024

Hon'ble Judges : S.P. Srivastava, J; Paritosh K. Mukherjee, J

Bench : Division Bench

Advocate : Neeraj Tripathi, for the Appellant;

Judgement

S.P. Srivastava, J.—Undaunted by the failure to get expunged an adverse entry recorded in his character roll in the year 1994-95, the representation against which entry was rejected by the Administrative Committee of this Court vide its resolution dated 15.12.1995, which order stood affirmed with the rejection of the memorial submitted by him by the same committee, the Petitioner who is an Additional District Judge has now approached this Court on its judicial side seeking the quashing of the orders passed by the Administrative Committee rejecting his representation and the memorial and further the quashing of the adverse entry referred to hereinabove.

2. In the order dated 9.4.1996 of this Court, the Respondents were required to file a counter affidavit within three weeks and were further required to produce the entire report of the Hon'ble Inspecting Judge. In spite of the opportunity afforded, no counter-affidavit has been filed. However, when this case was taken up for hearing on 15.5.1996, the learned Standing Counsel representing the Respondents produced the entire record relating to the proceedings culminating in the impugned orders. The entire record relating to the proceedings culminating in the impugned orders having been produced before us, the same was examined scrupulously. Since the relevant record has been produced and examined, no justification was found for granting any further time for filing the

counter affidavit which was sought for by the learned Standing Counsel.

3. We have heard Sri K. N. Tripathi, learned Senior Advocate for the Petitioner and Sri K. M. Sahai, learned Standing Counsel representing the Respondents and have perused that record.

4. The facts in brief, shorn of details and necessary for the disposal of this writ petition, lie in a narrow compass. The District Judge, Mirzapur who is the Reporting Officer had submitted his annual confidential remarks in regard to the integrity, performance and conduct of Sri S. P. Lal, the Additional District Judge for the year 1994-95, indicating that he appeared to be a fair and impartial, cool-minded person who did not loose temper in court and his private character was good. So far as the judgments delivered by the said Officer were concerned, the reporting Officer indicated in his report that they were satisfactory. The Reporting Officer on an overall assessment of the merit of the Officer, rated him as "fair". The reporting officer had further commented in his annual confidential remarks that no verifiable complaint had been received against the integrity of Sri S. P. Lal.

5. Sri S. P. Lal, the IInd Additional District Judge was authorised to deal with the cases under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, The District Judge, Mirzapur the reporting officer vide his D. O. letter No. ST-12/95 dated 12.5.1995 had informed the Registrar of the Court that Sri S. P. Lal had carved out a new procedure for dealing with the bail applications in the cases where the bails had been rejected by the Magistrate and was entertaining such bail applications directly without their being presented in the court of Sessions. The District Judge also made certain observations indicating certain procedural lapses on the part of Sri S. P. Lal which according to the District Judge should have been avoided taking into account the old practice. The District Judge had further indicated his doubt about the fair work of the officer.

6. It may be noticed that the aforesaid letter had been sent by the District Judge, the Reporting Officer subsequent to the submission of his annual recommendatory remarks for the year 1994-95 to which a reference has been made above. The District Judge has pointed out that the facts mentioned in his report submitted by him in regard to the disposal of the bail applications, transfer of cases and the altered procedure being adopted by Sri Lal ignoring the old practice were brought to the notice of the Hon"ble Inspecting Judge who appears to have sought for an explanation from Sri Lal which was to be submitted by 12th July, 1995. It appears from the record that Sri Lal did not submit any explanation by the date fixed and further, as noticed by Hon"ble Inspecting Judge, Sri Lal did not have even the courtesy of discussing the matter with the Sessions Judge. Observing so in his note dated 6.9.1995 after taking into consideration certain decisions rendered by Sri Lal in the matter relating to the award of compensation in the proceedings under the Motor Vehicles Act wherein according to the Hon"ble Inspecting Judge, the compensation had been disproportionately awarded to the claimants and further taking into consideration

certain directions issued by Sri S. P. Lal in the proceedings for the grant of bail, the Hon''ble Inspecting Judge recorded an opinion that the Judicial work of the Office concerned showed that he had no legal acumen and was incoherent and indiscrete and his integrity was doubtful.

7. On the basis of the aforesaid note about the work and conduct of the Petitioner, the Hon''ble Inspecting Judge gave the following entry for the year 1994-95:

Against 71 actual working days, the Officer gave an out post of 146.39 days. Disposal is thus 206.18%. The quality of the Judicial work of this office is poor. He has no legal acumen and is indiscrete and incoherent in Judicial behaviour that makes his integrity doubtful.

Over all assessment poor.

For reasons for the above opinion, see detailed not appended herewith.

8. On 20th September, 1995, vide the D.O. No. C-1052-95, the adverse entry for the year 1994-95 which was communicated to the Petitioner was to the following effect:

Against 71 actual working days, the Officer gave an out-turn of 146.39 days. Disposal is thus 206.18%. The quality of judicial work of this Officer is poor. He has no legal acumen and is in-discrete and incoherent in judicial behaviour that makes his integrity doubtful.

Over-all assessment; poor.

9. It is significant to note at this stage that while communicating the adverse entry to the Petitioner, the concluding sentence that is "For reasons for the above opinion, see detailed note appended herewith was not included although not only this sentence but also the detailed opinion dated 6.9.1995 running into twelve pages had to be treated as part of the adverse entry. The result was that the basis on which the adverse entry was founded was not communicated to the Petitioner. In the aforesaid situation as asserted in paragraph 8 of the writ petition, the Petitioner proceeded on the assumption that the adverse part of the annual remark for the year 1994-95 was based only on the inspection note of the Hon''ble Inspecting Judge which was recorded in the month of July, 1995. The Petitioner therefore in his representation against the adverse entry, proceeding on the assumption that the facts noticed in the inspection note were the basis for the adverse remarks confined his representation to what had been observed in the inspection note of July, 1995 at pages 13 to 16 thereof.

10. The representation of the Petitioner was rejected by the Administrative Committee. Thereafter the Petitioner submitted a memorial against the order of rejection of his representation. In this memorial, also it had been stated that the annual inspection report recorded by Hon''ble Inspecting Judge on the basis whereof the adverse entry had been made disclosed only two judgments

rendered by the Petitioner under the Motor Vehicles Act to which a reference has already been made above. The Administrative Committee vide its resolution dated 8.2.1996 required that the memorial submitted by the Petitioner be examined by an Hon''ble Judge of this Court making a nomination in that regard. The nominated Hon''ble Judge was required to submit his report.

11. In his report, the Hon''ble nominated Judge concluded that recording of the adverse remarks against Sri S. P. Lal to the effect that "integrity being doubtful" or even other remark "Indiscrete and incoherent in judicial behaviour", etc., if based only on two judgments in the Motor Accident Claim No. 91 of 1990 and 3 of 1991 will by itself would not be Justified. However, the Hon''ble nominated Judge further observed that incoherence or Judicial indiscreteness cannot be attributable only on account of the findings recorded in the two judgments in question or disproportionate disbursement of compensation to the claimant unless something more was found.

12. The Hon''ble nominated Judge, however, observed that the learned Inspecting Judge had not confined his remarks on the basis of the two cases only but on other judgments and orders. It was indicated that the Hon''ble Inspecting Judge had referred to in his note that judgments rendered by Sri S. P. Lal on 15.5.1992 in matrimonial case No. 72 of 1991, the other judgment in S.T. No. 264 of 1963 and bail application No. 1066 of 1994 and had also adversely recorded his impressions on that for coming to the conclusion that the Officer was indiscrete. The Hon''ble nominated Judge took into account all those facts which the learned Inspecting Judge had noticed in his note dated 6.9.1995 had observed that Sri S. P. Lal had indulged in improper judicial conduct during the absence of the District and Sessions Judge referring to a numbers of transfers of bail application against the direction of the Court and that an explanation was sought from him none was submitted. The Hon''ble nominated Judge, therefore, had concluded that adverse remarks if would have solely been based on the aforesaid motor accidents claims tribunal decisions as was said in the memorial was of some substance. However, since the adverse remarks were not being confined to the two cases but the other matters referred to in the note referred to above and the Administrative Committee, had earlier rejected the representation on 7.10.1995 and no new material in the memorial had been brought on record, there was no justification for allowing the memorial for expunction of the adverse entry as sought for.

13. The administrative Committee vide its resolution dated 20.3.1996 accepting the recommendations of the Hon''ble nominated Judge rejected the memorial submitted by the Petitioner.

14. From what has been noticed hereinabove, it is apparent that at least so far as that part of the note of Hon''ble Inspecting Judge dated 6.9.95 referring to the judgments rendered in Motor Accident Claims Petition No. 91 of 1990 and Motor Accident Claim Petition No. 31 of 1990 and the observations in regard thereto which were made the basis for holding that the quality of the judicial work and

conduct of the Petitioner was far from satisfactory had not been approved by Hon''ble the nominated Judge and further while accepting the recommendations of the Hon''ble nominated Judge the Administrative Committee will be deemed to have accepted this portion of the recommendation. However, the Hon''ble nominated Judge had clearly observed that the adverse remarks against the Petitioner were not confined on the aforesaid two cases but on the other matters as indicated in the note of the Hon''ble Inspecting Judge dated 6.9.1995.

15. The question which arises for consideration, therefore, is as to whether the representation of the Petitioner against the adverse entry in question could be rejected without affording the Petitioner an opportunity to put forward his case and submit an explanation in regard to the facts which were sought to be and actually utilised against him in making the adverse remarks in his character roll.

16. An Officer's career depends largely on his character roll. It must be emphasised that the entry In the character roll, of an officer which is nothing else except a performance appraisal should be based on fair and objective assessment and should be made judiciously without mental reservations. The object behind the communication of the adverse entry is to ensure an opportunity to the concerned Officer to improve his performance. A mere recital of defects in his character roll is not enough for this purpose. Moreover, these defects should be mentioned if attempts to eradicate them by oral or if necessary written exhortations and admonitions have not resulted in improvement. The judicial independence of the Officer has not to be curbed in any way. We must emphasise that normally no adverse entry should be made in the roll of the officer concerned without first giving him a warning or a chance to improve as it would not be fair to spoil the record containing the remarks made in the character roll of an Officer which have to be reflective of his performance, character, conduct and qualities.

17. The relevant provisions contained in Chapter III, Rule 4(B) of the Rules of the Court as amended provide as follows:

(B) Matters for Inspecting Judges:

1. Review of judicial work of subordinate courts, tribunals, district consumer forums and all other special courts and control of their working including inspection thereof, to record entries in the character rolls of the officers posted in the division assigned to the Inspecting Judge.

2. ...

3. Any adverse remarks or strictures made by an Inspecting Judge about judicial work, conduct or integrity of any officer under his charge will be communicated to the officer concerned, who may make his representations, if any, within a month and the same shall be placed before the Administrative Committee for consideration and decision.

18. The rules of this Court as amended vide the notification dated 1.8.1994

indicated above provide that any adverse remarks or stricture made by Inspecting Judge about Judicial work, conduct or integrity of any Officer concerned will be communicated to the Officer concerned who may make the representation, if any, within a month and the same shall be placed before the Administrative Committee for consideration and decision.

19. The opportunity of submitting a representation provided for in the rule referred to hereinabove is aimed to secure fair play in action and prevent miscarriage of Justice. One of the first principles of natural justice is that you must not permit one side to use means of influencing a decision which means are not known to the other side. It has to be emphasised that any person, even if represented at any enquiry who is to be adversely affected by any decision therein, should not be left in the dark as to the risk of the finding being made depriving him of any opportunity to adduce evidence or material of probative value which, had it been placed before the decision-maker, might have deterred him from making the finding even though it cannot be predicated that it would inevitably have had that result. In its decision in the case of *Manon v. Air New Zealand Ltd. and Ors.* 1984 (3) All ER 201 at 210, the Privy Council had made observations to the aforesaid effect. The ratio of that decision can be safely applied to the proceedings where the Administrative Committee deals with a representation contemplated under Rule 4 (B) of Chapter III of the Rules of the Court. The Officer who is going to be adversely affected must be informed of all the material which has been utilised against him so that he may have the opportunity to adduce the additional evidence or material of probative value which might have deterred the administrative committee from making the finding or form the opinion though it cannot be predicated that it would inevitably have had that result.

20. The opportunity of submitting a representation afforded as indicated hereinabove clearly contemplates a reasonable opportunity. In the present case, when the entry for the year 1994-95 in question itself provided that for the reasons for the opinion recorded the detailed note appended there may be seen. It was incumbent on the Respondent authorities to communicate to the Petitioner the detailed note dated 6.9.1995 containing the reasons for the opinion so that the Petitioner could submit an effective representation. In this connection, it may be noticed that even the Hon''ble nominated Judge in his recommendations had observed that the Petitioner had not brought to his notice anything on the matters other than the decisions in the Motor Accident Claim Petitions. We are surprised to note that how could the Administrative Committee expect that the Petitioner could submit his explanation in regard to matters which were never brought to his notice.

21. Considering the facts and circumstances of the case, we are of the considered opinion that the Petitioner was seriously prejudiced on account of the failure on the part of the Respondent authorities to communicate to him the note dated 6.9.1995 which had to be treated as a part of the adverse entry in

question. We are further of the considered opinion that the Petitioner could not be said to have been afforded a reasonable opportunity to submit his representation in regard to the matters which were sought to be relied upon and utilised against him for the opinion expressed in the adverse entry in question.

22. In view of our conclusions indicated hereinabove, sufficient ground has been made out for interference by this Court.

23. In the result, this writ petition succeeds in part and quashing the orders passed by the Administrative Committee dated 15.12.95 and 20.3.1996, the case is remitted back to the Respondent authorities to afford the Petitioner a fresh opportunity to submit his representation against the adverse entry in question supplying to him the copy of the note dated 6.9.1995 referred to therein. The Administrative Committee shall reconsider the entire matter in the light of the observations made hereinabove.

24. There shall, however, be no order as to costs.