

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 06.02.2012

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W.P. (C) 4396/2010

SANATAN PRASAD

... Petitioner

Versus

HIGH COURT OF DELHI & OTHERS

... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Sudhir Nandrajog, Sr Advocate with
Mr Rakesh Kumar Garg

For the Respondent No.1 : Mr Viraj R. Datar with Mr Chetan Lokur

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE V.K. JAIN

JUDGMENT

BADAR DURREZ AHMED, J

1. The petitioner made several prayers, but, as of now, this petition is limited to the quashing of the ACR in respect of the petitioner for the year 2008, whereby the petitioner was graded as 'B'. This would be evident from the order dated 06.07.2010 passed by a Division Bench of this court when the matter had initially come up for hearing. The said order reads as under:-

“In substance, the petitioner has prayed for the following two reliefs:-

“II. Issue appropriate writ order or direction in the nature of certiorari thereby quashing the

ACR for the year 2001 as 'C' (I.D.), ACR for the year 2002 as 'C', ACR for the year 2003 as not communicated, ACR for the year 2008 as 'B';

III. Issue appropriate/writ order or direction in the nature of mandamus commanding the respondents to treat the ACRs recorded for the years 2003, 2004, 2005 and 2008 as benchmark entries for the grant of Selection Grade and promotion from D.J.S. to D.H.J.S./Fast Track Courts; ...”

As a consequence, another relief which is sought is that he be granted selection grade with effect from 1st January, 2006.

In so far as the prayer for quashing the ACRs for the years 2001 and 2002 is concerned, it is an admitted fact that the ACRs for the year 2001 and 2002, being adverse, were communicated to the petitioner. The petitioner had also made representations against those adverse reports. However, those representations were rejected. Mr. Datar, the learned counsel appearing for the respondent no.1/Delhi High Court informs that this rejection was duly communicated to the petitioner vide letter dated 10th December, 2003. This position is not disputed by the learned counsel for the petitioner. Thus, it is clear that the petitioner was informed about the rejection more than 6 ½ years ago. However, no steps were taken by the petitioner at that time to challenge the recording of the ACRs or the rejection of his representations thereagainst. In these circumstances, we are of the opinion that this petition challenging the ACRs for the years 2001 and 2002 is highly belated and suffers from unexplained delays and laches.

Similar is the position in respect of the ACR for the year 2003. The grievance of the petitioner is that it was not communicated to him. However, the petitioner never approached this court earlier. Even otherwise, the ACR for the year 2003 would not be relevant in considering the selection grade to the petitioner. As on 1st January, 2006 the petitioner was denied the selection grade primarily because of the ACR for the year 2001 and 2002. This position remains

even in the year 2007 for which year the ACR for the year 2002 was also relevant. In these circumstances, irrespective of his grading for the year 2003, the petitioner would not have got the selection grade in any case. With effect from 7th October, 2008, the petitioner was finally granted the selection. For this reason also the prayer for quashing the ACRs for the year 2003 cannot be entertained.

In this view of the matter, the only relief which remains to be considered in the present petition relates to the ACR for the year 2008. Issue notice to show cause limited to this aspect. Mr. Viraj R. Datar, accepts notice on behalf of the respondent no.1/Delhi High Court and Mr. Anjum Javed accepts notice on behalf of the respondents no.2 and 3. Counter affidavit be filed within four weeks. Rejoinder within two weeks thereafter.

List the matter for hearing and disposal on 1st September, 2010.

CM No. 8725/2010 (for interim directions)

Dismissed as not pressed.

A.K. SIKRI, J.

REVA KHETRAPAL, J.”
(emphasis supplied)

2. It is an admitted position that the grading given to the petitioner for the years 2006 and 2007 was ‘B⁺’. In respect of the year 2008, he has been downgraded to ‘B’. The petitioner is aggrieved by this. Essentially, the plea of the petitioner is that there was no material before the learned Inspecting Judge for downgrading him from ‘B⁺’ to ‘B’ and that there was no basis for the remarks with regard to his integrity, knowledge and discipline which find place in the Inspection Note as also in Part-II of the ACR Form for the year 2008.

3. Before we proceed further, it would be appropriate to set out the remarks of the Inspecting Judge which find mention in Part-II of the ACR Form for the year 2008. Against the item “Knowledge of law & procedure”, the Inspecting Judge’s remark is “Average”. As regards “Impression during inspection”, the learned Inspecting Judge’s remark is “Poor”. In respect of “Areas in which he was counseled during inspection”, the learned Inspecting Judge has observed – “Integrity & discipline & personal cleanliness”. As regards the query – “As to whether the petitioner was industrious and prompt in the disposal of cases and whether he coped effectively with heavy work?”, the learned Inspecting Judge has remarked – “No”. The learned Inspecting Judge also found that the petitioner’s judgments and orders were not well written and were not clearly expressed. His judgments have been graded as “Average ‘C’”. Inasmuch as the petitioner being an efficient judicial officer, the learned Inspecting Judge has remarked – “No”. He has also observed that the petitioner did not maintain a reputation of honesty and impartiality. As against the entry – “Special Remarks, if any?”, the learned Inspecting Judge’s remarks were – “The officer does not enjoy good reputation integrity wise, discipline wise & attitude wise.”. The grading proposed by the learned Inspecting Judge, as mentioned above, was ‘B’.

4. The Inspection Note of the learned Inspecting Judge dated 06.07.2009 in respect of the petitioner is also relevant and the same reads as under:-

“Inspection Note i.r.o. Mr. Sanatan Prasad, MM for the year ending 2008”

The Officer has not been sitting in the Court in time and has not been maintaining discipline. He has not been keeping himself clean and would wear dirty shirts and dirty collar in the Court. His attitude towards staff has also not been commendable. He does not enjoy good reputation integrity-wise, knowledge-wise and discipline-wise. His attitude towards litigants has also not been good.”

5. The facts are that the learned Inspecting Judge had proposed the ACR grading in respect of the petitioner for the year 2008 to be ‘B’. The Inspection Note, referred to above, was also part of the proposal for grading the petitioner at ‘B’. The ACR grading was considered by the Full Court in its meeting held on 21.07.2009, when the Full Court decided that the ACR grading of the petitioner for the year 2008 should be ‘B’. This was communicated to the petitioner on 21.08.2009. The petitioner sent a representation dated 09.11.2009, whereby he sought review of the ACR grading for the said year, that is, 2008. The representation was placed before the Full Court which considered it in its meeting held on 15.01.2010 and decided to reject it. The rejection of the representation was also communicated to the petitioner on 09.03.2010. We may also point out that the petitioner had made an application dated 09.09.2009 under the Right to Information Act to the Public Information Officer, Delhi High Court, New Delhi. That application was responded to by the Public Information Officer by a letter dated 08.10.2009 (Annexure P/9 to the writ petition). The said letter dated 08.10.2009 reads as under:-

“No.35699/RTI/DHC/321/09

Dated: 8-10-09

From:

The Public Information Officer
Delhi High Court
New Delhi.

To,

Mr. Sanatan Prasad,
6/16, Sector-II,
Rajendra Nagar,
Ghaziabad.

Sub: Your application dated 09.09.2009 (registered under Dy. No.321/09 dated 10.09.2009), seeking information under Right to Information.

Sir,

With reference to your captioned application made to the undersigned seeking information under Right to Information Act, the information asked for is furnished as under:-

Sl. No.	Information Sought	Reply
1.	The applicant has asked grounds and reasons for downgrading performance for the year 2008 from B ⁺ to B.	The Hon'ble Inspecting Judge of Mr. Sanatan Prasad for the year 2008 recorded his ACR for the year 2008 as 'B' alongwith the following Inspecting Note:
2.	The applicant has asked the materials and evidence on which the aforesaid grounds and reasons are based.	“The Officer has not been sitting in the Court in time and has not been maintaining discipline. He has not been keeping himself clean and would wear dirty shirts and dirty collar in the Court. His attitude towards staff has also not been commendable.

		He does not enjoy good reputation integrity-wise, knowledge-wise and discipline-wise. His attitude towards litigants has also not been good.” The ACR recorded by Hon’ble Inspecting Judge alongwith the inspection note was placed before the Full Court on 21.07.2009 and the Full Court recorded the ACR of Mr. Sanatan Prasad for the year 2008 as ‘B’.
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As per Section 19 of the Right to Information Act, 2005, you are at liberty to file an appeal to the Appellate Authority i.e. Registrar (Admn.), Delhi High Court, New Delhi within thirty days of the issue of this order.

Yours faithfully,
Sd/-
(P.S. CHAGGAR)
PUBLIC INFORMATION OFFICER”

6. In response to the petition filed by the petitioner raising allegations of arbitrariness and lack of materials while downgrading the petitioner to ‘B’ in respect of the year 2008, the respondents have filed a counter-affidavit, wherein it has been stated that there are various considerations in awarding a grading to a judicial officer. It was also contended on behalf of the respondent No.1 that in grading an officer, several factors are taken into account, such as knowledge of law and procedure, quality of judgments, industriousness and promptness in disposal of cases and impression gathered during inspection, which included the manner in which the petitioner conducted the court, his general behaviour with advocates and litigants, etc. Apart from this, as Part-II of the ACR Form itself indicates, the Inspecting Judge has also to

answer the question as to whether the judicial officer was efficient and whether he had maintained a reputation of honesty and impartiality. It is after considering all these aspects that the grading is proposed by the learned Inspecting Judge. But, the matter does not end here inasmuch as the proposed grading is then placed before the Full Court for its consideration. It is for the Full Court to accept the proposed grading or to give its own grading. In the present case, the ACR recorded by the learned Inspecting Judge, alongwith the Inspection Note was placed before the Full Court on 21.07.2009 and the Full Court recorded the ACR of the petitioner for the year 2008 as 'B'. No other remarks, however, were recorded by the Full Court, except for recording his grading as 'B' for the year 2008.

7. The learned counsel for the petitioner sought to place reliance on the decision of a Division Bench of this court in the case of **Barkha Gupta v. High Court of Delhi Through Registrar: 136 (2007) DLT 119 (DB)** and, in particular, on paragraphs 31 and 35 to 40 thereof. The main focus of the learned counsel for the petitioner was that there was no material or information before the learned Inspecting Judge to indicate that the petitioner did not enjoy a good reputation. However, we do not see how the general observations contained in the said decision in ***Barkha Gupta (supra)*** would be of any help to the petitioner herein. It is obvious from the remarks of the Inspecting Judge as well as from the Inspection Note prepared by the learned Inspecting Judge that his general impression during inspection was 'Poor'.

8. Apart from this, the learned Inspecting Judge has observed that the knowledge of law and procedure of the petitioner was also only average and, so too, the quality of his judgments. It was also observed that the petitioner had been counselled during inspection, *inter alia*, in the areas of integrity and discipline. Therefore, we do not see as to how the petitioner can advance the argument that there was no material before the learned Inspecting Judge or the Full Court to have graded him as 'B' for the year 2008. While writing the ACR of a judicial officer, an Inspecting Judge, apart from having carried out an inspection and having counselled the judicial officer, also examines the quality of his judgments by going through them and then makes an assessment as to whether the judgments are well written, clearly expressed and as to in which category they fall. The categories being 'A – Very Good', 'B – Good', 'C – Average' and 'D – Below Average'. As mentioned above, the learned Inspecting Judge had graded the judgments of the petitioner as 'C – Average'.

9. We may also refer to a decision of the Supreme Court in the case of **High Court of Judicature at Bombay Through its Registrar v. Shashikant S. Patil and Another**: 2000 (1) SCC 416, which was relied upon by the learned counsel for the respondent No.1, wherein it has been noted that it is the constitutional duty of every High Court, on the administrative side, to keep guard over the subordinate judiciary functioning within its domain. It has also been held that while it is the imperative for the High Court to protect honest judicial officers against any ill-conceived or motivated complaints, the High Court cannot afford to bypass any dishonest performance of a member of the subordinate judiciary. The Supreme Court further observed that dishonesty is the

stark antithesis of judicial probity. Any instance of a High Court condoning or compromising with a dishonest deed of one of its officers would only be contributing to the erosion of the judicial foundation. The Supreme Court also observed as under:-

“24. When such a constitutional function was exercised by the administrative side of the High Court any judicial review thereon should have been made not only with great care and circumspection, but confining strictly to the parameters set by this Court in the afforested decisions. In the present case, as per the judgment under appeal the Division Bench of the Bombay High Court appears to have snipped off the decision of the Disciplinary Committee of the High Court as if the Bench had appeal powers over the decision of five judges on the administrative side. At any rate the Division Bench has clearly exceeded its jurisdictional frontiers by interfering with such an order passed by the High Court on the administrative side.”

10. We may also refer to another decision of a Division Bench of this court in the case of **High Court of Delhi v. Purshottam Das Gupta: 2001 (90) DLT 203**, wherein, *inter alia*, the question of what constitutes “material” on the basis of which a grading is to be given to a judicial officer, was considered. In the said decision, it was observed that while considering the case of a judicial officer, it is not necessary to limit the ‘material’ only to written complaints or ‘tangible’ evidence pointing a finger at the integrity of the judicial officer. It was observed that such an evidence in tangible form may not be forthcoming in such cases. It was also observed that the existence of material did not mean as if guilt was to be proved beyond reasonable doubt as that would be almost improbable

while grading ‘C – doubtful integrity’ in respect of a judicial officer. Importantly, the Division Bench observed as under:-

“However, on the other hand, when even verbal repeated complaints are received against the judicial officer or on 'discreet' enquiries, discreet or otherwise, the general impression created in the minds of those making enquiries or the Full Court is that concerned judicial officer does not carry good reputation, it may form appropriate 'material' for the Full Court while recording ACR of a judicial officer.”

11. Another grievance of the petitioner was that he had been given the grading of ‘B⁺’ for the years 2006 and 2007 and which was suddenly downgraded to ‘B’ for the year 2008. It would not be out of place to emphasise that, as observed in **Barkha Gupta** (*supra*), “an Annual Confidential Report, as its nomenclature suggests, is an annual event”. Consequently, the remarks in the Annual Confidential Report are based on an assessment of the work and conduct of the officer concerned for a period of one year. Thus, the fact that the petitioner had got a grading of ‘B⁺’ in the previous two years, that is, for the years 2006 and 2007 would not have any bearing on the grading for the year 2008, which has to be done independently by the Inspecting Judge and the Full Court. It is clear that if a judicial officer has a particular grading for a particular year, it does not mean that he must get the same grading for the next year. The grading can be higher or lower depending on an assessment of his work and conduct in the course of the year.

12. In the present case, we find that the learned Inspecting Judge has examined all the aspects of the matter and even if we put aside his

remarks with regard to integrity and discipline, just on the petitioner's knowledge of law and procedure and quality of his judgments, a grading of 'B' cannot be regarded as unfair or arbitrary.

13. In view of the foregoing discussion, there is no merit in this writ petition and the same is dismissed. The parties are left to bear their own costs.

BADAR DURREZ AHMED, J

V.K. JAIN, J

February 06, 2012

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