

Devendra Kumar Nailwal Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Feb-11-2004

Reported in : 2004(3)AWC1982; (2004)3UPLBEC2928

Judge : Jagdish Bhalla and ;P.K. Chatterji, JJ.

Acts : [Constitution of India](#) - Article 226

Appeal No. : Writ Petition No. 1634 (S/B) of 2002

Appellant : Devendra Kumar Nailwal

Respondent : State of U.P. and ors.

Advocate for Def. : Sanjay Bhasin, Adv. and ;Addl. C.S.C.

Advocate for Pet/Ap. : D.K. Upadhyay and ;Samir Kalia, Adv.

Judgement :

Jagdish Bhalla, J.

1. By this writ petition under Article 226 of the [Constitution of India](#), the petitioner, who is a Member of U.P. Nyayik Sewa and is presently posted as Additional Chief Judicial Magistrate, Lakhimpur Kheri, seeks issuance of a writ in the nature of certiorari for quashing of the orders contained in Annexure-8 and Annexure-10 to the writ petition, rejecting the representation preferred by the petitioner against the

adverse remarks for the year 2000-2001 and also for a writ or direction in the nature of mandamus directing the respondents to promote the petitioner in Higher Judicial Service cadre (hereinafter referred to as the 'H.J.S.' cadre for the sake of brevity) with effect from 15.5.2001, the date on which persons junior to the petitioner were given promotion.

2. Shorn of details, brief facts necessary for disposal of this writ petition are, that the petitioner was appointed as a Member of U.P. Nyayik Sewa on 5.8.1985 and was posted as Munsif, Nainital. On 5.8.1990 he was granted senior pay scale. Thereafter, the petitioner was promoted to the post of Civil Judge/Additional Chief Judicial Magistrate on 22.10.1994 and was posted at Ghaziabad. In the year 2000, the petitioner was posted as Additional Chief Judicial Magistrate, Nagina, District Bijnore. The District Judge while recording entry for the year 1999-2000 recorded adverse remarks against the petitioner. The petitioner gave a representation dated 14.7.2000 against the adverse remarks recorded for the year 1999-2000, which was allowed by the then Hon'ble Administrative Judge, District Bijnore and the adverse remarks given by the District Judge were expunged. By the letter dated 23.3.2002, the Joint Registrar of the High Court communicated to the petitioner that adverse remarks made against him for the year 1999-2000 have been expunged.

3. For the year 2000-2001, the District Judge, Bijnore again recorded the adverse remarks against the petitioner) Against the said adverse remarks for the year 2000-2001, the petitioner made a representation on 17.7.2001. The representation of the petitioner was placed before the then Hon'ble Administrative Judge, District Bijnore, passed certain orders, which we would refer later on.

4. The grievance of the petitioner is that although the adverse remarks awarded by the District Judge for the year 1999-2000 have been expunged on the representation dated 14.7.2000 made by the petitioner as would be evident from the communication dated 23.3.2002 (Annexure-1) and as far as the adverse remarks for the year 2000-2001 awarded by the District Judge is concerned, in view of the order passed by the Administrative Judge as contained in the letter dated 22.1.2002 have lost its significance but even then the petitioner who is fully

eligible, is not being promoted to the H.J.S. cadre.

5. Learned counsel for the petitioner has argued with great vehemence that though the adverse remarks awarded to the petitioner for the years 1999-2000 and 2000-2001 awarded by the District Judge are no more in existence even then petitioner is being denied promotion to the Higher Judicial Service cadre resulting illegal supersession of the petitioner twice. According to petitioner, his name was recommended by H.J.S. Selection Committee in the year 2000 but on account of communication of adverse remarks for the year 2000-2001, he was not promoted. Thereafter again in October, 2001 several candidates were promoted but this time also the case of the petitioner was ignored without considering the fact that the adverse remarks awarded for the year 1999-2000 had already stood expunged and in view of the order of Administrative Judge the adverse remarks for the year 2000-2001, have no significance.

6. Arguing further, learned counsel for the petitioner submitted that it appears that the adverse remarks made by the District Judge have not been deleted from the service record of the petitioner as a consequence whereof, it is the petitioner who is continuously suffering on account of inaction on the part of officers of the Registry. It is stated that in view of the order passed by the Administrative Judge contained in the letter dated 22.1.2002 and further in view of the decision of the Administrative Committee, the petitioner made an application (Annexure-9) to the Registrar General requesting therein to delete the adverse remarks for the year 2000-2001 from the service record. This representation of the petitioner, according to learned counsel, was placed under some confusion before the Administrative Committee, which the Administrative Committee rejected as would be evident from the communication dated 11.11.2002 contained in Annexure-10 to the writ petition. By the said representation dated 23.8.2002, the petitioner has requested only for the deletion of the remarks, which was a ministerial act and this application might not to have been placed before the Administrative Committee as the Administrative Committee after considering the material on record and the representation of the petitioner dated 17.7.2001, had already resolved that no further decision is required to be taken in the matter in view of the decision already taken by the Administrative Judge. Thus, there was no occasion for the Registry to

place petitioner's application dated 23.8.2002, before the Administrative Committee for deletion of adverse remarks in view of the decision of the Administrative Committee itself and the Administrative Judge.

7. Lastly, it has been submitted that the petitioner is suffering on account of inaction and is being denied his legitimate right of promotion in H.J.S. Cadre although, now there is nothing adverse against him which can be made a basis for rejecting his claim for promotion.

8. Sri Sanjay Bhasin, Additional Chief Standing Counsel appearing for the respondent submitted that it is not disputed that the adverse remarks for the year 1999-2000 awarded to the petitioner were expunged but the adverse remarks awarded to the petitioner for the year 2000-2001 are still in the character roll of the petitioner as there is no order either of the Administrative Committee or of the Administrative Judge to the extent that these remarks awarded to the petitioner, be expunged. The nature of adverse remarks against the petitioner, as awarded by the District Judge for the year 2000-2001, are so serious in nature and unbecoming of a Judicial Officer. Further, the application of the petitioner for deleting the adverse remarks from the service record was also considered by the Administrative Committee but the same was rejected. The allegation of the petitioner that it was the Registry of the High Court, who failed in its duty to delete the adverse remarks for the year 2000-2001 is absolutely incorrect and false. Since neither the Administrative Committee nor the Administrative Judge had passed specific orders for expunging the remarks as such there was no occasion for the Registry to act on his own.

9. As far as promotion of the petitioner in H.J.S. cadre is concerned, it was submitted by the learned Additional Chief Standing Counsel that the petitioner was found fit by the H.J.S. Recruitment Committee and in the Judges Meeting held on 9.4.2000, his name was approved for promotion to U.P. Higher Judicial Service. Names of the candidate senior to the petitioner were recommended to the State Government but since the vacancy was not available as such his name, was not sent to the Government. In April, 2001 when the vacancies in U.P. Higher Judicial Service came into existence, the name of the petitioner along with other eligible

officers was considered. The Higher Judicial Service Recruitment Committee in its meeting held on 10.4.2001 resolved and recommended for ad hoc promotion of the officers excluding the persons who earned disability for one reason or the other, as such the petitioner's name was again not recommended. Again in May, 2002 the petitioner's name was not approved for promotion to U.P. Higher Judicial Service. Thereafter, in February, 2003 the petitioner's name was not recommended on account of disability.

10. According to learned standing counsel, since there is no order either of the Administrative Judge or the Administrative Committee directing to expunge the remarks as such the adverse remarks awarded for the year 2000-2001 still holds the field and are relevant material for over all assessment of the work and conduct of the petitioner while considering his case for promotion.

11. Lastly, it has been argued that the behaviour of the petitioner has always been criticised by the concerned authority and the nature of allegations mentioned against him shows the conduct of the petitioner unbecoming of a judicial officer. The Committee constituted for the purposes of promotion to Higher Judicial Service had considered the entire service record of the petitioner including character roll and found him not fit for promotion as such there is no illegality or error which may warrant interference under Article 226 of the Constitution.

12. No doubt, petitioner was awarded adverse remarks in the year 1999-2000 and thereafter in the year 2000-2001 but prior to that there was no adverse remarks against the petitioner and he was given all the service benefits on due time. Even in the year 1994, he was given promotion to the post of Civil Judge, as has been admitted by the opposite parties in the counter-affidavit. Further, there is nothing on record to indicate that in between 1994 to 1999 he earned any sort of adverse remarks meaning thereby his work and conduct was good. It all happened when he was posted at Bijnore as after 2000-2001, nothing has been brought to the notice of this Court by the opposite parties that during this period too, the work and conduct of the petitioner was not satisfactory.

13. As far as adverse remarks for the year 1999-2000 are concerned, it is not disputed by the parties that same were expunged by the Court and a

communication to this effect was also sent to the petitioner on 23.3.2002. Now, there remain the adverse-remarks for the year 2000-2001, which according to the opposite party, still exist on the character roll of the petitioner as such, though he was considered for promotion, but was not found fit.

14. According to the petitioner, the adverse remarks for the year 2000-2001 have lost its significance in view of the order passed by the Administrative Judge whereas the contention of the learned standing counsel, is that since there is no specific direction of the Administrative Committee or of the Administrative Judge to expunge the remarks in question as such these adverse remarks still exists on the service record of the petitioner.

15. We deem it necessary to refer here the order passed by the Administrative Judge on the representation made by the petitioner against the remarks for the year 2000-2001. The order passed by Hon'ble Administrative Judge reads thus :

'The adverse remarks given by the District Judge in column No. 1 (a), (b), (c) and (d) are based on the remarks said to have been awarded to the officer for the year 1999-2000. No fresh facts have been disclosed by the District Judge so that the officer may be assessed for the year 2000-2001 that- he is vindictive to the members of the Bar and is a hotheaded officer and loses temper in the Court and that he is still indulged in womanisation and other public activities. As far relates to the adverse remarks in Column No. 3, the District Judge has filed the extracts of the minutes of monthly meetings held on 26.4.2000, 28.11.2000, 30.1.2001, 27.2.2001 and 30.3.2001 wherein the officer has submitted dates which go to show that the officer has attempted to dispose of old cases. Thus, the remarks in column No, 3 are not justified. The officer is advised to be cautious in rejecting the bail applications in the cases where the offences alleged to have been committed by the accused are bailable. The officer has given an out turn of 246.45 days out of 167.39 working days, which comes to 147% of work. The conduct of the officer has been assessed as members of Bar did not speak good of him. The assessment of the conduct of the officer should be given by the District Judge himself not by the Bar. The remarks awarded by the District Judge to the Officer appear to be a result of annoyance caused by an incident as stated in column No.

3 of the remarks. Over all assessment is fair. (e.s.)

Integrity certified.'

16. A perusal of the above order passed by the Hon'ble Administrative Judge on the representation of the petitioner against the adverse remarks clearly establishes the fact that the Hon'ble the Administrative Judge was not in agreement with the adverse remarks awarded by the District Judge, Bijnore. Hon'ble the Administrative Judge showed disagreement with the adverse remark awarded by the District Judge with regard to integrity, dealing with the public, temperament and private character and in very clear words has mentioned that remarks made by the District Judge are based on the remarks awarded to the Officer for the year 1999-2000 and while repeating those remarks again no fresh materials have been indicated by the District Judge. Similarly, comments made by the District Judge in column No. 3 which is regarding disposal of old case, the Hon'ble Administrative Judge has mentioned that the officer has made attempt to dispose of old cases and said that the remarks made by the District Judge are not justified. In other words, we may say that the Hon'ble Administrative Judge was of the view that there was no occasion for the District Judge to have awarded such adverse remarks when the Officer made efforts to dispose of old cases.

17. We would like to lay emphasis on the fact that any adverse remark in the C.R.'s could mar the entire career of an officer. Therefore, it is incumbent upon the authority awarding the adverse remarks to first come to a conclusion that the fact situation is such that it is imperative to make such remarks to set right the wrong committed by the officer concerned and while taking such a decision the authority concerned should carefully consider the materials, which are placed before him,

18. As far as the position of a Judicial Officer is concerned, it is quite different from that of a Government Officer because the Judicial Officers are required to work under a very charged atmosphere. Therefore, every error, however, gross it may look, should not, therefore, be attributed to improper motive. Mere possibility is hardly sufficient to assume that it would have happened. To infer an officer as one of 'doubtful integrity' it is necessary that there must be some relevant materials reflecting the error deliberately committed by the officer and while evaluating the

materials the authority should not altogether ignore the reputation in which the officer was held till recently.

19. In *State Bank of India v. Kashinath Kher*, (1996) 8 SCC 762, the Hon'ble Supreme Court has held that the controlling officer while writing confidential and character roll report, should show objectivity, impartiality and fair assessment without any prejudice whatsoever with highest sense of responsibility to inculcate in the officer's devotion to duty, honesty and integrity so as to improve excellence of the individual officer, lest the officers get demoralised which would be deleterious to the efficacy and efficiency of public service. In *P.K. Shastri v. State of M.P.*, (1999) 7 SCC 329, the Hon'ble Supreme Court while observing that the C.Rs. of an officer are basically the performance appraisal of the officer and go to constitute vital service record in relation to his career advancement held that authority making the remarks must first come to the conclusion that the fact situation is such that it is imperative to make such remarks to set right the wrong committed by the officer concerned.

20. In *Bishwanath Prasad Singh v. State of Bihar*, (2001) 2 SCC 305, the Apex Court observed that the entry in the confidential rolls should not be a reflection of personal whims, fancies or prejudices, likes or dislikes of a superior. The entry must reflect the result of an objective assessment coupled with an effort at guiding the judicial officers to secure an improvement in his performance where need be. In the on going paragraphs the Hon'ble Supreme Court laid emphasis on that fact that Entries either way have serious implication on the service career. Hence the need for fairness, justness and objectivity in performing the inspections and making the entries in the confidential rolls.

21. We would like to point out here that with regard to the remarks made by the District Judge relating to conduct of the Officer, Hon'ble the Administrative Judge was very critical of the manner in which the District Judge assessed the conduct of the officer and has categorically mentioned that the remarks awarded by the District Judge to the Officer, appears to be due to his annoyance. However, only with regard to remarks made in column No. 5, a note of caution was mentioned by the Hon'ble Administrative Judge and the Officer was advised to be cautious in

rejecting the bail applications in the cases where the offences alleged to have been committed by the accused are bailable.

22. The District Judge while writing the remarks for the year 2000-2001 in column 1 (a) of the confidential remarks, which is regarding integrity mentioned as 'Positively lacking' and over all assessment of the officer was assessed by the District Judge as 'very poor'. The Hon'ble Administrative Judge disapproved the remarks and while certifying the integrity substituted the words 'very poor' by the word 'fair',

23. Admittedly, prior to the impugned adverse entry recorded by the District Judge, Bijnore for the year 2000-2001, petitioner was never held to be an officer of doubtful integrity and earned a good reputation as Judicial Officer. He was always rated good officer and given benefits of service on due time. In the instant case no material has been disclosed on the basis of which the District Judge has arrived to the conclusion that integrity is positively lacking. Mere possibility is hardly sufficient to assume that it would have happened and perhaps this may be the definite reason for the Hon'ble Administrative Judge to certify the integrity.

24. We would like to mention that any annual entry is not an instrument to be wielded like a teachers' cane or to be cracked like a whip. C.Rs. are the foundations on which the career of a judicial officer is made or marred. While writing the C.Rs. (adverse remarks) it was incumbent upon the District Judge, Bijnore to have taken into consideration the overall estimation in which the petitioner was held in the recent past by those who were supervising the petitioner earlier. Needless to mention here that the adverse remarks given by the same District Judge for the year 1999-2000 had already been expunged by the Court as would be evident from the communication dated 23.2.2002 contained in Annexure-1 to the writ petition. The Hon'ble the Administrative Judge, in the present case while passing the orders on the representation made by the petitioner against the adverse remarks for the year 2000-2001, did not approve the same and on the contrary has criticised the manner in which remarks were written by the District Judge and stated in unequivocal terms that same were not justified. Perhaps, this may be the definite reason of the Hon'ble Administrative Committee for not

proceeding any further on the representation of the petitioner dated 17.7.2001 as enough was already done by the Hon'ble the Administrative Judge. Therefore, the stand of the respondent that the adverse remarks awarded for the year 2000-2001 by the District Judge still exist on the character roll of the petitioner is not acceptable.

25. On taking a holistic view of the matter, we are of the opinion that in view of the order passed by Hon'ble the Administrative Judge as contained in the communication dated 22nd January, 2002 ; the adverse remarks awarded to the petitioner for the year 2000-2001 shall be treated to have been expunged from the character roll of the petitioner. The candidature of the petitioner shall be considered for promotion in H.J.S. Cadre afresh and in the event, petitioner is found fit for promotion, he would be entitled to all the consequential benefits.

26. The writ petition stands disposed of accordingly.

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