

2. In the reply filed by the respondents No.1 to 4 therein it was projected that when the petitioner was considered for induction into KAS, he was in the substantive grade of Rs.2500-4000 when in terms of Rule 5(1)(c) of the Jammu & Kashmir Administrative Service Rules, 1993, an officer, not from any of the feeding services, would be eligible for induction into KAS against "technical quota" only when he is in the pay scale of Rs.3000-4500(pre-revised).

3. The said position has been specifically dealt with and repelled as is clear from para 12 of the judgment rendered in SWP No.1693/2000, wherein it is recorded as under:

“.....The stand taken by the respondents is belied by the record available on the file. The petitioner after completing his deputation to Desert Development Agency, Leh, has been vide Government order No.173-Agri of 2000 dated 7.6.2000 recalled from deputation by the Government and posted as Executive Engineer Rural Engineering Wing, Kargil. Had the petitioner held Executive Engineer's pay and grade i.e. Rs.3000-4500 on ex cadre basis, he would not have been transferred and posted as Executive engineer in Rural Engineering Wing Kargil. This ends controversy as regards petitioner's eligibility for induction into Kashmir Administrative Service having regard to the pay and grade held by him at the time he was considered by the Selection Committee...”

4. Next it had been projected by the respondents therein that notwithstanding ineligibility of the petitioner for induction into KAS, he was considered under “technical quota” but he failed to make the grade as he had secured 67 out of 100 marks whereas the last selected candidate secured 75 marks. While elaborating this position, it has been highlighted that the petitioner had obtained 60 marks on the basis of Annual Performs Reports and 7 marks in the interview, in total 67 marks.

This contention has been specifically dealt with and adjudicated upon in the judgment dated 26.07.2013 rendered in SWP No.1693/2000. The finding recorded thereon in Para 15 of the judgment is reproduced hereunder:

“.....The respondents’ contention that the petitioner did not make the grade, therefore, does not inspire confidence, more so record claimed by the respondents to reinforce their case is not forthcoming. Petitioner insists that his performance for the period 1992-93 to 1996-1997 was all along assessed ‘excellent’. He has placed his photocopies of APRs for the years 1992-93 to 1996-97 on the file as annexure-2 to the rejoinder. The photocopies duly attested show him to have been assessed “excellent” by his initiating officers and his APRs of 1992-93 to 1996-97 to have been approved by the accepting authorities. The respondents as custodian of official record are expected to have the record regarding APRs available with them, but they as already indicated have withheld the record.”

5. Para 16 is also relevant to be quoted:

“In the circumstances there is no reason to disbelieve the record placed on file by the petitioner. The plea raised by the respondents 1 to 3 in their additional affidavit dated 14.6.2012 that as there has been change in induction scenario and the officers inducted under technical quota exceed the permissible limits, cannot deprive the petitioner to his right that has accrued to him way back in the year 1999 and has been unjustifiably denied to him.”

6. In the backdrop of the aforesaid findings, the writ petition was allowed, respondents were directed to accord fresh consideration to the petitioner’s case for induction w.e.f. 31.08.2000 having regard to his performance as

assessed in his APRs of 1992-93 to 1996-97 and in the interview conducted by the Select Committee. Same was to be done within a period of four weeks.

7. Respondents did not adhere to the time schedule, however, in compliance to the judgment dated 26.07.2013, passed Government order No.620-GAD of 2014 dated 10.06.2014, where-under claim of the petitioner has been concluded to be devoid of merit and rejected. Aggrieved thereof, instant petition has been filed.

8. Petitioner while projecting his case submitted that the order impugned dated 10.06.2014, in-effect, has the trapping of re-writing the judgment i.e. instead of complying with the judgment, findings recorded therein have been upset. Buttressing his submission stated that the respondents have once again raised the issue of ineligibility on the basis of qualifying grade, APRs and the marks obtained.

9. Earlier SWP No. 1693/2000 remained pending till 26.07.2013 i.e. for a period of nearly 13 years. During its pendency respondents have failed to bring on record or produce any record to repel the contentions of the petitioner. The judgment dated 26.07.2013 too has not

been challenged. Now after 13 years they have tried to defeat the object of the judgment by projecting contentions which they have failed to support in the disposed of writ petition.

10. The contentions of the petitioner have substance. In the order impugned dated 10.06.2014, the grade position of the petitioner, position of his APRs for the period 1992-93 to 1996-97 have been questioned when the position vis-à-vis grade, APRs and of marks obtained by the petitioner has been settled in the judgment. It appears that the respondents with the sole object of depriving the petitioner of his legitimate right have ventured to do what is unexpected of responsible State functionaries. If the respondents were dissatisfied with the judgment dated 26.07.2013, they should have challenged the same which has not been, therefore, judgment has attained the finality. It has to be implemented in its real spirit. The reasons recorded in the order of consideration like the one impugned are ipse dixit, therefore, brazenly judgment dated 26.07.2013 has been ipso facto observed in breach, perhaps consciously not only to the disadvantage of the petitioner but may also imperil the respondents.

11. Petitioner has been litigating right from the year 2000 but is being denied to reap fruit without any justification which attitude is totally derogatory. A party cannot be allowed to be dragged indefinitely for getting what is legitimately due. Once the findings are recorded on certain issues, the authorities have no right to do something contrary to the same except by having recourse to legal remedies i.e. to file appeal. The respondent authorities have no power to re-write the findings recorded in the judgment.

12. It appears that the respondent authorities with conscious mind have so far defeated implementation of the judgment in its real spirit. They have adopted an approach which has the effect of negating the benefit of the judgment. Fresh consideration in terms of the judgment dated 26.07.2013 was to be in the context of the findings recorded therein. Order to reconsider does not empower the authorities to negate the findings recorded in the judgment and then to opine otherwise. The mode, method and manner adopted by the respondent authorities appear to be contemptuous as the order impugned dated 10.06.2014 has been passed totally against the spirit of the judgment. The findings recorded in the judgment dated 26.07.2013, in-effect,

have been upset which by no stretch of imagination could be within the domain of the respondent authorities.

13. The impugned Government order No.620-GAD of 2014 dated 10.06.2014, being incongruous with the findings recorded in the judgment dated 26.07.2013, is quashed. The respondent authorities are directed to pass orders in tune with the findings recorded in the judgment dated 26.07.2013 within a period of four weeks from today.

14. The respondents be put on notice as to why contempt proceedings be not initiated against them for having willfully violated the judgment dated 26.07.2013 rendered in SWP No.1693/2000. Robkar in this behalf shall be separately maintained and listed after four weeks.

15. Petition succeeds, shall stand disposed of as above. Costs of the litigation quantified as Rs.20,000(rupees twenty thousand) only) be paid by the respondents to the petitioner. Record of SWP No.1693/2000 be sent back.

(Mohammad Yaqoob Mir)
Judge

Srinagar,
26.10.2016
"Mohammad Altaf"