
(2007) 03 UK CK 0026

In the Uttarakhand High Court

Case No : Writ Petition No. 2854 of 2001 (S/S)

Amanat Husain

APPELLANT

Vs

The U.P. Public Services Tribunal No. 2 and Others

RESPONDENT

Date of Decision : 28-03-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 03 UK CK 0026

Hon'ble Judges : Rajeev Gupta, C.J.; J.C.S. Rawat, J

Bench : Division Bench

Advocate : I.P. Gairola, for the Appellant; Subhash Upadhyay, for the Respondent

Final Decision : Dismissed

Judgement

J.C.S. Rawat, J.—By means of this Writ Petition, moved under Article 226 of the Constitution of India, the Petitioner has sought the following reliefs:

- i. To issue a writ of Certiorari or any other suitable Writ, Order or Direction calling for the record of the Petitioner's case and quashing the order of the U.P. Public Services Tribunal No. 2, Lucknow, dated 9th March, 1987 (Annexure "5"), as well as the entries for the periods 24-12-1982 to 31-3-1983 and 1-4-1983 to 20-7-1983 (Annexures "1" and "3").
- ii. To issue a Writ of Mandamus or any other suitable Writ, Order or Direction in the nature of Mandamus commanding the Respondents to confirm the Petitioner to the post of Surveyor as well as Draughtsman.
- iii. To issue any other suitable Writ, Order or Direction as this Hon'ble Court may deem fit and proper in the circumstances of the case.
- iv. To award the cost of this petition to the Petitioner.

2. The Petitioner was appointed as Surveyor in the Forest Department and later on he was appointed as Draughtsman w.e.f. 21-06-1977. Thereafter the

Petitioner was transferred in Forest Division viz. Upper Ganga Water Shed Management Forest Division Karnprayag and posted there. He was given adverse entry for the period 24-12-1982 to 31-03-1983 against which he filed representation on 27-02-1984. He again received adverse entry for the period 01-04-1983 to 20-07-1983 and filed representation against the same. But his representations were not decided by the competent authority and thereafter, the Petitioner has filed the petition before the claim Tribunal alleging that both the entries were vague in nature and based upon generalization and indicating that the Petitioner was an untrue and undisciplined person who worked as per his own desire. The Respondent No. 5 Shri H.M.D. Srivastava had awarded the adverse entries to the Petitioner.

3. The opposite parties contested the claim petition and filed common counter affidavit in W.P. No. 5389 of 2001 (S/S) and pleaded that the adverse entries were not given to the Petitioner due to the malice and the same were given after general assessment of the Petitioner's work.

4. Learned Counsel for the Petitioner contended that the Petitioner had earned two adverse entries by the Respondent No. 5 Shri H.M.D. Srivastava maliciously due to the personal grudge and hostility which he had developed against the Petitioner. He further contended that the Respondent No. 5 Shri H.M.D. Srivastava was annoyed with the Petitioner on account of the fact that while he was posted as Divisional Forest Officer, Karnprayag, he was subject to assault on 05-01-1983 by the Contractor Shri Radha Krishnan and a report was lodged against Radha Krishnan. The Petitioner was shown as prosecution witness. It was further contended that the Petitioner did not appear before the Court as a prosecution witness but he appeared as a defence witness before the criminal court and he deposed the correct fact that he has not seen such incident on account of which the Respondent No. 5 Shri H.M.D. Srivastava started illwill against the Petitioner. Learned Tribunal had come to the conclusion that the first entry annexure-1 to the claim petition given by Srivastava on 14-09-1983 for a period from 24-12-1982 to 31-03-1983. He appeared as a witness before the Criminal court on 31-05-1984 and 06-06-1984 after awarding the entry where he had denied the incident as alleged by Respondent No. 5 Shri H.M.D. Srivastava on the pretext that he appeared as a defence witness against him. Thus there is no reason to give adverse entry to the Petitioner by Respondent No. 5 Shri H.M.D. Srivastava. Annexure-1 of adverse entry commencing from 24-12-1982 to 31-03-1983 reads as follow:

Perusal of the entry shows that this entry was given by Respondent No. 5 Shri H.M.D. Srivastava on 14-09-1983 and the Petitioner gave the evidence as a defence witness after 14-09-1983. It cannot be hold that Shri H.M.D. Srivastava had a grudge against the Petitioner on account of the evidence adduced in the criminal case by the Petitioner against him. We are completely in agreement with the findings recorded by the Tribunal.

5. The second entry which is the subject matter of challenge before this Court is

given for the period 01-04-1983 to 20-07-1983 (Annexure-3 to the writ petition). The same is quoted hereunder:

6. This entry has also been awarded by Sri H.M.D. Srivastava to the petitioner. Annexure No. 6 to the writ petition contains the details of the adverse entries given by the department to the petitioner which is as under:

7. The first entry given by Sri Srivastava on 14-09-1983 and it was in respect of the period from 24-12-1982 to 31-03-1983. Till then the Petitioner had not given the above mentioned statement in the criminal case. The Tribunal further rightly held that the statement given by the Petitioner in the court of Munsif Magistrate, Kamprayag on 31-05-1984 and 06-06-1984 wherein he had stated that the incident of Marpit had not taken place in his presence. Regarding the second adverse entry given by Sri H.M.D. Srivastava to the Petitioner, the Tribunal held that the Petitioner never had been able to earn a good entry regarding his conduct from the superior. It was held that no doubt in a few entries it has been mentioned that the Petitioner was a competent man but he was condemned on other points, e.g. his quarrelsome nature and lack of interest in his work. The Petitioner was also described in a few of the entries as an undisciplined official. The Tribunal rightly held that the Petitioner had never been good although he had got the knowledge of his work. The Petitioner was a work shirker and there was nothing unnatural if Sri Srivastava also in his assessment of the work of the Petitioner had described him accordingly. The Petitioner had not submitted sufficient material to hold that the adverse entries were malafide or result of prejudice on the part of Respondent No. 5 Shri H.M.D. Srivastava. We do not find any fault in the approach of the Tribunal holding that the impugned entries were not awarded by illwill and malice. We are completely in agreement with the findings recorded by the learned Tribunal.

8. In view of the above, we are of the considered opinion that the entries as awarded by the officer are not malafide or result of malice.

9. In view of the above, we do not find any ground for interference while exercising the jurisdiction under Article 226 of the Constitution. The writ petition is devoid of merit and is liable to be dismissed and is hereby dismissed.

10. No order as to costs.