
(2010) 05 AHC CK 0312
In the Allahabad High Court

Anoop Kumar and Raj Kumar Vishwakarma	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 20-05-2010

Acts Referred:

Uttar Pradesh Reorganisation Act, 2000 — Section 73(2)
Uttar Pradesh Reorganisation Act, 2000 — Section 73(2)
Uttar Pradesh Reorganisation Act, 2000 — Section 73(2)

Citation : (2010) 125 FLR 792

Hon'ble Judges : Sunil Ambwani, J;K.N. Pandey, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard Shri T.P. Singh, Sr. Advocate assisted by Shri Ajal Krishna for the petitioner in Writ Petition No. 29235 of 2009. Shri S.K. Vishwakarma and Shri R.K. Misra have appeared for the petitioner in Writ Petition No. 30443 of 2009. Shri Satish Chaturvedi, AAG assisted by Shri S.N. Srivastava appears for the State respondents. Shri Triloki Singh and Shri Shashi Sekhar Tiwari, Standing Counsel appear for the Central Government-respondent No. 2.

2. The petitioners were appointed on the substantive post of Senior Instructors in the Department of Rural Development, Government of U.P. They were promoted as District Training Officer and at present they are working as "Extension Training Officers" under Deen Dayal Upadhyay State Institute of Rural Development, Baxi Ka Talab, U.P. Lucknow under the Department of Rural Development, Government of U.P. Lucknow. By these writ petitions they have challenged their final allocation by the State Advisory Committee, constituted by the Government of India to be transferred to the new State of Uttaranchal (Now Uttarakhand) under the U.P. Reorganisation Act, 2000. By interim orders dated 9.6.2009 and 22.6.2009 their relieving from the State of U.P. and joining in the State of Uttaranchal (Uttarakhand) was made subject to the decision of the writ petition.

3. The State Advisory Committee constituted by the Government of India for

bifurcation of the cadres and allocation of the State employees to the newly created State of Uttarakhand appointed u/s 76 of the Act laid down a policy on 9.11.2000 and thereafter finalised the norms/criteria for allocation in its meeting held on 2.7.2002. The policy provided to bifurcate the cadres and to transfer those (1) who have opted for State of Uttaranchal followed by those (2) who are domicile of the districts falling in the State of Uttarakhand and (3) on the basis of the junior most in the cadre/category, in the pay scale as on the appointed date. The norms and criteria for allocation of the personnel adopted by the State Advisory Committee are given as below:

1. First of be allotted will be optees to Uttaranchal.
2. In case of, those whose home district as declared in service records lies within Uttaranchal, will be allotted to that the State.
3. If vacancies persist, the junior most as on the appointed day in the desired pay scale would be allotted.
4. While carrying out of exercise on 3 above, care would be taken to observe the criteria regarding reservation of SCs/STs/OBCs and others. There would also be taken to allocate personnel pro rata according tot he total strength of the batch, as for as possible.
5. If both husband and wife are in service, allotment would be in with the option of the senior would determined with reference to the pay scale. In case of officers finally allotted to Uttaranchal vide Government of India's order dated 11.9.2001, the spouse would be allotted Uttaranchal only and not Uttar Pradesh.
6. Female employees would be allocated according to their options, subject to the condition that those whose spouses are covered by point 2 or point 3 that would be allotted Uttaranchal only, and not Uttar Pradesh.
7. Those employees who are due to retire within two years will be allotted as for their option.
8. Handicapped employees, if not finally allotted to Uttaranchal vide orders dated 11.9.2001 issued by Government of India would be allotted as per their options.
4. The aforesaid norms were made subject to the cases of genuine and extreme hardship to be decided at the discretion of the State Advisory Committee.
5. By an Office Memorandum dated 19th May, 2009 the State Advisory Committee in its meeting dated 24.5.2005 considered the representations of the employees of Deen Dayal Upadhyay State Rural Development Institute and forwarded to the Central Government for allocation to the Central Government u/ s 73(2) of the Act of 2000. The Central Government made final allocations of the cadres of Extension Training Officers and decided to transfer Shri Sanjay Kumar, Shri Shiv Prakash, Shri Anoop Kumar (the petitioner in Writ Petition No. 29235 of 2009) and Shri Raj Kumar Vishwakarma (the petitioner in Writ Petition No. 30443 of 2009) to the State of Uttarakhand. The Office Memorandum observed that out

of these Shiv Prakash and Shri Anoop Kumar have been promoted as Category-1 Asstt. Commissioner (Training)/Principal by Notification dated 26.2.2009.

6. The petitioners in both these writ petitions have challenged their final allocation to the State of Uttarakhand on the ground that they had not opted nor are the domicile of the district falling in the State of Uttarakhand. They are also not the junior most in the cadre of the Extension Training Officers, and thus their allocation to the State of Uttarakhand is violative of policy of the State Advisory Committee.

7. Shri T.P. Singh, appearing for the petitioners would submit that the petitioners' transfer to the State of Uttarakhand is illegal, arbitrary and discriminatory, in gross contravention of the norms and rules and the guidelines laid down by the Government Order dated 15.7.2002. The State Advisory Committee has failed to adhere to its norms. The petitioner's representation against his transfer were not considered and that the Office Memorandum dated 19.5.2009 does not indicate that the petitioner's transfer has been made by the Central Government on the advice of the State Advisory committee.

8. In the counter affidavit of Dr. D.C. Upadhyay, Joint Director, Deen Dayal Upadhyay, State Institute of Rural Development, Lucknow it is stated that the petitioners are working as Extension Training Officers in the subject of "plant protection" (Paudh Sarankshan/Krishi Raksha). There are 12 sanctioned post of "Prasar Prasikshan Adhikari" in the subject out of which 3 posts were allocated to the State of Uttarakhand. The petitioner is junior most and is also a candidate belonging to SC category. His representation was rejected and he was allocated to the State of Uttarakhand. His representation dated 18.3.2005 in pursuance to the letter dated 22.2.2005 issued by the Principal Secretary was duly considered and thereafter the order dated 28.4.2006 was issued. As junior most Extension Training Officer in Plant Protection, he has been allocated to the State of Uttarakhand strictly in accordance with the policy of the State Advisory Committee without causing any discrimination.

9. In the short counter affidavit of Shri S. Nayak, Under Secretary in the Department of Personnel and Training, Government of India, Ministry of Personnel, P.G. and Pension, New Delhi, it is stated that the petitioner belongs to Extension Training Officer cadre in which against 23 posts allocated to Uttarakhand, 16 personnel and 7 vacancies were allocated. The petitioner's representation was considered by the State Advisory Committee in its meeting dated 24.4.2005 and recommended to be rejected as the petitioner is the junior most in the reversed order of seniority. In paras 8 and 9 of the counter affidavit of Shri S. Nayak it is stated as follows:

8. That the Government of India issued general guidelines vide letter dated 13.9.2000 wherein it was mentioned at para 3 (d) & (e) which inter alia reads:

3.(d) in making allocations as indicated in the para above, the importance of ensuring in each case, as far as possible, a composite and balanced cadre with

age and seniority groups evenly distributed, should be borne in mind.

(e) in cadres/categories where the composition and balance of the cadres have not been achieved, to the extent of shortfall, the list may be completed by including the names of the junior most personnel of the respective cadres/category.

9. That the State Advisory Committee constituted by the Government of India in the meeting held on 02.07.2002, finalized norms/criteria for allocation of personnel which include allocation first by "option", followed by "domicile" and lastly on the basis of "junior most" as on the appointed day. It was stated that the junior most as on the appointed day in the desired pay scale should be considered. However, while carrying out the exercise, care would be taken to observe the criteria regarding reservation of Scs/STs/OBCs and others.

10. Shri Triloki Singh, learned Counsel for Union of India states that the principles laid down by the High Court at Patna in the case of Prakash Chandra Sinha etc. Vs. Union of India (UOI) and Others, have been upheld in Civil Appeal No. 3307 of 2007, Indra Deo Paswan v. Union of India. It was held that unless the Court is compelled to interfere on the basis of clear illegality or Wednesbury unreasonableness, the Court should leave the application of personnel in various services as it was, and that acceptance of individual grievance unless clearcut cases made out would make it a never ending process and that will not be in the interest of reorganised State or its employees.

11. In order to appreciate whether the petitioner is the junior most in his cadre/category, in the pay scale, to fall in the criteria fixed by the State Advisory Committee, accepted by the Central Government, we may refer to U.P. Rural Development (Extension Training) Gazetted Officers Service Rules, 1992 applicable to the petitioner. Rule 3(h) defines service to mean U.P. Rural Development (Extension Training) Gazetted Officers Service. The Rule 4 provides for cadre of the service and reads as follows:

. 4. Cadre of the service - (1) The strength of the Service and of each category of posts therein shall be such as may be determined by the government from time to time.

(2) The strength of the Service and of each category of posts therein shall, until orders varying the same are passed under Sub-rule (1), be as given in Appendix.

Provided that-

(1) the appointing authority may leave unfilled or the Governor may hold in abeyance any vacant post, without thereby entitling any person to compensation;

(2) The Governor may create such additional permanent or temporary posts as he may consider proper.

12. Rule 5 deals with source of recruitment to various categories of post in the services. It provides for 10 categories of service including Extension Training

Officers. Sub-rule (3) of Rule 5 provide for the category of Extension Training Officer as follows:

(3) Extension Training Officers (Soil Science), Extension Training Officer (Agronomy), Extension Training Officer (Plant Protection), Extension Training Officer (Horticulture) and Extension Training Officer (Agriculture Extension).

13. Rule 22 provides for seniority of the persons substantively appointed in any category of posts to be determined in accordance with the U.P. Government Servant Seniority Rules, 1991, as amended from time to time. The Appendix with reference to Rule 4(2) and 23(2), provides for the cadre strength of each category of the employees at the time of notification of the Rules. The Appendix provides at Sl. No. 4 the cadre strength of the Extension Training Officers as a separate class break up provides for fifteen (I to XV) category of officers. The category of Extension Training Officers for Plant Protection at Item No. (iv) includes 12 permanent posts out of total number of 115 posts of Extension Training Officers including 64 permanent and 51 temporary posts.

14. The Rules of 1992 quoted as above clearly demonstrates that there are ten category of posts in the cadre of Extension Gazetted Officers in Rule 11. The First Category include Asstt. Commissioner (Training) and Principal. The Second Category includes District Training Officers, Category 3 to 9 includes Extension Training Officers in different branches. The Extension Training Officers in the subjects of Soil Science, Agronomy, Plant Protection, Horticulture and Agriculture Extension fall in the same Category - (3) for which the academic qualifications are provided in Rule 8(2) as Master degree in their subjects and preferential qualification of Doctor's degree in any of the aforesaid subjects and three years experience of teaching or training or research from recognised institute. The promotion to the post of Asstt. Commissioner (Training) and Principal through Selection Committee amongst substantively appointed District Training Officer and Extension Training Officer in Group-A, who have completed five years of service on the first day of their recruitment.

15. The Rules of 1992 would clearly demonstrate that the Extension Training Officers in the subject of Soil Science, Agronomy, Plant Protection, Horticulture and Agriculture Extension, under Rule 5(3) fall in one category of posts, for which the number of posts in the Appendix to the Rules is provided and that common seniority list of category has to be maintained in accordance with the Rules of 1991.

16. In the final seniority list of Extension Training Officers circulated vide Office Memorandum dated 15th September, 2008 petitioners Shri Anoop Kumar and Shri Raj Kumar Vishwakarma are placed at Sl. No. 58 and 38 respectively, appointed substantively on 6.11.1999 and 30.5.1998/25.6.1998 respectively. The seniority list include total number of 92 officers in Group-B appointed substantively upto 5.12.2003. Out of these the officers upto Sl. No. 87 were appointed substantively on 28.8.2000/31.8.2000. The petitioners thus fallen in

the common category of Extension Training Officer under Rule 8(3) of the Rules of 1992, They are not the junior most in their cadre/category. In the second supplementary counter affidavit of Dr. D.C. Upadhyay, Joint Director, Deen Dayal Upadhyay State Institute of Rural Development, Lucknow it is stated in para 3 that the petitioner Shri Anoop Kumar was selected as direct recruit on the post of Extension Training Officer in the subject of "Plant Protection" in the Department of Rural Development and combined seniority list of direct recruits was issued to U.P. Public Service Commission on 11.11.2002, wherein seniority was determined taking the basis of the date of approval from the Commissioner. The combined seniority list was later amended and was prepared by the Commission on the basis of marks obtained by the candidates in the interviews in accordance with Rule 15(3) of the Rules of 1992, Rule 5 and Rule 8(2) of the U.P. Government Servant Seniority Rules, 1991. In this list dated 3.9.2004 the name of the petitioner is at Sl. No. 28. The petitioner Anoop Kumar was selected as Scheduled Caste candidates on the post of Extension Training Officer in the subject of Plant Protection. The petitioner scored lowest position in the seniority list of Extension Training Officers in the subject of Plant Protection. The Principal Secretary, State Advisory Committee by his letter dated 22.2.2005 directed the State Government to circulate the final tentative list of the employees allocated to the State of Uttarakhand inviting objections. The petitioners Shri Anoop Kumar and Shri Raj Kumar Vishwakarma were shown to be junior most at Sl. Nos. 20 and 17 in their subjects.

17. It is further stated in para 11 of the second supplementary counter affidavit that in respect of allocation of the cadre of Senior Instructors in the same department, writ petition of Ram Mulan Yadav was dismissed by learned Single Judge. Special Appeal No. 977 of 2009 was dismissed on 21.7.2009. A perusal of these judgments would show that the Court followed its earlier judgments and relied upon the report of the Committee in which Shri Ram Milan Yadav was found junior most employee in the department.

18. In the present case as we have found above the petitioners have been treated to be junior most as Extension Training Officers in the subject of Plant Protection. The Rules do not bifurcate the post of Extension Training Officers, Soil Science, Agronomy, Plant Protection, Horticulture and Agriculture Extension. They all fall in Rule 5(3) and for which common cadre and number of posts are provided in the Rules. All these Extension Training Officers fall in the same category and thus their combined seniority list was required to be taken into consideration to find out as to who is the junior most in the cadre/category and in the pay scale.

19. The State Advisory Committee fell into apparent error in treating each subject of the Extension Training Officers in the category to be separated for the purposes of determining the junior most for allocation by way of transfer to the State of Uttarakhand.

20. The writ petitions are allowed. The impugned Office Memorandum dated

19.5.2009 issued by the Principal Secretary, Rural Development, Government of U.P., allocating and transferring the petitioners Anoop Kumar and Raj Kumar Vishwakarma to the State of Uttarakhand is quashed. The respondents are directed to consider the allocation for transfer to the State of Uttarakhand afresh, on the basis of the seniority list of each category of posts under the Rules. There shall be no order as to costs.