
(1997) 09 AHC CK 0194

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 9864 of 1996

Ashok Kumar Gupta

APPELLANT

Vs

The District Judge and Another

RESPONDENT

Date of Decision : 15-09-1997

Acts Referred:

Citation : (1997) 3 UPLBEC 1915

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : Dhan Prakash, for the Appellant;

Final Decision : Dismissed

Judgement

D.K. Seth, J.—The petitioner was transferred from the post of Amin Munsif's court to the post of Misc. clerk in another Munsif's court.

2. Sri Dhan Prakash, learned counsel for the petitioner contends that the said order of transfer was punitive and the same has been passed without giving any opportunity of hearing and without holding any enquiry, therefore, it should be quashed.

3. On the other hand, learned Standing Counsel contends that the said order cannot be held to be punitive. By the reason of said order, the petitioner would neither suffer reduction in rank nor reduction in pay. Both are Class III posts. Neither petitioner's seniority nor other incidence of service has been affected by the impugned order.

4. The petitioner earlier has moved a writ petition being Writ Petition No. 14322 of 1995 against the said order which has since been disposed of by order dated 24-5-1995 by directing the respondents to consider the petitioner's representation. His representation thereafter was considered by order dated 13-2-1996 which is Annexure-4 to the writ petition.

5. From Annexure 4. learned counsel for the petitioner points out that in the said

order it has been admitted that there were certain secret reports on the basis whereof the petitioner was shifted without holding any enquiry and affording any opportunity of hearing to him. Therefore, according to the learned counsel, the said order supports the case of the petitioner.

6. Admittedly, the post of Amin and Misc. Clerk both are Class III posts. I have perused the representation made by the petitioner which is Annexure-2 to the writ petition. In the said representation, he has not made out a case that by reason of such transfer either he was reduced in rank or there was reduction in pay. He had only made out a case that he having obtained training, his services could be better utilised by posting him as court Amin.

7. Thus, it appears that by reason of the transfer, the petitioner has neither suffered reduction in pay nor reduction in rank. There is nothing to indicate that the petitioner would suffer anything by reason of said transfer either in the matter of seniority or otherwise, In the absence of any such material, the said transfer order cannot be held to be punitive. If the order of transfer is not punitive, even if it is ordered in consideration of the ground mentioned in the order dated 13-2-1996, the same cannot be said to be illegal in as much as no punishment has been inflicted on the petitioner. The transfer is an incidence of service. If it does not appear to be punitive, in that event the same cannot be assailed on the ground that it was issued on account of reasons mentioned in the order dated 13-2-1996, viz. Secret report on complaint.

8. In that view of the matter, I am not inclined to interfere with the impugned order.

9. The writ petition fails and is accordingly dismissed. No order as to costs.