

(2012) 08 AHC CK 0263

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 15768 of 2012

Chiraunji Lal Yadav

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 07-08-2012

Acts Referred:

Citation : (2013) 1 ADJ 520

Hon'ble Judges : P.K.S. Baghel, J

Bench : Single Bench

Advocate : Ashok Khare and Siddharth Khare, for the Appellant;

Final Decision : Allowed

Judgement

P.K.S. Baghel, J.—Instant writ petition pertains to an order dated 13.2.2012 passed by the Additional Director General of Police (Railways), U.P., Lucknow whereby the representation of the petitioner has been rejected and a direction is issued for a recovery of the excess payment made to him. The basic facts, pertinent to the issue in question, may be stated as follows:

The petitioner was initially appointed on 1st August, 1973 as Constable (Ministerial), he earned his promotion from the post of Assistant Sub-Inspector (Ministerial), in the year 1976 and subsequently on 10th June, 1982 he was further promoted as Sub-Inspector (Ministerial). The petitioner reached his age of superannuation on 31.12.2010. The cause of action arose when on 22.7.2010 an order was passed by the Deputy Inspector General of Police (Railways), Allahabad, whereby the petitioner's date of promotion dated 10th June, 1982 on the post of Sub-Inspector (Ministerial) was altered and it was directed that his said promotion shall be treated from 9th October, 1997 instead of 1982.

2. Feeling aggrieved by the order dated 22.7.2010 the petitioner preferred a writ petition No. 58502 of 2010 (Chiraunji Lal Yadav v. State of U.P. and others), this Court passed an interim order in favour of petitioner not to recover any amount from him.

3. After exchange of the pleadings the writ petition was allowed on 12.10.2011. This Court set aside the order dated 22.7.2010 and remitted the matter back to the authority concerned to reconsider the matter afresh.

The petitioner was not satisfied with the order dated 12.10.2011 passed by the learned Single Judge. He filed the Special Appeal No. 1226 of 2011 which was disposed of on 16.12.2011 and the order of the learned Single Judge was upheld. However, a direction was issued to the concerned authority to pay the petitioner provisional pension. It was also observed by the Division Bench in its judgment that in case it is found that the petitioner did not misled the authorities and he was not involved in any kind of fraud then in that event the recovery of the excess amount would not be justifiable.

4. After the matter was remitted back, a show-cause notice was issued by the Additional Director General of Police (Railways), to the respondent No. 2 herein. A copy of the said notice has been brought on the record by the petitioner as Annexure-10 to the writ petition. The petitioner submitted a detailed explanation to the said notice on 23.12.2011 with regard to his promotion dated 10.6.1982 on the post of Sub-Inspector (Ministerail).

5. The respondent No. 2 by the impugned order dated 13.2.2011 rejected the representation of the petitioner and he ordered that petitioner shall be deemed to be promoted from 9.10.1997 on the post of Sub-Inspector (Ministerial). However, no recovery shall be made of excess amount from 10.6.1982 to 8.10.1997. But, after 9.10.1992 upto his retirement dated 31.12.2010 the excess amount paid to him shall be recovered.

Consequent upon, the office of the Inspector General of Police (Railways) issued a communication dated 19.3.2012 for the recovery of the excess amount. Feeling aggrieved, petitioner has preferred this writ petition.

6. I have heard learned counsel for the petitioner Sri. Ashok Khare, learned Senior Advocate assisted by Sri. Siddarth Khare and the learned standing counsel for the respondent.

The learned Senior counsel submitted that the petitioner was promoted on the post of Sub-Inspector (Ministerial) on 10.6.1982 he continued to work on the said post to the entire satisfaction of the department. For the first time complaints were made against the petitioner in the year 2010 by two alleged seniors namely Mahboob Alam and Gulam Muztaba. Sri. Khare has further urged that the State Government had issued the order dated 9.2.1976 where under a policy decision was taken by the State Government to bifurcate the Police Staff into five separate cadres. The clerical staff in the Government Railway Police is one of them. On 17th September, 2002 the Director General of Police (Railways) sent a communication to the State Government for clarification of the Government Order dated 9.7.1976. In response thereto the State Government clarified its stand with regard to the said Government Order only on 21st March, 2003; in pursuance of the said Government Order/Clarification the State

Government accorded its consent and issued Seniority List on 23rd August, 2005; there is unexplainable delay of 26 years on the part of the respondent department in keeping the matter unattended. Relevant would it be to mention that the petitioner was already promoted on 10.6.1982; there is no justifiable reason for the recovery of the alleged excess amount after 1997 upto the retirement, whatever discrepancy came into existence, petitioner cannot be held to responsible for it. The department itself is to be blamed as for the first time in the year 2002 it sought clarification from the State Government.

7. Sri. Khare, learned senior counsel, amplifying his aforesaid submissions submitted that in the impugned order the petitioner has not been held to be guilty of any kind of mis-representation, fraud or sharp practice for his promotion and as such the impugned order is arbitrary and without any justifiable reasons.

8. Learned standing counsel has submitted that the petitioner was junior to the Mahboob Alam and Gulam Muztaba and as such by the impugned order the date of promotion of the petitioner on the post of Sub-Inspector (Ministerial) has rightly been corrected as 8.10.1997 and the anomaly in the promotion has been removed.

9. I have considered the respective submissions of the learned counsels and have also perused the record. It is a common ground that there is no allegations of mis-representation or fraud against the petitioner in respect of his promotion on the post of Sub-Inspector (Ministerial) on 10.6.1982. For the first time on the complaint of the two alleged senior of the petitioner. The order dated 22.7.2010 was issued by the Additional Director General of Police (Railways), Lucknow whereby the date of promotion of the petitioner was altered from 10.6.1982 to 9.10.1997.

10. Suffice would it be to state that in pursuance of the notice dated 30.11.2011 the petitioner has submitted his reply on 23.12.2011. In the said explanation he has stated a very material fact. On 25.6.1981 the Deputy Inspector General of Police (Railways), Allahabad requested the Inspector General of Police (Railways), Lucknow seeking his permission to fill up the existing vacancies in the Government Railway Police Headquarter, Allahabad. In response to the said request the Inspector General of Police (Railways), Lucknow, vide communication dated 12.6.1981 and 6.7.1981 constituted a Committee headed by one Sri. J.N. Chaturvedi. The said Committee was comprised of Deputy Inspector General of Police (Railways) Allahabad, Superintendent of Police (Railways), Allahabad and Superintendent of Police (Railways), Agra. The said Committee conducted departmental examination in the year 1981, written test and interview were held for the promotion on the post of Sub-Inspector (Ministerial). The petitioner and the two complainants appeared in the said examination and on 24.7.1981 a list of 18 Ministerial Cadre Employees was issued in order of merit, wherein one Rajesh Kumar Tripathi was placed at serial No. 1 and the petitioner was placed at serial No. 2. Consequent upon the said examination Rajesh Kumar Tripathi was promoted as Sub-Inspector (Ministerial) who retired from the office of the

Superintendent of Police (Railways), Lucknow and the petitioner at serial No. 2 in the merit list was promoted in the year 1982.

11. Regard being had to the fact, that in the same list of successful candidates name of both complainants Mahboob Alam and Gulam Muztaba were mentioned at serial Nos. 6 and 15. Thus there was no justification to entertain the complaints of these two persons in the year 2010 when they acquiesced to the said facts considerable long time and only in the year 2010 they made a complaint on the basis of Seniority List of the year 2005. The Additional Director General of Police (Railways), Lucknow has failed to advert to aforesaid plea raised by the petitioner in his explanation. Pertinently, in the impugned order the respondent No. 2 has taken note of the explanation submitted by the petitioner in his reply 23.12.2011 except this material fact which he has omitted to consider in the impugned order.

12. Thus facts stand established from record that the promotion of the petitioner in the year 1982 does not suffer from any illegality as in view of the Government Order dated 9.2.1976 the Ministerial Cadre was divided in five separate categories. The Railway Police was one of the category and in pursuance of the permission granted by the Inspector General of Police (Railways), Lucknow a Committee was constituted for the promotion on the post of Sub-Inspector (Ministerial) and the petitioner was found suitable in the said departmental examination. Relevant would it be to say, that for the first time a clarificatory order was issued on 21.3.2003 in respect of the Government Order dated 9.2.1976. The said clarificatory notice was issued in response to the communication of the Deputy Inspector General of Police (Railways), dated 17th September, 2002. There is nothing on the record to indicate the reasons for inordinate delay for more than 26 years. In the impugned order it has been conceded/admitted that there was departmental lapse seeking explanation after such a long time, therefore, in my view the petitioner cannot be made to suffer for a situation which was created by the department and the petitioner was not responsible in any way.

For the reasons given herein above the Court is of the view that the impugned order deserves to be quashed. Accordingly it is quashed.

This Court earlier on 12.10.2011 had allowed the writ petition and quashed the order dated 22.7.2010 and 6.9.2010 which was passed against the petitioner in respect of his seniority and the recovery of the alleged excess amount. In pursuance of the said order the impugned order has been passed. No useful purpose would be served to remit the matter again to decide the matter afresh as the petitioner stood retired on 31.12.2010. His gratuity and other post retiral benefits have been withheld by the respondent department. He has been paid only provisional pension.

In the facts and circumstances the case, the end of justice would be served, if a direction is issued that no recovery shall be made from the petitioner in respect

of the salary and other allowances paid to him after the year, 1997 till his date of retirement.

Accordingly the writ petition is allowed.

No recovery shall be made from the petitioner in respect of the salary and other allowances paid to him after the year, 1997, till his date of retirement. The petitioner shall be entitled for all post retiral benefits and pension ignoring the aforesaid two orders as expeditiously as possible but not later than three months from the date of communication of this order.

No orders as to cost.