
(2002) 03 AHC CK 0051
In the Allahabad High Court
Case No : C.M.W.P. No. 22524 of 1990

Dhirendra Chaturvedi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 14-03-2002

Acts Referred:

Uttar Pradesh Service of Engineer Class II (Irrigation Branch) Rules, 1936 — Rule 5

Citation : (2002) 2 AWC 1280 : (2002) 95 FLR 501 : (2002) 3 UPLBEC 2528

Hon'ble Judges : S.N. Srivastava, J;D.S. Sinha, J

Bench : Division Bench

Advocate : A.K. Gupta and V.K. Gupta, for the Appellant; V.N. Agarwal, S.C., for the Respondent

Final Decision : Dismissed

Judgement

D.S. Sinha and S.N. Srivastava, JJ.—Heard Sri A. K. Gupta, learned counsel appearing for the petitioner and Sri V. N. Agarwal, learned standing counsel for the State of U. P., representing the respondents.

2. The petitioners, an erstwhile Junior Engineer (Civil) in the Irrigation Department of the State of U. P., urges this Court to Issue mandamus to the respondents directing them to promote him as Assistant Engineer and also to pay his salary and other benefits admissible to Assistant Engineer.

3. Indisputably, the promotion to the post of Assistant Engineer is regulated by sub-rule (iv) of Rule 5 of the U. P. Service of Engineers Class II, Irrigation Branch Rules, 1936 (as amended by the Uttar Pradesh Service of Engineers Class II, Irrigation Branch (Amendment) Rules, 1988), (hereinafter called the Rules). Sub-rule (iv) of Rule 5 of the Rules is as under :

"5. Sources of Recruitment. --Recruitment to the service shall be made by the Government :

(iv) by promotion, on the basis of merit, through the Uttar Pradesh Public Service

Commission from amongst such permanent Junior Engineers and permanent Computers of the Irrigation Department as ;

(a) possess bachelors degree in Engineering or an equivalent degree in Engineering from a recognized institution or are associate members of the institute of Engineers ; or

(b) are diploma holders and have put in at least 7 years service as Junior Engineers or Computers in the Irrigation Department."

4. Obviously, according to the provisions of Sub-rule (iv) of Rule 5 of the Rules, quoted above, the promotion to the post of Assistant Engineer is granted on the basis of merit through selection by the U. P. Public Service Commission.

5. It appears that the petitioner was not selected on account of an adverse entry awarded to him in the year 1984-85 though it was expunged subsequent to the selection.

6. From the averments made in paragraph 13 of the counter-affidavit of Sri Kashi Nath Pandey, filed on behalf of the respondents. It transpires that the petitioner has been promoted as Assistant Engineer vide order dated 12th April, 1991.

7. Learned counsel appearing for the petitioner does not dispute the fact that the petitioner has, indeed, been promoted vide order dated 12th April, 1991. However, he contends that the petitioner be granted the benefits admissible to Assistant Engineer from the date from which his other colleagues had been promoted.

8. The contention of the learned counsel is obviously misconceived. It cannot be gainsaid that in view of the clear provision of Rule 5 of the Rules, the benefit admissible to an Assistant Engineer cannot be granted until the incumbent is duly selected by the Public Service Commission on the basis of merit. The petitioner having not been selected by the Public Service Commission on merits and appointed till 12th April, 1991, he is not entitled to the benefits claimed by him for the period prior to his selection by the Public Service Commission on merits, and appointment vide order dated 12th April. 1991.

9. For what has been stated above, the petition lacks merit and deserves to be dismissed. Accordingly, it is dismissed. There is no order as to costs.