
(2003) 08 AHC CK 0133
In the Allahabad High Court
Case No : C.M.W.P. No. 33107 of 2003

Jai Prakash Gupta

APPELLANT

Vs

Chief Engineer, Hydel, U.P. Power Corporation Ltd. and Others

RESPONDENT

Date of Decision : 04-08-2003

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2003) 4 AWC 3252

Hon'ble Judges : S.N. Srivastava, J

Bench : Single Bench

Advocate : Piyush Gupta, for the Appellant; Nripendra Misra, for the Respondent

Final Decision : Disposed Of

Judgement

S.N. Srivastava, J.—Challenge in this petition is directed against the order dated 28.5.2003 whereby the order dated 31.12.2002 passed by the respondent No. 2 has been rescinded and aggrieved by the order aforesaid, the petitioner has rushed to this Court for relief of quashing the impugned order and a writ of mandamus commanding the respondent No. 2 to levy implementation to the order dated 31.12.2002.

2. The facts forming background to the present petition are that the petitioner applied to the General Manager, U.P. Power Corporation, Lucknow for his transfer from Electricity Distribution Division II, Rampur to Electricity Urban Distribution Circle Moradabad by means of application dated 18.9.2002. The transfer sought by the petitioner was premised on the ground that his wife was ailing and was being administered treatment at Moradabad and further that the petitioner was also afflicted with heart disease and also that his daughter was receiving education at Hindu College, Moradabad. It transpires from the record that consequent upon the receipt of the transfer order, the petitioner made application for being relieved from Rampur but at this stage, the concerned Executive Engineer did not relieve him in obedience to the transfer order and

instead, he sought cancellation of transfer order by means of letter dated 14.5.2003 citing reason that no person has been posted in place of the petitioner and that the work of recovery is adversely affected due to disinclination being betrayed by him ever since the receipt of the order of his transfer.

3. I have heard the learned counsel for the petitioner and Sri Nripendra Misra appearing for opposite party Nos. 2 to 5 and made sedulous scrutiny of the respective submissions.

4. The learned counsel for the petitioner submitted that the ground cited in the letter dated 14.5.2003 that no person has been posted in his place and that the work of recovery is hampered is nothing but a fabric of lies and in connection with this proposition, he drew attention of the Court to Annexure 10 from a perusal of which it transpires that one Qamar Abbas was transferred to Rampur and he has already reported for duty at 33/11 K.V. Up. Sansthan, Rampur. It is further submitted by the learned counsel that in addition to the petitioner, four more Junior Engineers are already working at Rampur and by this reckoning, the ground cited to seek cancellation of the order of transfer is fallacious and has no substance and appears to have been propounded out of malice towards petitioner. He further submitted that as on date, there is no dearth of Junior Engineers and the shortage has been taken as an excuse to frustrate the transfer of the petitioner.

5. From a conspectus of the above facts, it transpires that there was no valid basis for the Executive Engineer to seek cancellation of the order of transfer inasmuch as it is borne out from Annexure-10 to the writ petition that one Qamar Abbas was transferred and he has already reported for duty at Rampur at the relevant time and thus the ground in the communication that no person has been posted in place of the petitioner, falls to the ground. It also appears from the record that there was no much dearth of Junior Engineers at Rampur so as to adversely visit upon the work of recovery and the dearth of the staff has been magnified beyond all proportions for some other reason, In the light of the above facts, there is every vestige of substance in the contention of the learned counsel that the bald report of the Executive Engineer has been acted upon in a mechanical manner without any Indicia on the part of the authority concerned to delve deeper into the true intendment behind seeking cancellation of the transfer order. In the above conspectus, it docs follow that Incorrect report of the Executive Engineer has been mechanically acted upon and the transfer order of the petitioner has been rescinded on grounds, which are fallacious. An Executive Engineer holds a responsible post and is not expected to indulge in distortion as he has done in the report. On the other hand, the authority concerned should have been careful and circumspect enough to act upon the report of the Executive Engineer on ground of alleged interest of administration. The words "Public Interest" or "interest of administration" has been often exploited by the authorities to give veneer of validity to their arbitrary action or orders and this aspect has been noticed by the Apex Court in Delhi Transport Corporation Vs.

D.T.C. Mazdoor Congress and Others, in the following observations :

"There is need to minimize the scope of the arbitrary use of power in all walks of life. It is inadvisable to depend on the good sense of the individuals, however high placed they may be. It is all the more improper and undesirable to expose the precious rights like the rights of life, liberty and property to the vagaries of the individual whims and fancies. It is trite to say that individuals are not and do not become wise because they occupy high seats of power and good sense, circumspection and fairness does not go with the posts, however high they may be. There is only a complacent presumption that those who occupy high posts have a high sense of responsibility. The presumption is neither legal nor rational. History does not support it and reality does not warrant it. In particular, in a society, pledged to uphold the rule of law, it would be both unwise and impolitic to leave any aspect of its life to be governed by discretion when it can conveniently and easily be covered by the rule of law."

6. In the facts and circumstances of the case, I feel called to dispose of the petition finally attended with the direction that the petitioner may prefer representation to the authority concerned, i.e., the General Manager, U.P. Power Corporation Ltd., Moradabad embodying therein all such aspects and grounds as pressed into service in the instant petition and in case any such representation is preferred to the General Manager respondent No. 2, he would consider the matter in all its aspects in a fair and objective manner and pass appropriate orders assigning reasons for his conclusions within a reasonable time preferably within a period of one month from the date of filing of such representation.

7. The petition is accordingly disposed of in terms of the above directions and observations.