

(2011) 07 AHC CK 0262
In the Allahabad High Court
Case No : Writ Petition No. 671 (SB) of 2008

Mahesh Kumar

APPELLANT

Vs

U.P. Power Corporation Limited

RESPONDENT

Date of Decision : 22-07-2011

Acts Referred:

Uttar Pradesh State Electricity Board (Retirement of Employees) Regulations, 1975 — Regulation 1(2)

Citation : (2012) 1 AWC 648 : (2011) 131 FLR 513

Hon'ble Judges : Ritu Raj Awasthi, J; Pradeep Kant, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Pradeep Kant and Ritu Raj Awasthi, JJ.—Heard the learned Counsel for the petitioner Sri Pankaj Nath and Sri Sanchit S. Asthana for the respondent Corporation.

2. The petitioner challenges the order of his compulsory retirement dated 25.3.2008 passed by the Managing Director, U.P. Power Corporation Ltd.

3. The petitioner joined the services of the then U.P. State Electricity Board, now U.P. Power Corporation Ltd. (hereinafter referred to as the "Corporation") on 30.1.1973 as Assistant Engineer in the Electrical and Mechanical cadre. While working as such, he was allowed to work as temporary Executive Engineer in officiating capacity on 22.10.1988. Thereafter he was designated as Senior Assistant Engineer (Special Grade) on completion of 14 years of service on 7.12.1988. Later on, he was given the pay scale of Superintending Engineer on 26.9.1998.

4. The Corporation decided to weed out the dead woods and, therefore, it constituted a screening committee for considering the case of such officers, who fell within the mischief of the rule of compulsory retirement, which was governed by the rules known as U.P. State Electricity Board (Retirement of Employees)

Regulations, 1975.

5. The petitioner's specific case is that there was no adverse material against him, on which any opinion could have been formed objectively that the petitioner has become dead wood or that his integrity was doubtful or he was not fit for being retained in service but even then on consideration, which cannot be said to be relevant, the order of compulsory retirement has been passed.

6. Elaborating the aforesaid argument, learned Counsel for the petitioner has submitted that there were no adverse entries against the petitioner, barring adverse entries of the year 1982-83, 1983-84 (for a period of six months) and 1989-90. So far the entry of the year 1982-83 is concerned, that has been expunged and against the adverse entries of the years 1983-84 and 1989-90, representations are still pending which have not been decided.

7. Apart from the plea that there was no material for compulsory retiring the petitioner, the learned Counsel has also submitted that the very criteria adopted by the Corporation for retiring an officer compulsorily was per se illegal, bad and arbitrary and that even according to the said criteria, the petitioner did not fall within the mischief of the said criteria, so as to be considered for compulsory retirement.

8. The criteria which was adopted by the screening committee was that marks be awarded for every warning, adverse entry, supersession etc. and if such marks, in total, are 100 or more than 100, then such an officer would be considered for compulsory retirement, whereas the petitioner was awarded only 30 marks under the said criteria but even then his case was considered for compulsory retirement.

9. Alternative argument is that mere supersession of the petitioner at three occasions for being regularly promoted on the post of Superintending Engineer would not constitute a ground for compulsory retirement, as he was already given the pay scale of Superintending Engineer though was working on the substantive post of Executive Engineer, therefore, his work and conduct as Executive Engineer was to be seen and the result of the selection for the next higher post could not have been made the basis for compulsory retirement.

10. Sri Sanchit S. Asthana appearing for the Corporation has defended the order vehemently and has produced the record.

11. From the record it is clear that the screening committee decided the procedure and criteria to be adopted in its meeting held on 25.1.2008, wherein it was decided that the punishments which have been awarded to an officer during his entire service period would be valued in accordance with the criteria given therein and thereafter on the basis of the marks obtained, coupled with the service record and his health and also if he has made pretexts for not going on transfer for which he has put pressure, the matter regarding compulsory retirement be considered along with annual entries of past ten years.

12. The marks which were to be assigned to various punishments were as under:

- (1) For every warning - 5 marks
- (2) For every censure entry -10 marks
- (3) For every increment withheld with non-cumulative effect -10 marks
- (4) For every increment withheld with cumulative effect - 20 marks
- (5) For every doubtful integrity - 50 marks
- (6) For every adverse entry - 20 marks
- (7) For every supersession in promotion -10 marks
- (8) For sanction of criminal prosecution - 20 marks
- (9) For medical unfitness - 20 to 50 marks
- (10) Apart from above, for every minor punishment like stoppage of efficiency bar, recovery of financial loss, partly or fully from salary etc. -10 marks
- (11) For every major punishment like reversion on lower post or grade or time bound scale or lower stage of time bound scale etc. - 40 marks.

13. In the meeting dated 5.3.2008, the screening committee was constituted and it was provided that the service record of all the Executive Engineers be scrutinized and those officers who are awarded 100 or more than 100 marks on the criteria as discussed above, be considered for compulsory retirement. Compulsory retirement was also directed to be considered with respect to those officers for whom the Managing Director had made any such recommendation or such a recommendation has been made from the higher level. The term "higher level" has not been defined nor explained in the said meeting but presumably, it may relate to the recommendation, if at all made by the officer superior than the Managing Director.

14. The relevant portion of the minutes of meeting dated 5.3.2008 reads as under:

Samiti ki dwitiye baithak dinank 5.3.2008 ko sampann hui jisme nimn अधिकारियों द्वारा भाग लिया गया :

- (1) Sri Avnish Kumar Awasthi, Prabandh Nideshak, U.P. Power Corporation Ltd., Shakti Bhawan, Lucknow.
- (2) Sri Harishchandra Singh, Nideshak (ka.Prab. evam Prasha evam vitt), U.P. Power Corporation Ltd. Shakti Bhawan, Lucknow.
- (3) Sri Arun, Nideshak (virtan), U.P. Power Corporation Ltd., Shakti Bhawan, Lucknow.

Baithak mein samiti ke samaksh 20 varsh ki aharkari sewa poorn evam 50 varsh ki aayu prapt kar chuke adhishasi abhiyantaon ki soochi pradatt dandon ke aadhar par arjit ankon ke vivran ke saath prastut ki gayi.

Samiti dwara is soochi ka avlokan karne ke uprant un sabhi adhishasi abhiyantaon ke abhilekhon ki gahan samiksha/adhyayan kiya gaya jinko 100 athwa 100 se adhik ank prapt hain athwa anivarya sewanivratti ki sanstuti prabandh nideshak/uchh star se ki gayi hai.

15. The minutes of the committee aforesaid as well as the resolution passed on 25.1.2008 clearly show that only those Executive Engineers/officers could have been considered for compulsory retirement, who had to their credit or so to say, discredit, 100 or more marks. Admittedly, the petitioner was awarded only 30 marks and, therefore, on the aforesaid criteria, his case could not have been considered for compulsory retirement.

16. There is nothing on record nor anything has been placed before us to show that there was any recommendation made by the Managing Director or from higher level for compulsorily retiring the petitioner. The petitioner thus, not falling under any of the aforesaid two criteria, was not liable to be considered for compulsory retirement, in the wake of its own criteria as determined by the Corporation in its various meetings.

17. This apart, the supersession of the petitioner three times for regular promotion to the post of Superintending Engineer in itself could not be a ground for compulsory retirement.

18. There is nothing on record nor it has been urged by the respondent that the petitioner's work as Executive Engineer was not satisfactory or that he lacked in any respect in performing his duties as Executive Engineer. May be, that he was not found fit for being regularly promoted on the post of Superintending Engineer but that would not be a ground for ousting him from service from a post where his work has not been questioned and he has not been apprised of any shortcoming in performance of his duties.

19. When compulsory retirement of an officer is considered, his work and conduct on the post on which he is working and from where he is to retire, has to be considered. Future promotions or his being unsuccessful in getting promotion to the higher post would not be a relevant consideration for compulsorily retiring an officer, as it would amount to curtailment of his tenure of the post on which there is no grievance about his working.

20. Why the petitioner was not promoted or could not be promoted on the post of Executive Engineer and the criteria of promotion being seniority subject to rejection of unfit since are the questions which are not before us, therefore, we need not enter into these questions.

21. The screening committee report has been produced before us, which shows that, in fact, there was no adverse entry against the petitioner for the last ten years and, therefore, rightly, no adverse entry was shown against his name nor was considered by the Committee. The shortcomings which have been shown are that (i) he was awarded 30 marks because of supersession; and (ii) he has made

requests consistently for not being posted out of Lucknow.

22. The report says that out of his 34 years of service, he has remained in Lucknow for 20 years barring his posting at Panki (Kanpur), Varanasi and Faizabad at different intervals. Whenever he was posted out of Lucknow, he had given reasons of his health and other reasons-for staying at Lucknow. After making the aforesaid recital, the committee has taken into consideration the letter dated 15.10.2003 by means of which he has given an excuse for being posted at Agra and likewise the letters dated 10.12.2004, 7.12.2005, 17.2.2006, 19.6.2006, 26.12.2006 and 16.6.2007.

23. True, that the petitioner had made requests on one ground or the other for retaining him at Lucknow but it was the discretion of the Corporation either to accept his request or to reject the same. Once the Corporation accepted his request on reasons given by the petitioner and allowed him to stay at Lucknow, it is presumed that the reasons given by him appealed to the conscience of the Corporation and, therefore, the Corporation cannot take advantage of its own act nor the petitioner can be punished for that. In fact, ordering compulsory retirement because of the petitioner's various requests to stay at Lucknow would amount to punishing him for making such requests.

24. Compulsory retirement cannot be ordered by way of punishment and, therefore, the order also becomes punitive, which is not permissible under law.

25. We also take note of the fact that the criteria determined by the screening committee in its meeting dated 25.1.2008, wherein the act of an officer in getting over the transfer orders was made a basis for his compulsory retirement, appears to have been deliberately provided only for getting rid of the petitioner, as Counsel for the Corporation Sri Sanchit S. Asthana after looking to the record, very fairly stated that there was no other officer whose case fell under the said category. It was only the petitioner who consistently made requests for staying at Lucknow.

26. Such a criterion itself was wholly unjustifiable and unreasonable, and merely because the screening committee had included such a criterion in its resolution, it will not give a right to the Corporation to compulsorily retire an officer on a ground which does not get support from sub-regulations 2(b) and 2(c) of Regulation 1 of the U.P. State Electricity Board (Retirement of Employees) Regulations, 1975.

27. It is also to be noticed that every officer/employee has a right to make a representation against his transfer to his superior authority, namely, the transferring authority or appointing authority and it is the discretion of such authority to accept the representation or not. By merely making a request that the officer be not transferred out of Lucknow or to say, from his present place of posting, he does not commit any misconduct nor it adversely affects the functioning of his office, unless, of course, such a request has been rejected or even if not rejected, it is not accepted and the officer continues without any

authority at his original place of posting.

28. The Corporation in its wisdom accepted the request of the petitioner, whenever it was made and, therefore, no ill motive can be attributed to the petitioner nor he can be subjected to any punishment for making such a request, which the Corporation had itself accepted.

29. The report also says that the annual entries for the last ten years show that his work was satisfactory but again on some information received from the Chief Engineer (Distribution), Faizabad Region, Faizabad vide letter dated 1.1.2007, it has been said that because of his illness, he is not regularly present at Faizabad and, therefore, he is not in a position to discharge his functions properly as he goes to his permanent residence very frequently.

30. Learned Counsel for the petitioner has submitted that so far the aforesaid observation in the report is concerned, that is not the whole version of the Chief Engineer. In fact, the petitioner was issued a show cause notice for termination on 16.6.2007 on the same very ground to which the petitioner replied and thereafter the Chief Engineer forwarded the same and recommended that he may be transferred to Lucknow but that portion of the recommendations of the Chief Engineer has not been considered and obviously has not been quoted by the screening committee in its report, though there is no reason that when the letter of the Chief Engineer was before the Committee, then why the whole contents thereof were not noted by the Committee.

31. In case an officer is found guilty of some misconduct, he can be subjected to disciplinary proceedings and for that matter he can be suspended also, but compulsory retirement on the aforesaid facts and circumstances, could not have been ordered. The order of compulsory retirement of the petitioner thus, to sum up, is per se bad, illegal and without authority for the reason (i) he did not fall within the criteria of consideration of compulsory retirement as per the criteria determined by the screening committee itself, he having secured only 30 marks, whereas he should have been awarded at least 100 marks for such a consideration; (ii) there was no adverse material against him in regard to his functioning and working on the post of Executive Engineer; (iv) there was no adverse entry, as has also been found by the Committee itself, for the last ten years; (iv) his work was found satisfactory; (v) mere non-promotion to the next higher post of Superintending Engineer would not make him a dead wood for a post on which he was working substantively, unless, of course, there were reports of inefficiency and doubtful integrity against him; (vi) making request for allowing him to stay at Lucknow at times when transfer orders were passed in itself alone could not have been a ground for compulsory retirement, moreso, when such requests were accepted by the Corporation itself; (vii) the letter of the Chief Engineer was not seen in toto and a portion of the same was placed for making out a case for compulsory retirement, so as to give an impression that the petitioner was a habitual absentee at Faizabad and, therefore, he can be retired compulsorily; and (viii) the conclusion drawn by the screening committee

that efficiency and performance of the petitioner was below standard and his services would not be of any use to the department, cannot be said to be based on any material, much less any relevant material.

32. Counsel for the petitioner has also argued that the very basis of award of marks for determining as to whether an officer should be compulsorily retired or not, was per se illegal, for which he placed reliance on the cases of Ram Bharat Verma Vs. State of U.P. and Others, Ram Bharat Verma v. State of Uttar Pradesh and others, 2007 (25) LCD 1299 and Dev Dutt v. Union of India and others 2008 (117) FLR 1024 (S.C).

33. Sri Sanchit S. Asthana, in response, submitted that the aforesaid criterion is not under challenge and, therefore, it is not open for the petitioner to raise such an issue.

34. We also feel that the criteria for compulsory retirement not being under challenge, we need not interfere with the same and, therefore, we leave this issue open.

35. For the reasons aforesaid, the order of compulsory retirement of the petitioner dated 25.3.2008 is set aside. Since the petitioner has already crossed the age of superannuation, therefore, he shall be deemed to have been in continuous service till the date of his retirement and shall be given all consequential benefits of salary etc. accordingly. The amount of arrears of salary and other dues shall be paid to the petitioner within a maximum period of three months from the date of receipt of a certified copy of this order.

36. The writ petition is allowed. No order as to costs.