
(2000) 05 AHC CK 0159
In the Allahabad High Court
Case No : C.M.W.P. No. 21940 of 2000

Narendra Nath Sinha

APPELLANT

Vs

State of U. P.

RESPONDENT

Date of Decision : 22-05-2000

Acts Referred:

Uttar Pradesh Public Works Department Services of Engineers (Higher) Rules, 1990 — Rule 5

Citation : (2000) 3 AWC 1935 : (2000) AWC 1935 : (2000) 86 FLR 283 : (2000) 3 UPLBEC 2450

Hon'ble Judges : M. Katju, J;D. R. Choudhary, J

Bench : Division Bench

Advocate : T. P. Singh and Ashotosh Srivastava, for the Appellant; S. C., for the Respondent

Final Decision : Allowed

Judgement

M. Katju, J.—This writ petition has been filed for quashing the impugned order dated 2.5.2000 Annexure-6 to the writ petition and for quashing the downgraded entries of the petitioner pertaining to the years 1984-85 to 1989-1990. 1993-94 and 1994-95 in the petitioner's A.C.R. and to consider the case of the petitioner for promotion to the post of Chief Engineer Level-11 against the vacancy of the year 1994-95 Ignoring the downgrading entries given by the Reviewing Officer and Accepting Officer.

2. We have heard learned counsel for the parties and perused the record.

3. The petitioner is presently working as Superintendent Engineer in P.W.D., U. P. The U. P. Public Service Commission selected him as Assistant Engineer and thereafter he was appointed. He was promoted as Executive Engineer from 12.7.1979 and further as Superintendent Engineer initially on ad hoc basis and later on regular basis on which post he is working since 30.5.1981. He is seeking promotion as Chief Engineer Level-II (Electrical and Mechanical) under the U. P. Public Works Department Services of Engineers (Higher) Rules, 1990. Rule 5 (iii)

of the said rules provides that the post of Chief Engineer Level-II shall be filled in by promotion from substantially appointed Superintending Engineers. True copy of the rules is Annexure-1 to the petition. A vacancy on that post arose on account of retirement of one Sri D. M. Gupta in 1994. Thereafter when he retired, one A. N. Tiwari who was junior to the petitioner was promoted on 4.12.1998 and when A. N. Tewari retired, one Harish Kumar who was also junior to the petitioner was promoted on 28.1.1999 as Chief Engineer Level-II. The petitioner filed a claim petition before the U. P. Public Services Tribunal and the Tribunal by judgment dated 30.8.1999 allowed the petition vide Annexure-2 to the petition. The Tribunal quashed the appointment of Sri A. N. Tewari and Sri Harish Kumar and directed that fresh appointment shall be made after selection by the Selection Committee and the petitioner shall also be considered. In para 10 of the petition, it is alleged that the petitioner is not being considered as the entries given by the reporting officer have been downgraded in the character roll by the reviewing authority and accepting authority without giving opportunity of hearing and without showing any reason. Though the reporting officer had given entries Very good and excellent but the reviewing authority had downgraded such entries. In para 11 of the petition, it is alleged that promotion from Superintending Engineer to Chief Engineer is determined on the basis of merit taking into consideration entries for the last 10 years. In para 13 of the petition, it is stated that the State Government by Government order dated 28.3.1984 laid down the procedure by which A.C.R. was to be recorded. Clause 4 (2) of the Government order dated 28.3.1984 provides that in case of difference of opinion between the reporting officer and the Reviewing Officer, the Reviewing Officer shall record reasons for the same and similarly the accepting officer must also record reasons. True copy of the Government order dated 28.3.1984 is Annexure 3. The G. O. dated 5.3.1993. Annexure 4 to the petition, also requires recording of reasons for downgrading entries. The petitioner has relied on the decision of the Supreme Court in. U. P. Jal Nigam v. Prabhat Chandra Jain and others JT 1996 (2) SC 363, which laid down that reasons must be recorded for downgrading the entries. True copy of the Judgment of the Supreme Court is Annexure-5 to the petition.

4. In para 19 of the writ petition, it is alleged that the petitioner was not given any notice before downgrading the entries. Aggrieved the petitioner filed a representation dated 28.10.1999 to the State Government vide Annexure-6 to the petition and he made a supplementary representation dated 5.2.2000, which is Annexure-7 to the petition. Thereafter, he filed Writ Petition No. 1799 of 1999 in this Court which was disposed of by judgment dated 3.11.1999 vide Annexure-8. By that judgment, this Court directed that the petitioner's representation shall be decided by the Principal Secretary before the meeting of the Departmental Promotion Committee by a speaking order. The representation of the petitioner was disposed of by means of the impugned order dated 2.5.2000 vide Annexure-9. Aggrieved the petitioner filed this writ petition in this Court.

5. In this case on 9.5.2000, learned standing counsel gave an undertaking that he will seek instructions or file counter-affidavit but no counter-affidavit has been filed, although the record has been produced before us.

6. A large number of grounds have been taken in this writ petition but in our opinion, this writ petition deserves to be allowed on a short point that before downgrading the character roll entries, no reasons have been recorded and no show cause notice was given to the petitioner. In our opinion, the downgrading of the character roll entries has civil consequences. Hence opportunity of hearing should have been given to the petitioner and reasons should have been recorded for downgrading the entries but that was not done, and hence the rules of natural justice as well as the G.O. dated 28.3.1984 and 5.3.1993 have been violated. As held by the Supreme Court in *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, any order, which has civil consequences must be passed after giving opportunity of hearing. The impugned orders certainly have civil consequences as they affect the petitioner's chances of promotion and future prospects. In *S.N. Mukherjee Vs. Union of India*, the Supreme Court held that reasons should be recorded. The Supreme Court in that decision observed that recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of arbitrariness and assures a degree of fairness in the process of decision making. The decision of the Supreme Court in *U. P. Jal Nigam's case* (supra) also supports this view.

7. In *Breen v. AEU* (1971) 1 AER 1148, Lord Denning observed that A.W.C. 122 giving of reasons "is one of the fundamentals of good administration".

8. The rationale for the requirement to give reasons for administrative decisions are several ; (1) Reasons help to control the exercise of discretion, for It requires the authority to explain the relevant factors which he has taken into consideration, and thus It reduces the possibility of whim and caprice. (2) Reasons satisfy the desire of the affected person to know why the decision was reached (particularly when it is against him). As held in *In re Poyser and Mills Arbitration* (1964) 2 QB 467 "The decision might be perfectly right, but the person against whom it was made was left with the real grievance that he was not told why the decision had been made. "(3) Rational criticism of a decision can be made only when its reasons are known."

9. As De Smith, Woolf and Jowell remark in "Judicial Review of Administrative Action" : "The individual cannot be left to receive an unreasoned decision, as if the "distant oracle" has spoken."

10. The requirement to give reasons even for administrative decisions is being emphasized by Courts all over the world in view of the forward march of democracy, which implies transparency and open-mindedness, e.g., in, Ireland vide *State of McGeough v. Louth County Council* I LTR 107, and in South Africa vide *Nkondo v. Minister of Law and Order* (1986) 2 SA 756 and *Jeffrey v. President, South African Medical and Dental Council* (1987) 1 SA 387.

11. As observed by Mr. Soli Sorabji, Attorney-General of India, in his article "The Duty to give reasons in Administrative Law" "The apprehension that giving reasons will place an unbearable burden on the administration is both exaggerated and misplaced. What is needed is not a detailed and elaborate judgment, but a brief and pithy statement of reasons for the decision." (vide Democracy, Human Rights and the Rule of Law"--Essays in Honour of Nani Palkhivala).

12. In the circumstances, the writ petition is allowed and the impugned order dated 2.5.2000 as well as the impugned downgrading entries are quashed. The respondents are directed to consider the petitioner for promotion to the post of Chief Engineer level-II ignoring the Impugned order dated 2.5.2000 and the impugned downgrading entries given by the Reviewing Officer and Accepting Officer. No order as to costs.