
(1999) 04 AHC CK 0193
In the Allahabad High Court
Case No : C.M.W.P. No. 25169 of 1996

Prabhu Nath Singh

APPELLANT

Vs

Executive Engineer, R.E.S., Ghazipur and others

RESPONDENT

Date of Decision : 26-04-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 3 AWC 2165 : (1999) 82 FLR 914 : (1999) 2 UPLBEC 1131

Hon'ble Judges : A.K. Yog, J

Bench : Single Bench

Advocate : Awadhesh Narain Srivastava and S.S. Chauhan, for the Appellant;

Final Decision : Allowed

Judgement

A.K. Yog, J.—Petitioner alleges in the present writ petition under Article 226 of the Constitution of India that he was working as Junior Engineer and he was suspended vide order dated 24th February, 1994. While under suspension, he was attached to Ghazipur Division of Rural Engineering Services under the State Government. In para 8 of the writ petition, it is mentioned that suspension was in contemplation of disciplinary proceedings and that an enquiry was going on when the writ petition was filed. Petitioner has filed on 27.11.1997 a supplementary affidavit after serving its copy in the Office of Chief Standing Counsel on 25.11.1997. Para 16 of the said supplementary affidavit reads--"that it is not out of place to mention here that from time to time Executive Engineers were appointed to hold and complete the enquiry about alleged charges mentioned in the suspension order dated 24th February, 1994, but till date none of them has completed, nor any irregularity or mistake on the part of the petitioner recovered or found out by the Executive Engineers". Time contemplated under Rules of Court for filing counter-affidavit to the writ petition and the supplementary affidavit under Rules of Court has already expired. There is no oral request or application on behalf of the respondents to file counter-affidavit or supplementary counter-affidavit, Averments in writ petition and the

supplementary affidavit. hence, remains uncontroverted. It appears that enquiry against the petitioner had not been completed as per the material on record of the present writ petition.

2. On 13th August. 1996. the learned single Judge passed an interim order which reads-- "until further orders of this Court, the transfer order dated 10th July, 1996, in so far as it relates to the petitioner, shall remain suspended and he would remain under suspension attached to the Division Ghazipur. The respondents are further directed to complete the disciplinary inquiry within" four months of service of the copy of this order".

3. Supplementary affidavit in the present case was sworn on 25th November, 1997. Conspicuously enough, there is no averment in the supplementary affidavit to the effect that the above referred order dated 13th August. 1996 passed by the learned single Judge (Hon''ble S. C. Verma, J.) was served upon the respondent. In absence of a categorical averment to that effect, it cannot be presumed that said order was communicated to the concerned authorities. Learned standing counsel also shows his inability to confirm whether said order was communicated or not to the concerned authority. Hence, cannot be said that the concerned officer i.e., officer responsible for conducting inquiry and disciplinary proceedings are guilty of not complying with the order dated 13th August, 1996 passed by this court.

4. There is another aspect of the matter. Once petitioner was suspended in the year 1994 in fitness of things inquiry and disciplinary proceedings ought to have been completed expeditiously and in case petitioner was avoiding or not cooperating in the progress of the disciplinary enquiry, then adequate and suitable action ought to have been taken against the petitioner. Record is completely silent on that aspect. One falls to comprehend and ascertain as to why disciplinary proceedings have not been completed, though a period of approximately four years has already elapsed. Keeping disciplinary inquiry pending indefinitely or for that matter delaying the same indefinitely for no just cause, is bound to create frustration in the delinquent officer. On one hand, keeping inquiry pending in abeyance and thus fate of delinquent officer in suspense and on the other hand paying subsistence allowance to an erring official is an unwarranted expenditure and uncalled for burden on the public exchequer. Procrastinating disciplinary proceeding indefinitely for no Just cause, or some time inordinate delay for one reason or the other though avoidable, are usual features of the present day and the Court takes Judicial notice of the same. An officer/authority, which decides to initiate disciplinary inquiry, is under a statutory obligation to complete the same expeditiously and promptly in accordance with rules as otherwise the very purpose of holding disciplinary inquiry is rendered nugatory since it will not work as an exemplary or deterrent measure for others. In many cases even the concerned delinquent official manages to escape consequence of the disciplinary inquiry.

5. The present writ petition has been filed against the transfer order dated 10th

July, 1996 (Annexure-1) and the consequential order dated 16th July, 1996 (Annexure-2). Since the impugned order of transfer was stayed vide interim order dated 13th August, 1996, the order of transfer in question becomes meaningless and redundant by passage of time. Even if it is assumed that the petitioner was transferred in compliance of the impugned order of transfer dated 10th July, 1996 the present petition "becomes in fructuous as a couple of years have already passed bringing in existence, possibly, complete change in administrative exigencies as an administrative set up.

6. It is expedient that the impugned order of transfer dated 10th July, 1996 (Annexure-1) and consequential impugned order dated 16th July, 1996 (Annexure-2) to the writ petition are being set aside. Respondents are at liberty to make a fresh order as may be permissible under law taking into account the present situation and development if at all deemed necessary.

7. Before parting with the case, it seems appropriate in the facts of the case that a certified copy of this judgment be sent to the Chief Engineer, Rural Engineering Services, Eastern U. P., Faizabad (Respondent No. 3) as well as to the Chief Secretary, Government of U. P., Lucknow, for initiating enquiry so as to ascertain the responsibility of the officer's for not concluding the disciplinary enquiry and thereby causing loss of public exchequer by paying subsistence allowance to the petitioner. Concerned authority shall take suitable action after holding enquiry on this aspect of the matter and it is hoped suitable order shall be passed for guidance to the concerned officers in future and if deemed fit, after fixing responsibility erring official may be made accountable and face consequence for causing loss to public exchequer.

8. The writ petition is allowed with costs subject to the observation made above.