

(2008) 04 AHC CK 0269
In the Allahabad High Court

Radhey Shyam

APPELLANT

Vs

U.P. Power Corporation Ltd. and Another

RESPONDENT

Date of Decision : 09-04-2008

Acts Referred:

Citation : (2008) 119 FLR 335

Hon'ble Judges : V.K. Shukla, J

Bench : Single Bench

Final Decision : Allowed

Judgement

V.K. Shukla, J.—Present writ petition has been filed by the petitioner for issuing writ in the nature of mandamus commanding the opposite parties to open sealed cover and promote the petitioner to the post of Assistant Engineer with effect from 25.1.1995 i.e. the date when person junior to the petitioner were promoted to the post of Assistant Engineer, notwithstanding adverse entry and punishment recorded against another person named Sri Radhey Shyam who was posted at Bareilly.

Brief background of the case is that petitioner was initially appointed on the post of Line Inspector/Junior Engineer. Petitioner submits that promotional exercise was undertaken and list of incumbents who have been promoted was published and therein name of petitioner did not find figure. Sole ground for non-suiting the claim of the petitioner was a report wherein it was mentioned that petitioner while posted at Electricity Distribution Division, Bareilly was given punishment. Petitioner came with specific case that at no point of time, he was ever posted at Electricity Distribution Division, Bareilly, as such report which has been submitted is totally incorrect report and based on non-existent ground.

2. This Court on presentation of present writ petition on 4.12.1995 asked the respondents-authority to consider the representation of the petitioner.

3. Counter affidavit has been filed (Xerox copy of the same is on record) and therein it has been accepted that claim of the petitioner was considered for

promotion to the post of Assistant Engineer by the Departmental Promotion Committee in the meeting held on 17.1.1995 but on account of the fact that punishment was shown against him, his service record was considered as poor and he was not found fit for promotion. This fact has been admitted in paragraph-5 that inadvertently punishment was shown against the name of the petitioner while he was posted at Electricity Distribution Division, Bareilly. This fact has also been admitted that on account of this punishment petitioner was not found suitable for promotion for the post of Assistant Engineer by the Departmental Promotion Committee and accordingly his candidature has been passed over. It has also been accepted that Chief Engineer (Hydel) vide letter dated 18.2.1995 intimated the Board that petitioner was never posted at Electricity Distribution Division, Bareilly, as such punishment earlier reported against him be deleted. Thereafter petitioner's claim was again considered for promotion to the post of Assistant Engineer by the Departmental Promotion Committee in the meeting held on 27.8.1995 and the petitioner has been approved for promotion but actual orders of promotion of the petitioner could not be issued due to stay order dated 17.12.1995, passed in writ petition No. 3902 of 1995.

4. Thus, the claim of the petitioner has been accepted by respondent-authority and only reason on account on which claim of the petitioner has not been given effect is the order dated 17.12.1995. In writ petition No. 3902 of 1995, petitioner is not at all party and coupled with this in the said writ petition on 13.5.1998 clear cut order has been passed that respondent will be at liberty to make promotion but the same shall however, be subject to the result of the writ petition.

5. Once claim of the petitioner has been non-suited on totally unsustainable ground and thereafter error which has been committed by the respondent-authority same has been rectified and claim of the petitioner has been accepted by the Departmental Promotion Committee then there is no occasion to " deny the benefit of the promotion to the petitioner on the post of Assistant Engineer and not to implement and execute the order.

6. Consequently in the facts and circumstances of the present case as Departmental Promotion Committee has already passed order for promotion on the post of Assistant Engineer, respondents are directed to see that further follow up action be taken within one month from the date of presentation of certified copy of this order and petitioner shall be extended all benefit as has been extended to his junior on promotion i.e. in term of seniority and monetary benefits etc.

Consequently for the reason stated above, writ petition is allowed.