
(2002) 07 AHC CK 0095
In the Allahabad High Court
Case No : C.M.W.P. No. 8750 of 2002

Ravindra Nath Upadhyay

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 05-07-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 3 AWC 2388 : (2002) 3 UPLBEC 2600

Hon'ble Judges : Rakesh Tiwari, J;M. Katju, J

Bench : Division Bench

Advocate : Bhagwati Prasad, for the Appellant; Pradeep Kumar, S.C., for the Respondent

Final Decision : Dismissed

Judgement

M. Katju and Rakesh Tiwari, JJ.—Heard learned counsel for the parties and perused the record.

2. The petitioner is aggrieved against the order dated 27.4.2000, passed by the State Government reverting the petitioner from the post of Additional Commissioner, Trade Tax to the post of Deputy Commissioner. The petitioner challenged this order of reversion before the U. P. Public Service Tribunal (hereinafter called as "the Tribunal") which dismissed his claim application by judgment dated 19.11.2001. Both these orders have been impugned in this writ petition.

3. The case of the petitioner is that a Departmental Promotion Committee (hereinafter called as "the D.P.C.") was held in the year 1998 for promotion to the post of Additional Commissioner. The petitioner was considered and recommended by the D.P.C. for promotion. Accordingly, he was promoted to the post of Additional Commissioner vide order dated 16.10.1998. It is contended by the petitioner that he has been reverted to the post of Deputy Commissioner by order dated 27.10.2000 (Annexure-7 to the writ petition) arbitrarily and without

giving any opportunity of hearing.

4. The State Government contested the claim, inter alia, on the ground that petitioner committed forgery and had fabricated entries in his character roll and was wrongly recommended for promotion by the D.P.C. on the basis of such forged and interpolated entries in the character roll. It has been stated in paragraph 26 of the counter-affidavit of Subhash Chandra, Deputy Secretary, Tax and Registration Department that but for the forged entries the petitioner would not have been recommended and promoted as Additional Commissioner, Sales Tax.

5. It has also been submitted by the respondents that the petitioner, had filed an earlier writ petition challenging the same order, which was dismissed and hence this second writ petition is not maintainable. It is further submitted that the present case is a clear case of fraud and interpolation in service records and hence, the principles of natural justice are not attracted, as fraud vitiates all proceedings.

6. The sole controversy in this case is as to whether the service record/character roll of the petitioner for the years 1994-95 and 1995-96 were interpolated by the petitioner to get benefit of promotion.

7. The allegation in the counter-affidavit is that the petitioner was given only entry of "attain", which means "good". This was changed to "Utkrisht" i.e., "outstanding". It is further stated that promotion from the post of Deputy Commissioner to the post of Additional Commissioner is made on the basis of merit. "Utkrisht" is an outstanding entry, which carries three marks, while "uttam" carried one mark. Thus, a person carrying the remark "utkrisht" gets two additional marks for each year.

8. In order to get selected, the entry in the service record was erased by using eraser or Erazex Correcting Fluid and was substituted by the entry "utkrisht". Had the entry not been changed, the petitioner would not have been selected. In paragraph 26 of the counter-affidavit of Sri Subhash Chandra, it has been clearly stated that "if entries of the petitioner for the years 1994-95 and 1995-96 were taken as "uttam", the petitioner would be out of promotion and if they are taken as "utkrisht" the petitioner would be promoted. The D.P.C. Initially took those entries as "utkrisht" and promoted the petitioner to the post of Additional Commissioner but subsequently when it noticed that the entries were in fact "uttam" and manipulated to "utkrisht", it was realised that the petitioner was not entitled to be promoted and the order had been obtained on the basis of forged and manipulated character rolls of these two years and hence the D.P.C. corrected itself."

9. We have seen the original records produced before us. The change is apparent from the back side of the paper, where the word "uttam" is visible even now.

10. According to the respondents, when this forgery came to light, an enquiry

was made from the Commissioner Trade Tax, who certified by letter dated 4.12.1999 (Annexure-C.A. 8) that he had only given entry of "uttam" to the petitioner and not "utkrisht". The forgery has also been confirmed by the Director, Laboratory, Lucknow.

11. It is pertinent to mention here, that the petitioner has not denied the interpolation but has taken a stand that the service record remains with the Government and he could have no access to it and as such, he cannot be punished for the interpolation committed by someone else.

12. It may be stated that by the interpolation, none else could have been benefited except the petitioner. So far as access to the departmental record is concerned, we find that the petitioner has quoted in his petition the extracts of confidential notings in his file given by the Chief Minister and has also filed a copy of the letter of the Director, Forensic Laboratory, Lucknow as Annexure-24 to the writ petition, which show that the petitioner had easy access to his service record, since he at that time held a high post in the hierarchy of service. Had this interpolation not been done, the petitioner would not have been selected for promotion.

13. It seems to us that the petitioner is responsible for the forgery in his service record. The Tribunal has also recorded a finding of fact to the same effect and we cannot interfere with the same in writ jurisdiction.

14. It has been contended on behalf of the petitioner that before reverting him to the post of Deputy Commissioner, he should have been given opportunity to show cause and as that was not done, the order is void being against the principles of natural justice. On the other hand, the stand of the respondents is that it was a case of fraud and misrepresentation, which was the basis of promotion, and hence the order of promotion was void and the D.P.C. had a right to correct its mistake, and in any case sufficient compliance of principles of natural justice was made as the petitioner was, by letter dated 31.1.2000 (Annexure-8 to the writ petition), informed that his original entries in character roll have been fabricated and hence he may clarify as to how this change has been made and under order of which officer. The petitioner gave his reply, by his letter dated 28.2.2002 (Annexure-29 to the writ petition), which runs in six pages. After considering his reply, the impugned order dated 27.4.2000 was passed. Thus, the petitioner's contention is wrong. There was sufficient compliance of principles of natural justice. The principles of natural justice are not a straitjacket formula. They are meant for ensuring fairness in action. In the case of Kumaun Mandal Vikas Nigam 2001 (1) AWC 83 (SC) : 2001 (1) SCC 182, it was held :

"Although over the years there has been a steady refinement as regards the doctrine of natural justice but no attempt has been made and, in fact, cannot be made, to define the doctrine in a specific manner or method. Strait-jacket formula cannot be made applicable but compliance with the doctrine is solely

dependent upon the facts and circumstances of each case. The totality of the situation ought to be taken note of and if on examination of such totality, it comes to light that the executive action suffers from the vice of non-compliance with the doctrine, the law courts ought to set right the wrong inflicted upon the person concerned and to do so would be a plain exercise of judicial power. As a matter of fact the doctrine is now termed as a synonym of fairness in the concept of justice and stands as the most-accepted methodology of a governmental action."

15. The learned counsel for the State has relied on the cases of U.P. Junior Doctors" Action Committee Vs. Dr B. Sheetal Nandwani and Others, In this case, admissions were obtained in Post Graduate Course by misrepresentation, which was cancelled on the misrepresentation coming to light. The cancellation was challenged on the ground of not providing opportunity of hearing. The Apex Court held that admissions were rightly cancelled and opportunity of hearing was not necessary as admissions were secured by fraud.

16. The petitioner had his full say and whatever could be said on his behalf, was said. Further opportunity would not have advanced his case. He has also not pleaded or proved any prejudice to his case. We have heard him in full. We are of the opinion that there was sufficient compliance of natural justice, and no prejudice was caused to the petitioner in the facts and circumstances of this case. In the case of Aligarh Muslim University and Others Vs. Mansoor Ali Khan, the Apex Court has said :

"There can be certain situations in which an order passed in violation of natural justice need not be set aside under Article 226 of the Constitution of India. For example where no prejudice is caused to the person concerned, interference under Article 226 is not necessary. Similarly, if the quashing of the order, which is in breach of natural justice, is likely to result in revival of another order, which is in itself, illegal as in Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others, it is not necessary to quash the order merely because of violation of principles of natural justice."

17. The petitioner earlier filed Writ Petition No. 21427 of 2000 challenging the same order, which was dismissed on 16.5.2000 on the ground of alternative remedy. Thereafter, he filed a Review Petition No. 47566 of 2000 for reviewing the above judgment. This review petition was also dismissed by order dated 4.8.2000. Then he filed Writ Petition No. 1486 of 2000 which was dismissed on the ground that a second writ petition is not maintainable for the same relief. Thereafter, the petitioner again filed Writ Petition No. 7722 of 2001, which was disposed of by this Court vide judgment dated 27.4.2001 with a direction to the Service Tribunal to decide his claim petition within three months. The petitioner has now filed this writ petition. We cannot appreciate this conduct of the petitioner of filing repeated petitions.

18. For the reasons enumerated above, we dismiss the writ petition, as we see

no error of law in the impugned orders. Moreover, writ jurisdiction is discretionary jurisdiction, and we are not inclined to exercise our discretion under Article 226 of the Constitution of India in this case.

19. The petition is, accordingly, dismissed.