(2006) 11 AHC CK 0172

In the Allahabad High Court

Sidheswar Mishra APPELLANT

Vs

State of U.P. RESPONDENT

Date of Decision : 15-11-2006

Acts Referred:

Citation : (2006) 7 AWC 7365

Hon'ble Judges : D.P. Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.P. Singh, J.—Heard learned Counsel for the petitioner and Shri Ranjeet Saxena for the respondent Corporation.

2. This petition is directed against an order of compulsory retirement dated 3.8.2005.

3. The petitioner was working as a Junior Engineer in the respondents Corporation and by the impugned order dated 3.8.2005 he has been compulsory retired in view of U.P. State Electricity Board Employees (Retirement) Regulations, 1975 (hereinafter referred to as ''Regulations'').

4. Learned Counsel for the petitioner has urged that neither any adverse entry was ever communicated to him nor any enquiry or charge sheet was ever served on him. He has also urged that there was no adverse material available before the respondents to have taken action under Regulation 2(b) and 2(c)(i). Regulation 2-A of the said Regulations provides as under.

In order to be satisfied whether it will be in the public interest to require a Board''s servant to retire under Clause (b) the appointing authority or any authority to whom the appointing authority is subordinate may take into consideration any material relating to the efficiency and suitability of the Boards servant including Service Records, Annual Confidential Reports, any report of the Vigilance Establishment or any other Inquiry Report and other relevant material.

5. A perusal of the aforesaid Regulation shows that the Appointing Authority has to take into consideration any material relating to the efficiency and suitability of the incumbent including any report of vigilance or any other enquiry report to decide whether it is necessary to compulsorily retire the incumbent. There are only two material disclosed in the counter affidavit. One is that miscellaneous advance amounting to Rs. 5,35,173/- was neither deposited by the petitioner nor accounted for. The other is an alleged bad entry for the year 1998-99.

6. In the writ petition itself the petitioner has annexed a copy of the report dated 30.9.2004 showing that an amount of Rs. 5,03,477/- had already been accounted for through vouchers and verified in form No. A-9 of March 2000 but for the remaining amount of Rs. 31,696/-, the Deputy General Manager vide his letter dated 7.1.2005, which is Annexure-6 to the petition had declared that it is being recovered from the petitioner through his salary. These allegations or the annexures have not been denied specifically. Once the amount had already been duly accounted for and explained, it could not be said by any strech of imagination that it reflected upon the efficiency or suitability of the petitioner. The record relating to the award of bad entry for 1998-99 has not been annexed with the counter affidavit. The award of the bad entry and its communication has been specifically denied in the rejoinder affidavit. However, learned Counsel for the respondent has produced some of the service record of the petitioner. There is an order mentioning about bad entry against the petitioner but neither in the Annual Confidential Report of 1998-99 it is reflected nor its communication is demonstrated by any material on record. To the contrary the service record shows that right from 1992-93 till 1996-97 the petitioner was awarded "Very Good" or "Good" entries. No service record subsequent to 1998 has been produced to justify the action against the petitioner. Assuming that there is one bad entry of 1998-99 but that has also not been communicated to him. It is aptly said one swallow does not bring a spring. One bad entry in more than three decades of service cannot be said to be sufficient to hold that the public interest requires the compulsory retirement of the petitioner. From the service record, it is also apparent that throughout his service, the integrity of the petitioner was never doubted. The counsel for the respondent has failed to point out any material which could show that the conduct or the method of working of the petitioner was adversely telling up on the efficiency of the unit where he was working or of the corporation at large. Therefore, the exercise of power of compulsory retirement appears to be arbitrary and not based on any relevant material. Therefore, it has to be quashed.

7. For the reasons above, this petition succeeds and is allowed and the impugned order dated 3.8.2005 is hereby quashed and it is directed that the petitioner shall be treated to be in service till the date of his actual retirement and will also be entitled to consequential benefits. No order as to costs.

