

(2005) 11 AHC CK 0020

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 60966 of 2005

S.S. Tariq and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 21-11-2005

Acts Referred:

Uttar Pradesh State Electricity Board (Operating Staff) Services Regulations, 1995 — Regulation 38(2)

Citation : (2006) 5 AWC 4598 : (2006) 1 UPLBEC 669

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Ashok Khare assisted by Amit Srivastava, for the Appellant; R.D. Khare and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—The present writ petition is directed against an order dated 24.8.2005/31.8.2005 issued by the General Manager, Madhyaanchal Vidyut Vitaran Nigam Ltd., Bareilly. By the impugned order, the petitioners who were working on the post of Junior Meter Tester at Bareilly have been transferred to the post of sub Station Operator.

2. It is submitted that the grounds of challenge of the petitioner are firstly that they have been continuously working on the post of Junior Meter Testers and cannot be transferred to any other post and secondly the impugned order of transfer has been passed without grant of approval by the Independent Monitoring Committee constituted by Hon"ble the Supreme Court. It is stated that though the impugned order contains a recital to the effect that the said order of transfer has been issued with the approval of the Independent Monitoring Committee constituted by Hon"ble the Supreme Court, but the recital is incorrect as neither there exists any approval of the Independent Monitoring Committee for the transfer of the petitioners individually nor any approval for transfer of the persons appointed as Junior Meter Tester to the post of Sub

Station Operator.

3. It is submitted that the requirement of such prior approval of the Independent Monitoring Committee flows from the judgment of Hon''ble the Apex Court rendered in Suresh Chandra Sharma Vs. Chairman, UPSEB and Others, A specific averment in regard to absence of such approval has been made in paragraph 32 of the writ petition.

4. It is submitted that a perusal of paragraph 8 would demonstrate that at item No. 3, it has been specifically directed by Hon''ble the Supreme Court that all the proposals for transfer/postings of the officers and the staff before finalization be placed before the Independent Monitoring Committee which shall examine and approve the transfer/postings on merits. The counsel for the petitioner further submits that from the counter affidavit filed by the respondents, it is established that the said direction of Hon''ble the Supreme Court has not been complied with in issuing the impugned order of transfer and further that the documents enclosed to the counter affidavit also demonstrate that though in the meeting of the Independent Monitoring Committee which took place on 6.8.2005, the Managing Director was authorized to implement the transfers of Operating Staff but the judgment of Hon''ble the Apex Court does not confer any such authority to take a decision on the Managing Director as is referred to above. It is urged that at any rate, the said proceeding demonstrates that the individual cases of the Operating Staff, who were to be transferred were not considered by the Independent Monitoring Committee which was neither made aware of the reasons for effecting the transfer of the persons nor the essential facts that the petitioners had been appointed as Junior Meter Testers and were sought to be transferred as Sub Station Operators which was entirely a different post. It is submitted that no details had been furnished to the Independent Monitoring Committee even for a post facto consideration as such, the impugned order is not in accordance with the judgment of Hon''ble the Supreme Court in Suresh Chandra's case (supra). Reliance has been placed on the counter affidavit which shows that after the issuance of the order of transfer the Independent Monitoring Committee has merely intimated that 37 members out of a total number of 990 of the Operating Staff had been transferred.

5. It is next contended by Sri Ashok Khare learned Senior counsel for the petitioner that each of the petitioners has been appointed as Junior Meter Tester and has continuously functioned only as Junior Meter Tester. Their confirmation is also on the said post as Junior Meter Tester. He submits that the transfer affects a number of petitioners to the post of Sub Station Operator and though the post of Junior Meter Tester and Sub Station Operator carry the same pay-scale and have been included in the same category. They are not inter-transferable. He has placed paragraph 4 of the U.P. State Electricity Board (Operating Staff) Services Regulation, 1995 and submits from the said Regulation in this regard. It is stated that under Regulation 38(2) of the 1995 Regulations, transfer can be effected from one post to another carrying the same qualification and the pay scale

provided the post does not require special experience/activities but the said requirement has not been adhered to. It is lastly urged that apart from the aforesaid, the order of transfer has been effected the changing of the appointing authority of the petitioners as also disturbing the seniority of the petitioners and order of transfer emanating such consequences cannot be sustained as the petitioners have no experience, whatsoever, of working as Sub Station Operator and their experience is limited to the working as Junior Meter Tester only, as such, they have erroneously been posted against a post on which the petitioners have no knowledge or experience.

6. The counsel for the respondents submits that a perusal of the aforesaid order would demonstrate that it contains a clear recital to the effect that the said transfer orders have been passed in pursuance of the approval of the High Level Independent Committee constituted by Hon"ble the Supreme Court in Suresh Chandra Sharma's case (supra).

7. It is urged that in so far as the first contention is concerned, it is totally misconceived. He has placed copy of the notification dated 9.8.95 appended as Annexure S.C.A-1 to the Supplementary Counter Affidavit wherein the duties of employee of the Technician Grade-II have been specified. Perusal of the duties demonstrates that the duties of the post of Meter Reader Testers and that of Sub-Station Operators are almost same. He has also placed annexure S.C.A-2 appended to the Supplementary Counter Affidavit. It clarifies that persons, who were holding designation specified in column 2, to 4, whether they have been classified as Meter Reader, Junior Meter Tester, Up Khand Parichalak or Junior Mistri in their place, they should be read as T.G.-2 (Vidyut) and those persons who are classified Lineman, they should be read as TG-2 (Lines). He submits that person holding TG-2 post comes under the operating staff and as the petitioners are working as TG-2, they are covered by the office order dated 31.8.2005. It is stated that perusal of the order dated 31.8.2005 demonstrates that in pursuance of the office order Nos. 306, 307, 309 and 311/Ma-Pra/(V) B-6/Camp/Ma Samasat dated 24.8.2005/31.8.2005, the duties and function of Junior Meter Tester are almost the same as that of Sub Station Operator hence Junior Meter Tester can be transferred on the post of Sub Station Operator, transfer being exigency of service and that the petitioners had been transferred within the same district.

8. As regards the second contention of the petitioner that the said transfer order has not been granted/accorded approved by the High Level Independent Committee constituted by Hon"ble the Supreme Court, it is submitted by the counsel for the respondents that the contention is totally incorrect in view of the fact that the High Level Independent Committee in its 12th meeting had authorized the transfer of operating staff under intimation of the Independent Committee, which power was conferred upon the respective Managing Directors of the Corporations. Reliance has been placed upon the minutes of 12th meeting, which has been filed as Annexure C.A. 3 to the Counter Affidavit. It is urged that

in the minutes, the Committee has observed that the matter of finalization of transfer proposal of Operating Staff shall be placed before it in the next meeting of the committee. It is stated that the Committee had also taken note of the fact that the transfer of the operating staff can be made by the Managing Directors as they had stayed at one place for a long period and the Managing Directors concerned to transfer the operating staff under the intimation to it so that the committee could look into the orders and ensure that the transfers are not arbitrary or mala fide.

9. It is further urged that thereafter, in the 14th meeting of the Independent Committee, it had taken note of the transfer orders effected by the respective Managing Directors of Purvanchal Vidyut Nigam Ltd., Paschimanchal Vidyut Nigam Ltd., Madhyanchal Vidyut Vitran Nigam Ltd., Dakshinchal Vidyut Vitran Nigam Ltd., K.ESA Kanpur and Transmission Division, wherein details of operating staff transferred by the respective Managing Directors was duly intimated to the said Committee and were affirmed by it. Reference in this regard has been made to the minutes appended to the Counter Affidavit and it is submitted that had transfer not been in accordance with the directions of the Hon"ble Supreme Court, the transfers would have been disapproved by the said committee itself.

10. It is emphatically urged that the Corporation is empowered to transfer the employee of the Corporation which are now to be approved by the said Committee constituted under the order of Hon"ble the Supreme Court. Further, the High Level Committee is reporting back to the Hon"ble Supreme Court and are being monitored by it.

11. The Counsel for the respondents lastly submits that if the petitioners have any grievance whatsoever, with regard to the transfer orders impugned in the present petition, then the appropriate remedy for them is to approach the High Level Independent Committee constituted under the order of Hon"ble the Supreme Court itself, bringing their grievance, if any, before either the Committee or the Hon"ble Supreme Court and the present writ petition is totally misconceived and not maintainable. It has been brought to the notice of the Court that many employees/officers have challenged their orders of transfer by means of writ petitions before the High Court and that the Division Bench as well as Single Judge of the Court have been pleased to dismiss the said writ petitions. The objection of the petitioners that the impugned transfer order has not been granted approval by the High Level Independent Committee is totally incorrect which is evident from Annexure CA 2 and CA 3 to the Counter Affidavit filed on behalf of the respondents.

12. The transfer of the petitioners is covered by Regulation 38(2) as it is in the same grade and both the posts belong to same grade i.e. T.G-2 and nature of duties does not require special experience/activities as the nature of work is same. The question of change of appointing authority is not relevant to the controversy. The petitioners have failed to show as to how any change in

appointing authority (if any) causes any serious prejudice to them. If the seniority of the petitioners is disturbed, it is open to them to challenge the same in appropriate proceedings before the higher authorities or before the appropriate Labour Court or as the case may be.

13. In view of the fact that the Junior Meter Testers discharge the same function as that of Sub Station Operators and they come within the operating staff T.G-2, they are liable to be transferred as per officer order dated 31.8.2005. The transfer being exigency of service, persons who have been posted for along period as Junior Meter Tester can be transferred. Secondly, the transfer orders of operating staff have been intimated to the High Level Independent Committee constituted by the Hon"ble Supreme Court and which has granted its approval to the same. There is no illegality or infirmity in the order as the same stands ratified by the High Level Committee.

14. For the reasons stated above, the writ petition fails and is dismissed. No orders as to costs.