(2010) 03 AHC CK 0095

In the Allahabad High Court

State of U.P. APPELLANT

Vs

Deepak Kumar Singh and Another RESPONDENT

Date of Decision : 09-03-2010

Acts Referred:

Citation : (2010) 03 AHC CK 0095

Hon'ble Judges : Uma Nath Singh, J;Devendra Kumar Arora, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This writ petition has been preferred to challenge the judgment & order dated 14.1.2009, passed by U.P. Public Services Tribunal, Lucknow in Claim Petition No. 1749 of 2008 on the ground that the Petitioner-State was not granted opportunity/liberty to explain delay in disposal of the representation in terms of Rule 7 of the U. P. Government Servants (Disposal of Representation Against Adverse Annual Confidential Reports & Allied Matters) Rules, 1995 (hereinafter referred to as "Rules, 1995").

2. This is the one and only submission to seek indulgence of this Court in this writ petition.

3. It appears that private respondent was working as Commercial Tax Officer and was due to be considered for promotion to the next higher post of Assistant Commissioner, Commercial Tax but his juniors were promoted whereas he was not given promotion on the ground of adverse entries for the year 1998-99, 1999-00, 2001-02. It appears that the adverse entry for the year 1998-99 was communicated to him on 16.01.2001 against which he made representation on 23.02.2001. The said representation was disposed of on 12.06.2002, obviously after 400 days. Likewise, adverse entry for the year 1999-00 was communicated to the private respondent on 08.01.2002 against which he made representation on 15.02.2002 but the same was disposed of after more than 500 days i.e. on 29.07.2003.

4. As the Petitioner-State was under obligation in terms of Rule 4(3) and (4) of the Rules, 1995 to dispose of the representation within maximum period of 165 days from the date of submission of representation and further, in terms of Rule (5) of the Rules 1995 if the representation was not disposed of in accordance with Rule 4, such report is not to be treated adverse for the purpose of promotion, crossing of efficiency-bar and other service matters of the Government Servant concerned. It also appears that the last adverse entry for the year 2001-02 was communicated to the private respondent on 17.05.2003 against which he made a representation on 28.06.2003 which was decided on 15.11.2003, of course, within the prescribed limit. However, the representation against the adverse entries for the earlier two years were decided belatedly with inordinate delay, and, therefore, the tribunal has given benefit to the private respondent in terms of Rule 5 of the aforesaid Rules 1995.

5. As regards submission of learned Counsel for the petitioner that the Petitioner-State should have been given opportunity/liberty to explain the delay in disposal of the representation, as the same was not deliberate or intentional. On being asked, learned Counsel conceded that a counter affidavit had been filed and in the counter affidavit it was open for the State to explain the delay. Since this point has been raised in the counter affidavit, the same was not conspicuous by absence. Moreover, in terms of Sub-rule (5) of Rule 4 of the Rules 1995 if there is delay in disposal of the representation beyond the prescribed limit, the same should be communicated to the higher officers and the higher officer is under duty to pass such orders as he considers proper for disposal of the representation within the prescribed limit. The same on being reproduced, reads as under.

Rule (5): Where the competent authority due to any administrative reasons, is unable to dispose of the representation within the period specified in Sub-rule (4), he shall report in this regard to his higher authority, who shall pass such orders as he considers proper for ensuring disposal of the representation within the specified period.

6. We, therefore, do not find any infirmity or perversity in the impugned judgment and order rendered by the tribunal.

7. Thus, this writ petition being devoid of merits, is dismissed.

