

(2016) 07 AHC CK 0237
In the Allahabad High Court
Case No : Writ A No. 45376 of 2012

State of U.P.

APPELLANT

Vs

Munshi Lal Baghel

RESPONDENT

Date of Decision : 22-07-2016

Acts Referred:

Citation : (2016) 8 ADJ 501 : (2016) 4 UPLBEC 2775

Hon'ble Judges : Dilip Gupta and Prabhat Chandra Tripathi, JJ.

Bench : Division Bench

Advocate : Ms. Meenakshi Singh and Sri R.B. Pradhan, Advocates, for the Petitioners

Final Decision : Allowed

Judgement

1. The State of Uttar Pradesh and its officers have filed this petition to assail the order dated 29 October 2010 passed by State Public Services Tribunal, Lucknow (the Tribunal) in Claim Petition No. 1511 of 2007 that was instituted by Munshi Lal Baghel (Baghel) who has been impleaded as respondent no.1 in this petition.
2. The said claim petition was filed by Baghel, who was working on the post of Seenchpal, for a direction upon the opposite parties in the claim petition to place him in the final seniority list dated 7 March 2007 at the correct position between serial Nos. 10 and 11 and to grant him promotion on the post of "Seench Paryavekshak" from the date persons at serial Nos. 10 and 11 were promoted with all consequential benefits.
3. The Tribunal by order dated 29 October 2010 allowed the claim petition and directed the opposite parties to re-fix the seniority of the applicant above the name of Rakesh Chandra Srivastava (who was placed at serial No.11) and, if he was found fit, then to consider his case for promotion on the post of "Seench Paryavekshak" from the date promotion was granted to Rakesh Chandra Srivastava and, if promoted, to grant all the consequential benefits.
4. On 18 September 2012, while entertaining the writ petition, the Court had

stayed the operation of order dated 29 October 2010 passed by the Tribunal and also issued notice to respondent nos. 1, 3 and 4. Sri Ranjeet Saxena, has put in appearance on behalf of respondent No.1. Office has reported that steps were taken to serve notice on respondent Nos. 3 and 4 by registered post on 24 September 2012 but neither acknowledgement due nor unserved notices have been received in the office. In such circumstances, notices on respondent Nos. 3 and 4 shall be deemed to have been served. No one has, however, put in appearance on behalf of respondent Nos. 3 and 4.

5. It transpires from the records that Baghel was initially posted as a Seenchpal on 1 April 1981 under the Executive Engineer, Feeder Channel Division-I, Moradabad. He, however, made a request for transfer to the Aligarh Division and by an order dated 31 July 1987, his request for transfer was accepted and he was transferred to Aligarh Division. He, consequently, joined at Narora, Lower Ganga Canal, Aligarh on 24 August 1987 pursuant to the aforesaid order dated 31 July 1987. This order dated 31 July 1987 clearly mentions that on transfer, Baghel shall be treated to be junior to all the employees of the Division. A seniority list of the Aligarh Division was prepared in which Baghel was placed below Rakesh Chandra Srivastava.

6. This is what prompted Baghel to file a claim petition before the Tribunal and it was sought to be contended before the Tribunal that his seniority should be counted from 1 April 1981 when he was initially appointed as Seenchpal in the Moradabad Division and not from the date when he joined at Aligarh Division on 24 August 1987 pursuant to the request made by him for transfer. This plea has found favour of the Tribunal and it has, accordingly, directed for refixation of his seniority above that of Rakesh Chandra Srivastava, who had been appointed in the Aligarh Division on 16 June 1981.

7. Ms. Meenakshi Singh, learned Standing Counsel appearing for the petitioners has contended that the Tribunal erred in holding that the seniority of Baghel in the Aligarh Division, where he had joined his duty on 24 August 1987 pursuant to the transfer sought by him, should be counted from 1 April 1981. In support of her contention, learned Standing Counsel has placed reliance not only on the transfer order dated 31 July 1987 but also on the Circular dated 22 July 1967 issued by the office of the Chief Engineer relating to the transfer of Amins, Patrols, Tube-well Operators. Learned Standing Counsel has also submitted that seniority is determined Division-wise and, therefore, the Tribunal erred in law in giving seniority to Baghel from 1 April 1981.

8. Sri Ranjeet Saxena, learned counsel appearing for respondent no.1-Baghel has, however, contended that the order passed by the Tribunal does not call for any interference by this Court under Article 226 of the Constitution. His submission is that the Tribunal committed no illegality in holding that seniority of Baghel should be counted from 1 April 1981, which is the date on which he was initially posted in Moradabad Division and that the Circular issued by the Chief Engineer in the Irrigation Department would be of no relevance. He further

contended that the Irrigation Department Patrols Service Rules, 1953 have not been followed by the Department. It is also his contention that Baghel had never made a request for his transfer.

9. We have considered the submissions advanced by the learned counsel for the parties.

10. It is not in dispute that Baghel was appointed as Seenchpal in Moradabad Division on 1 April 1981. It is also not in dispute that he was transferred to Narora Khand, Lower Ganga Canal, Aligarh Division, by order dated 31 July 1987. A perusal of the order dated 31 July 1987 clearly shows that on transfer to the Aligarh Division Baghel would be the junior-most Seenchpal. Baghel joined at Aligarh fully conscious of the condition mentioned in the transfer order and did not raise any objection.

11. The Circular dated 22 July 1967 issued by Chief Engineer, relates to the transfers of Amins, Patrols and Tube-Well Operators in the Divisional Cadre. It is not in dispute that Seenchpal is a Patrol. Transfers of patrol are governed by the Circular. This Circular provides that a patrol or tube-well operator shall be placed below the junior-most permanent or temporary patrol or tube-well operator working in the Division where they are transferred. This fact was also absolutely made clear in the transfer order.

12. The Tribunal has recorded a finding that Baghel had made a request for his transfer and the condition contained in the transfer order dated 31 July 1987 also supports this view. It is, therefore, not possible to accept the contention of learned counsel for Baghel that he had not made any request for transfer.

13. The Tribunal has given its decision regarding seniority of Baghel by treating the date of joining of Baghel at the Moradabad Division on 1 April 1981 for the purpose of seniority in the Aligarh Division. The seniority list, on which reliance has been placed by Baghel, is Division-wise and there is nothing on the record to indicate that a common seniority list is prepared. The Circular dated 22 July 1967 also supports this view. In the transfer order of Baghel, it was also clearly stated that on transfer, Baghel would be treated as junior-most Patrol in the Division. The Tribunal could not have, therefore, directed for placement of Baghel in the seniority list above Rakesh Chandra Srivastava by treating his appointment as 1 April 1981 in the Aligarh Division. When the seniority is determined Division-wise, the U.P. Government Servants Seniority Rules, 1991 and the Irrigation Department Patrols Service Rules, 1953 would not enure any benefit to Baghel. It is, therefore, apparent that the Tribunal committed an illegality in holding that the seniority of Baghel should be counted from 1 April 1981 in the Aligarh Division and he should be placed above Rakesh Chandra Srivastava who is at Serial No.11.

14. The order dated 29 October 2010 passed by the Tribunal, therefore, cannot be sustained. It is, accordingly, set aside. The writ petition is, accordingly, allowed and the claim petition filed by Baghel before the Tribunal stands

dismissed.