

CASE NO.:
Appeal (civil) 6007 of 2001

PETITIONER:
STATE OF UTTAR PRADESH

Vs.

RESPONDENT:
NARENDRA NATH SINHA

DATE OF JUDGMENT: 30/08/2001

BENCH:
D.P. Mohapatra & Shivaraj V. Patil

JUDGMENT:

D.P. MOHAPATRA, J.

Leave granted.

The State of Uttar Pradesh has filed this appeal assailing the judgment of the Allahabad High Court allowing the writ petition filed by the respondent on the terms and in the manner quoted hereunder :

In the circumstances the writ petition is allowed and the impugned order dated 2.5.2000 as well as the impugned downgrading entries are quashed. The respondents are directed to consider the petitioner for promotion to the post of Chief Engineer Level-II ignoring the impugned order dated 2.5.2000 and the impugned downgrading entries given by the Reviewing Officer and Accepting Officer. No order as to costs.

The gist of the case of the appellant is that the judgment of the High Court and the directions issued thereunder are against the Government orders issued from time to time regarding the manner of assessment of performance of the officers for the purpose of giving grading in the Annual Confidential Report (ACR), regarding disposal of representations against adverse grading in such Report and regarding consideration of eligible candidates for promotion from the grade of Superintendent Engineer to Chief Engineer Level-II. The respondent had approached the High Court with the grievance against non-consideration of his case for promotion to the post of Chief Engineer Level II which according to him was based on the downgraded entries made by the Reviewing Officer which were accepted by the Accepting Officers in his ACR. He prayed for quashing such downgraded entries and for fresh consideration of his case for promotion.

The main ground on which he challenged the downgraded entries was that the Reviewing Officer and/or Accepting Officer had not stated any reason/ justification for downgrading the entries given by the Reporting officer which were either very good or excellent or outstanding. On perusal of the judgment of the High Court we find that the arguments advanced on behalf of the writ petitioner-respondent herein were on the line noticed above. The High Court felt persuaded to accept the contentions raised on behalf of the writ petitioner mainly on the ground of non-compliance of principle of natural justice inasmuch as no intimation was given to, no explanation called for from the writ petitioner before downgrading the excellent or outstanding entries to satisfactory or good. It was further contended by the writ petitioner that no reason/ justification was given in support of such down grading.

Shri D.Dwivedi learned senior counsel appearing for the appellant contended that the High Court has failed to consider the provision in the Government order that when a Reporting Officer gives outstanding grading to an officer he has to give justification in support of such entry which, submitted Shri Dwivedi, the Reporting Officer had failed to comply in the case of the writ petitioner. In these circumstances, according to Shri Dwivedi the Reviewing Officer was justified in downgrading the entry and the Accepting Officer rightly agreed with the Reviewing officer. Shri Dwivedi also raised the contention that even accepting the reason stated in the judgment of the High Court, the matter should have been remitted to the Accepting Officer or the State Government for fresh consideration and for passing appropriate order; instead of issuing a writ of mandamus to the State Government to consider the case of the petitioner for promotion only on the basis of the gradings given by the Reporting Officer.

Shri A.K.Sanghi, learned counsel for the respondent supporting the judgment of the High Court contended that in the facts and circumstances of the case since the writ petitioner had been repeatedly superseded while granting promotion to his juniors, relying on the downgraded entries given in the ACR by the Reviewing Officers and Accepting Officers the High Court was justified in issuing the directions as has been done in the judgment.

It is relevant to note here that in pursuance of the directions issued by the High Court in another Writ Petition filed by the respondent earlier the Principal Secretary of the Works Department of the Government of U.P. had passed the order dated 2nd May 2000 rejecting the representation of the writ petitioner.

We have perused the said order of the Principal Secretary which is annexed as Annexure P4 to the counter affidavit (Paper Book-Volume-II). We have also perused the Government Order No.36/1976 Karmik-2 dated 30th October, 1986 and G.O. No.36/1/1976 Karmik 2 of even date, G.O.No. 35/1/78-Karmik-2/93 dated 5th March, 1993 and certain other executive instructions issued by the State Government in the matter. The contentions raised by Shri Dwivedi that the Reporting Officer while giving the gradings outstanding or excellent had not stated any reason or justification in support of it cannot be rejected as without substance. The factual position cannot be ignored that the entries were made in 1980s and long time has lapsed since

then. In all probability the Reporting Officers, the Reviewing Officers and the Accepting Officers concerned might not be available in the posts and might also have retired from Government service and therefore, no useful purpose will be served in requiring the officers concerned to re-consider the matter.

On the facts and in the circumstances of the case we are of the view that the Principal Secretary of the Public Works Department of Government of Uttar Pradesh should consider the matter afresh applying his mind to the grievances raised by the petitioner in the representations submitted by him in the light of the provisions of the rules and executive instructions relating to making entries in the administrative character roll and promotion from the post of Superintendent Engineer to Chief Engineer Level II and pass a reasoned order. The Principal Secretary should give a reasonable opportunity of hearing to the respondent so that he may place before the authority the materials available on record in the department which may be relevant for consideration of the matter.

In the result, we allow the appeal set aside the judgment of the High Court under challenge and also the order dated 2nd May, 2000 passed by the Principal Secretary, Public Works Department of the State of Uttar Pradesh and direct him to consider the matter afresh in the light of the discussions in this judgment and pass a reasoned order expeditiously if possible within four months of receipt of intimation of this judgment. The respondent shall produce a copy of this judgment before the Principal Secretary to enable the latter to take further steps in the matter. There will be no order for costs.

.J.
(D.P. MOHAPATRA)

.J.
(SHIVARAJ V.PATIL)

Dated : 30th August, 2001