

Court No. - 5

Case :- WRIT - A No. - 16814 of 2024

Petitioner :- Vijay Kumar Yadav

Respondent :- State Of U.P. And 8 Others

Counsel for Petitioner :- Ajeet Kumar, Mahendra Kumar Yadav

Counsel for Respondent :- Abhishek Srivastava, Adarsh Bhushan, C.S.C., Manoj Kumar Srivastava

Hon'ble J.J. Munir, J.

1. This writ petition is directed against the transfer order dated 09.10.2024 passed by the Chief Engineer, Distribution Division-II, Prayagraj, transferring the petitioner, an Assistant Engineer, from the Electricity Distribution Sub-Division Katehara, Electricity Distribution Division, Handia, Prayagraj to the Electricity Distribution Sub-Division-City, Pratapgarh, falling under the Electricity Distribution Division-I, Pratapgarh.

2. The facts of this case would show that the petitioner has been in the employ of the Uttar Pradesh Power Corporation Limited, Lucknow (for short, 'the Corporation') since the year 2008. He was posted at Prayagraj (then called Allahabad) from the year 2008 to April, 2013 in different establishments. In April, 2013, he was transferred to Ghazipur, but in November, 2015, he was back at Prayagraj, where again he served in different positions in varying establishments, up to the month July, 2019. In July, 2019, he was transferred to the Gorakhpur Zone and then posted at Bhatpaarrani, Deoria. He remained posted in the Gorakhpur Zone up to 28.06.2024, when on his request that his wife was serving as a Lecturer with a Government Institution, to wit, the Gauri Pathshala Inter College, Malviya Nagar, Prayagraj. he was transferred to Prayagraj once again.

3. A perusal of the transfer order dated 28.06.2024 passed by the Managing Director, Purvanchal Vidyut Vitaran Nigam Limited, Varanasi, would show that the petitioner was transferred from the Electricity Test Division-I, Gorakhpur to Prayagraj under the control of the Chief Engineer (Distribution), Prayagraj Region-II. In Column No.5 of the said order, there is a remark, which reads: “*swayam ke anurodh par pati-patni sarkari sewa me karyarat*”.

4. The Chief Engineer (Distribution)-II *vide* order dated 30.06.2024 posted the petitioner to the Electricity Distribution Sub-Division, Katehara, Prayagraj, falling under the Electricity Distribution Division, Handia, Prayagraj. This posting was given to the petitioner on administrative grounds, bearing in mind the interest of the Corporation. This is what is said in the remarks column carried in the order dated 30.06.2024. Now, by the impugned order dated 09.10.2024, the Chief Engineer (Distribution)-II, Prayagraj has transferred the petitioner from the Electricity Distribution Sub-Division, Katahara, Prayagraj, falling under Electricity Distribution Division, Handia, Prayagraj to the Electricity Distribution Sub-Division-City, Pratapgarh, falling under the Electricity Distribution Division-I, Pratapgarh.

5. This Court issued a notice of motion *vide* order dated 08.11.2024 in the following terms:

“The petitioner says that he was transferred from Gorakhpur to Prayagraj on his own request vide order dated 28.06.2024 because his wife is in government service posted at Prayagraj. Now, by the impugned order dated 19.10.2024, he has been transferred from Prayagraj to Pratapgarh.

Prima facie once an employee is transferred on his request to a particular station on ground that his wife is posted there, a swift transfer to another station within four months may give rise to an inference of mala fide exercise of power.

Issue notice.

Let the Chief Engineer, Distribution-II, Prayagraj file a counter affidavit, which shall be his own affidavit, showing cause why on an inference of mala fide exercise of power, the impugned order be not quashed.

*Looking to the short point involved, lay this matter **as fresh on 21.11.2024**, by which time, the required counter affidavit shall be positively filed by the Chief Engineer.*

*Let this order be communicated to the Chief Engineer, Distribution-II, Prayagraj through the Chief Judicial Magistrate, Allahabad by the Registrar (Compliance) within **24 hours**."*

6. A counter affidavit has been filed on behalf of respondent No.9.

7. Heard Mr. Shivdutt Yadav, Advocate holding brief of Mr. Mahendra Kumar Yadav, learned Counsel for the petitioner, Mr. Manoj Kumar Srivastava, learned Counsel appearing on behalf of respondent Nos. 6, 7 and 9, Mr. Ajay Kumar Patel, Advocate holding brief of Mr. Adarsh Bhushan, appearing for respondent Nos. 4 and 5, Ms. Kritika Sinha, Advocate holding brief of Mr. Abhishek Srivastava, learned Counsel appearing on behalf of respondent nos. 2,3 and 8 and Ms. Amrita Singh, learned Additional Chief Standing Counsel appearing on behalf of respondent No.7.

8. In paragraph No.8 of the counter affidavit filed on behalf of respondent No.9, the Chief Engineer (Distribution) has put forward a rather benign stance and said that the petitioner has been transferred from Electricity Distribution Sub-Division Katahara, Prayagraj to Electricity Distribution Division-I, Pratapgarh. He has averred that both places are almost equidistant from the petitioner's house in Prayagraj with the result that the transfer would not cause any difficulty to the petitioner in taking care of his family. If this were the consideration, on the foot of which the impugned order of transfer from Katahara, Handia, Prayagraj to Pratapgarh has

been passed, possibly there would be no case for interference. The order indicates that it has been passed in view of administrative need bearing in mind the interest of the Corporation. If the order and the stand in paragraph No.8 of the counter affidavit were all that was there to it, the very narrow scope for judicial interference with a transfer order would not entitle the petitioner to relief. But, the counter affidavit, which is a personal affidavit of the Chief Engineer, who passed the transfer order, betrays the real nature of the impugned order. In the paragraphs that follow, to be precise, in paragraph No.13 of the counter affidavit, it is said on a rather low sounding note that there were several complaints against the petitioner and an inquiry was also conducted into the allegations against him. There is then a reference in the same paragraph to a true copy of the inquiry report No.6071 dated 09.10.2024. This inquiry report, which is apparently some kind of a preliminary inquiry, is required to be quoted for every word of it. It reads:

“एतद्वारा मुख्य अभियंता (वि०), प्रयागराज क्षेत्र, द्वितीय, प्रयागराज के कार्यालय ज्ञाप संख्या-4755/मु० अ० (वि०) प्र० क्षेत्र द्वि० प्र०/ जांच / दिनांक: 28.09.2024 एवं कार्यालय ज्ञाप संख्या-4787/मु० अ० (वि०) प्र० क्षेत्र द्वि० प्र०/ जांच/ दिनांक: 30.09.2024 के माध्यम से शिकायतकर्ता श्री रामललित तिवारी, दिनेश चन्द्र पाण्डेय, हिरायती देवी, मालती देवी आदि एवं श्री वीरेन्द्र मौर्य (वीरू), मण्डल महामंत्री धनूपुर, हण्डिया जनपद प्रयागराज के पत्रांक-002/ एसइपी/ 3 दिनांक: 30.09.2024 (छायाप्रति संलग्न) के द्वारा श्री विजय कुमार यादव उपखण्ड अधिकारी, विद्युत वितरण उपखण्ड कटहरा के विरुद्ध प्राप्त शिकायती पत्रों की जांच करने हेतु निर्देशित किया गया है।

उक्त सम्बन्ध में शिकायतकर्ता श्री रामललित तिवारी , श्री दिनेश चन्द्र पाण्डेय, हिरायती देवी, मालती देवी, श्री रामचन्द्र आदि शिकायतकर्ताओं से दूरभाष पर बात की गयी तो उनके द्वारा अवगत कराया गया है कि उनके द्वारा श्री विजय कुमार यादव के विरुद्ध कोई भी शिकायत नहीं की गयी है। (फोन की स्क्रीनशॉट संलग्न)

अधोहस्ताक्षरी द्वारा श्री विजय कुमार यादव उपखण्ड अधिकारी विद्युत वितरण उपखण्ड कटहरा को अपना बयान दर्ज कराने हेतु दिनांक - 05.10.2024 को दूरभाष के माध्यम से निर्देशित किया गया, जिस पर उपखण्ड अधिकारी द्वारा अपना बयान दर्ज करने हेतु आश्वस्त किया गया था, परन्तु श्री विजय कुमार यादव उपखण्ड अधिकारी द्वारा बयान दर्ज नहीं कराया गया। जिसके लिए श्री विजय कुमार यादव उपखण्ड अधिकारी से दूरभाष पर पुनः सम्पर्क करने का प्रयास किया गया परन्तु

लगातार कई बार फोन करने के बावजूद श्री विजय कुमार यादव द्वारा फोन नहीं उठाया गया और न ही अधोहस्ताक्षरी को वापस फोन कर सम्पर्क करने का प्रयास किया गया। (फोन की स्क्रीनशॉट संलग्न)

जिसके उपरान्त अधिशासी अभियंता, विद्युत वितरण खण्ड हण्डिया प्रयागराज को दूरभाष के माध्यम से श्री विजय कुमार यादव उपखण्ड अधिकारी विद्युत वितरण उपखण्ड कटहरा को जांच समिति के समक्ष अपना बयान दर्ज कराने के लिए निर्देशित करने हेतु अनुरोध किया गया। जिस पर उनके द्वारा श्री विजय कुमार यादव उपखण्ड अधिकारी को निर्देशित किया गया। परन्तु श्री विजय कुमार उपखण्ड अधिकारी ने अधोहस्ताक्षरी एवं उच्चाधिकारियों द्वारा निर्देशित करने के बावजूद अपना बयान दर्ज नहीं कराया तथा उनको सी0 यू0 जी0 नम्बर पर कई कॉल किये जाने के बावजूद कॉल को रिसीव नहीं किया गया। जिससे स्पष्ट होता है कि श्री विजय कुमार उपखण्ड अधिकारी द्वारा अपने उच्चाधिकारियों के विभागीय कार्यों से सम्बन्धित कॉल रिसीव नहीं की जाती है। इनका यह कृत्य अनुशासनहीनता को प्रदर्शित करता है तथा इनकी कार्यशैली उत्तर प्रदेश राज्य कर्मचारी आचरण नियमावली 1956 के संगत नियमों के विरुद्ध है। उपरोक्त तथ्यों से स्पष्ट हो रहा है कि श्री विजय कुमार यादव उपखण्ड अधिकारी, विद्युत वितरण उपखण्ड कटहरा प्रयागराज का उपभोक्ताओं के प्रति आचरण एवं व्यवहार ठीक नहीं होगा। जिसके लिए श्री विजय कुमार यादव उपखण्ड अधिकारी विद्युत वितरण उपखण्ड कटहरा को अपने आचरण एवं व्यवहार में सुधार लाने की आवश्यकता है।"

9. This report was submitted by an Inquiry Committee, comprising a Superintending Engineer and an Executive Engineer. Putting aside the wisdom of the conclusions drawn by the Inquiry Committee, doing the preliminary inquiry, what is noteworthy here is the fact that this inquiry report was submitted by the Inquiry Committee on 09.10.2024 and on the same day, the impugned order of transfer was passed. It is difficult, therefore, not to think that the petitioner was transferred from Electricity Distribution Sub-Division, Katahara, Handia, Prayagraj to Electricity Distribution Sub-Division-City, Pratapgarh, as a measure of penalty, utilizing the employer's power to transfer. If the employer thought that the petitioner was an inconvenient man at Katahara, he could very well be transferred to whichever place the Chief Engineer thought fit, on administrative grounds, in the exercise of the employer's purely administrative power of transfer, and which for the employee is an exigency of service.

10. The matter, however, assumes a different complexion altogether, if it is evident that the employer has utilized the power of transfer to punish the employee. This is precisely what the Chief Engineer has done here. He has betrayed through his counter affidavit, what went behind scenes, in passing the order of transfer. There were some complaints against the petitioner by certain named persons mentioned in the inquiry report dated 09.10.2024. These appear to be written complaints. When these complainants were contacted over telephone by the Inquiry Committee, they denied having complained against the petitioner. It is queer that after the complainants disowned the complaints, the Inquiry Committee were after the petitioner, calling him up to record his statements. There was no occasion to do that. Nevertheless, that was the Inquiry Committee's wisdom and the petitioner did behave oddly in not responding to the Inquiry Committee's communications and appearing before them. The non-response of the petitioner to the various messages from higher officials seems to have been regarded as disrespectful behaviour and insubordination, about which there is a remark in the Inquiry Committee's report that the petitioner should improve his conduct and behaviour. It is also remarked that the petitioner's behaviour with consumers is not appreciable.

11. Now, the fact that on the day that this inquiry report was submitted, as already remarked, the impugned order of transfer was passed, would show that it is just not an administrative exigency, considering the petitioner's conduct in general that animates the exercise of power of transfer by the Chief Engineer. Rather, the impugned transfer order has been passed unmistakably as a substitute for the exercise of his disciplinary jurisdiction by the Chief Engineer, or so to speak, the

respondents, where they could penalize the petitioner, if they so thought for whatever misconduct, the Inquiry Committee reported. This would, however, not in any way justify the Chief Engineer, or for that matter, the respondents, exercising their power of transfer to punish or penalize the petitioner. The exercise of the power of transfer as a substitute for the infliction of lawful punishment in exercise of the employer's disciplinary jurisdiction, is verily an instance of malice in law. This is precisely the case here.

12. In this connection, reference may be made to principal laid down in **Somesh Tiwari v. Union of India and others, (2009) 2 SCC 592**. In **Somesh Tiwari** (*supra*) too, the facts before their Lordships of the Supreme Court would show that anonymous complaints had been laid against the petitioner, an officer of the Indian Revenue Service, alleging a caste bias against him, because he had undertaken re-assessment of certain files with him. The preliminary or the discrete inquiry into complaints by an Assistant Commissioner, Directorate of Vigilance, did not find the allegations true. Still, the petitioner, Somesh Tiwari, was transferred from Bhopal to Shillong. There are then very detailed facts, which may not be of much relevance, but the principle, on which the event turned before their Lordships in **Somesh Tiwari**, is expressed in the following words:

"16. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds—one malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant

ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal.

17. An enquiry was initiated against the appellant in terms of the allegations contained in an anonymous letter. Having regard to the directives of the Central Vigilance Commission, no enquiry could have been initiated against him but it is beyond any doubt or dispute that in the said enquiry, the allegations were found to be untrue. Despite the same not only an order of transfer was passed but to a station, which, according to the respondents themselves, was "harsh".

13. In view of what we have held hereinabove, the impugned transfer order cannot be sustained.

14. In the result, this writ petition succeeds and is **allowed**. The impugned transfer order dated 09.10.2024 passed by the Chief Engineer, District Division-II, Purvanchal Vidyut Vitaran Nigam Limited, Varanasi is hereby **quashed**. The petitioner shall be permitted to join at the station where he was serving immediately before the order impugned dated 09.10.2024 forthwith and paid salary regularly.

15. There shall be no order as to costs.

16. Let this order be communicated to the Chief Engineer, District Division-II, Purvanchal Vidyut Vitaran Nigam Limited, Varanasi through the learned Civil Judge (Sr. Div.), Varanasi by the Registrar (Compliance).

Order Date :- 09.12.2024
Anoop

(J.J. Munir)
Judge