

(2013) 09 MAD CK 0200

In the Madras High Court

Case No : Writ Petition No's. 40964 and 40965 of 2002

N. Rajendran

APPELLANT

Vs

Tamil Nadu Electricity Board and Others

RESPONDENT

Date of Decision : 03-09-2013

Acts Referred:

Citation : (2013) 09 MAD CK 0200

Hon'ble Judges : K. Ravichandrababu, J

Bench : Single Bench

Advocate : Balan Haridass in Both W.Ps, for the Appellant; Fakkir Mohideen for R1 in W.P. No. 40964 of 2002, Mr. S. Balasubramanian for R3, R5, R7, R12, No Appearance for R2, R4, R6 R8 to R11, R13 and Mr. Fakkir Mohideen in W.P. No. 40965 of 2002, for the Respondent

Judgement

K. Ravichandrababu, J.

W.P. No. 40964 of 2002

1. The petitioner in W.P. No. 40964 of 2002 is aggrieved against two proceedings of the respondent Electricity Board, viz. alteration of the seniority list and cancellation of the panel for promotion to the post of Commercial Inspector. The short facts that are necessary for deciding the writ petition is as follows:-

The petitioner joined as helper on 4.9.1987 in Tiruvannamalai Electricity Distribution Circle of the Tamil Nadu Electricity Board. He was promoted as Commercial Assistant on 10.1.1991. Thereafter, he was transferred to Nagapattinam Circle on 20.1.1994. After such transfer and after nearly seven years, a seniority list was prepared by showing the petitioner in Sl. No. 291. According to the petitioner, his position was placed correctly in the said seniority list. Thereafter, the department prepared a panel for promotion to the post of Commercial Inspector on 23.9.2002. The petitioner was placed in Sl. No. 2 therein. However, without giving effect to the panel for promotion, the same came to be cancelled on 4.10.2002, which is impugned in this writ petition as

impugned order No. 1. Thereafter, within a week, the petitioner's seniority was altered by the second impugned proceedings dated 10.10.2002, thereby the petitioner was placed at Sl. No. 422A from the Sl. No. 291 as was originally fixed in the seniority list prepared on 1.12.2000. These two proceedings, according to the petitioner, came to be passed without notice to the petitioner as well as without giving him an opportunity of hearing. Thus, two proceedings are challenged before this Court mainly on the ground of violation of principles of natural justice.

2. The matter was listed for final disposal today. Till this date, no counter affidavit is filed by the respondents.

3. Mr. Balan Haridas, learned counsel appearing for the petitioner would submit that the alteration of the seniority list cannot be made without putting the petitioner on notice as such alteration, materially affects the promotional opportunity of the petitioner. When already the petitioner was placed at Sl. No. 291 in the seniority list prepared on 1.12.2000, the first respondent is not justified in altering the same and placing the petitioner at Sl. No. 422A without any reason and without giving him sufficient opportunity of hearing. According to the learned counsel, even when the petitioner was transferred to Nagappattinam, his seniority was maintained correctly and therefore there is no reason or justification for altering the seniority, that too, without affording an opportunity of hearing.

4. Per contra, learned counsel appearing for the Electricity Board would contend that when the transfer was made at the request of the petitioner to Nagapattinam circle, then he has to forego his seniority as per the Board Proceedings and therefore the seniority list was rightly altered.

5. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

6. Admittedly, the petitioner who was appointed as helper on 4.9.1987 was transferred to Nagapattinam circle on 20.1.1994. Only thereafter, a seniority list came to be prepared on 1.12.2000. That means, even after taking note of the factum of transfer of the petitioner to Nagapattinam circle, the said seniority list came to be prepared wherein, the petitioner was placed at Sl. No. 291. The petitioner does not dispute the said seniority list and on the other hand admits that he was rightly placed at Sl. No. 291. Therefore, when the authorities had prepared a seniority list after such transfer and placed the petitioner at Sl. No. 291, they cannot alter the same, unilaterally, after a period of two years, that too, without giving an opportunity of hearing to the petitioner. Whatever may be the reason for such alteration, as contended by the learned counsel for the respondent Board, in my considered view, such reason alone would not entitle the respondent Board to alter the seniority list unilaterally without putting the petitioner on notice and calling for his objections for altering the seniority list based on the so-called reason. The first respondent's such unilateral action

affecting the vested right of the petitioner cannot be sustained as it violates the principles of natural justice.

7. Therefore, I am of the view that the impugned order of altering the seniority list made in proceedings in (***) 10.10.2002 is not sustainable in the eye of law. It is not the case of the respondent Board that before passing the said order the petitioner was put on notice. Even a perusal of the impugned order would show that the same came to be passed without hearing the petitioner. Hence, the impugned order is set aside and it is open to the respondent Board to pass appropriate orders after issuing notice to the petitioner and also after affording him due opportunity of hearing.

8. In so far as the other impugned order viz., the cancellation of the panel for promotion is concerned, I am of the view that the petitioner cannot have a grievance against such cancellation because it is only a panel prepared to the post of Commercial Inspector, which came to be cancelled. Needless to say that preparing a panel is only to show that the persons shown in the panel are eligible for promotion. Therefore, merely placing the persons in the panel would not confer them any right of promotion automatically. Therefore, I am of the view that the cancellation of the panel by the Board cannot give any cause of action for the petitioner to agitate against the said order. Accordingly, I am not interfering with the order dated 4.10.2002 whereby the panel for promotion to the post of Commercial Inspector came to be cancelled. If at all, the petitioner is able to succeed in respect of his contest before the authorities with regard to the alteration of his seniority, it is open to the authorities to consider the petitioner's placement in the panel for promotion in accordance with law.

9. In the result, the writ petition in W.P. No. 40964 of 2002 is partly allowed and the and the impugned order dated 10.10.2002 is set aside. No costs.

W.P. No. 40965 of 2002

10. In this writ petition, the petitioner is aggrieved against the order of cancellation of selection grade given to the petitioner. The petitioner was appointed on 4.9.1987 as helper and promoted as Commercial Assistant on 10.1.1991. He was given Selection Grade on 21.11.2000 after completion of 10 years of service through the proceedings of the respondent Board. Such selection Grade given was cancelled by the respondent through the impugned order on 4.10.2002 on the ground that the petitioner has not completed 9 years of service in the Electricity Distribution circle. Thus, aggrieved against the said order, the present writ petition is filed.

11. Mr. Balan Hardidas learned counsel appearing for the petitioner would submit that when admittedly the petitioner joined the service of the respondent Board on 4.9.1987 as helper and promoted as Commercial Assistant on 10.1.1991, he cannot be denied the benefit of Selection Grade which was rightly given through the proceedings dated 21.11.2000. According to the learned counsel, the petitioner has put in 10 years of service and the respondent is not counting the

service rendered at Tiruvannamalai Circle as the service computable for Selection Grade.

12. Per contra, learned counsel appearing for the respondent Board would submit that as the petitioner was transferred to Nagapattinam circle at his request, the past service of the petitioner cannot be counted for awarding selection grade. He relied upon the Board Proceedings to that effect.

13. Whatever be the reason for cancelling the Selection Grade, one thing is very clear that the impugned order came to be passed without affording an opportunity of hearing to the petitioner. Admittedly, no notice was issued to the petitioner before passing the impugned order. Here again, a benefit conferred on the petitioner is taken away without notice to him. In my considered view, such cancellation of a benefit or withdrawal of the same, cannot be done in violation of principles of natural justice. Thus, I am of the view that the impugned order cannot be sustained and the same has to be set aside on the sole ground of violation of principles of natural justice. Consequently, the writ petition in W.P. No. 40965 of 2002 is allowed and the impugned order is set aside. No costs. It is open to the respondent Board to issue notice to the petitioner and give him sufficient opportunity of hearing and thereafter to pass fresh orders on merits and in accordance with law.
