
(2011) 04 SHI CK 0219
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 14036 of 2008

Naresh Kumar

APPELLANT

Vs

HPSEB and Others

RESPONDENT

Date of Decision : 20-04-2011

Acts Referred:

Citation : (2011) 04 SHI CK 0219

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Deepak Gupta, J.—These two petitions are being disposed of by a common judgment since identical questions of law and facts are involved.

2. The undisputed facts are that both the Petitioners were substantially holding the post of Telephone (Mechanic). Both the Petitioners were promoted as Foremen purely on acting basis and also as a stop gap arrangement in the year 1993. It is also not disputed that though they were promoted as Foremen they were promoted against the posts meant for Junior Engineer (Telephone).

3. The Recruitment and Promotion Rules in respect of the post of Foreman (Telephone) and JE (Telephone) are as follows:

S. No. Name of post/scale Classification Grade Method of recruitment Age limit for direct recruitment Educational & other qualification

3. i) ii) Foreman J.E (Telephone) Rs. 1800-3200 Class-III Wing level 100% by promotion not applicable not applicable

Note: Post of Foreman will be filled in from amongst non-ITI candidates and post of the JE (Telephone) will be filled in from amongst candidates holding Matriculates qualification with ITI certificate.

4. On 22.5.2006, the Petitioners who were holding the charge of Foreman on

acting basis were reverted to the substantial post of Telephone (Mechanic). By means of these petitions they have challenged their reversion orders.

5. Shri B.S. Ranjan, learned Counsel for the Petitioners, submits that once the Petitioners had been promoted as Foremen against the post of JE the Board cannot turn- round and say that they are not qualified. He further submits that by virtue of their experience they have attained the qualifications. He also submits that one Shri Ram Singh, who was a Sub Station (Attendant), not having qualification of matriculation, was promoted as J.E (Sub Station). Lastly, it is submitted that the experience of the Petitioners itself shows that they are entitled to hold the post of Foreman/JE (Mechanic). The stand of the Respondent is that as far as the post of Junior Engineer (Telephone) is concerned, as per the Recruitment and Promotion Rules quoted here-in-above, it is essential that they should be matriculates and should have also obtained a requisite certificate from an Industrial Training Institute (ITI). As far as the post of Foreman is concerned, the stand of the Board appears to be that no qualifications are prescribed but there are no vacant post of Foreman and as and when the post of Foreman fall vacant the Petitioners shall be considered in accordance with their seniority.

6. There is no doubt that the Petitioners worked for six long years as Foreman that too against the post of J.E (Telephone). However, in the initial appointment order itself, it was clearly spelt out that the promotion is purely temporary/a stop gap arrangement and on adhoc basis. The Respondent-Board in its reply stated that it was compelled to promote the Petitioners on adhoc basis since at that relevant time it did not have adequate number of employees who had the requisite qualifications of matriculation and ITI. During the period of 5-6 years a number of persons attained these qualifications and once they had attained the qualifications they had to be promoted on regular basis whereas the Petitioners could not be considered for promotion on regular basis as they did not fulfill the necessary eligibility qualifications.

7. I have heard learned Counsel for the parties. I am afraid that no relief can be granted to the Petitioners since they do not have the essential qualifications.

8. Shri B.S. Ranjan, learned Counsel for the Petitioners, has relied upon the judgment of the Apex Court in B.N. Saxena Vs. New Delhi Municipal Committee and others, I am of the view that this judgment cannot be applied to the facts of the present case since this Court also has to consider the rights of the other employees of the Board who are duly qualified. Why should the persons who have worked hard and obtained requisite qualifications be denied promotions and persons who are not qualified be promoted. This cannot be permitted.

9. Accordingly, the petitions are rejected. It is, however, made clear that in case the post of Foreman falls vacant, the Petitioners shall be considered for appointment against the said posts. No costs.