(1998) 04 PAT CK 0048

In the Patna High Court

Case No : C.W.J.C. No. 5287 of 1995

Surendra Prasad APPELLANT

Vs

Power Grid Corporation of India Ltd. and Others RESPONDENT

Date of Decision : 03-04-1998

Acts Referred:

Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 — Section 9
Constitution of India, 1950 — Article 311

Citation : (1998) 3 PLJR 864

Hon'ble Judges : Nagendra Rai, J

Bench : Single Bench

Advocate : S.N. Jha and Anant Vijay Singh, for the Appellant; Ram Balak Mahto and Jayanandan Singh, for the Respondent

Final Decision : Dismissed

Judgement

Nagendra Rai, J.—The Petitioner has filed the present writ application challenging the placement/fitment scheme formulated by the Respondent Power Grid Corporation of India Ltd. (hereinafter referred to as the Grid Corporation) relating to the fitment of Superintending Engineers of NEEPCO) as the same is arbitrary or irrational and for a direction to the Respondent Grid Corporation to give the same fitment package as has been given to the employees holding the same/ similar post in the Central Electricity Authority.

2. The facts necessary for disposal of the present application are that the Petitioner at present after his transfer in the Grid Corporation is holding a post of Senior Manager (Commercial) Eastern Region, Patna. The National Power Transmission Corporation Ltd. was inaugurated on 23rd October, 1989 to undertake the programme of laying the Extra High Voltage Alternating Current and High Voltage Direct Current transmission system and associated substations and constructing load despatch and communications facilities in a coordinated and efficient manner for moving large blocks of power from various generating sources within the Central Sector to the load centres. The said Corporation has

now been named as Power Grid Corporation of India Ltd. The Government of India decided to transfer the Transmission work of the Public Sector Establishment to the Power Grid Corporation. The organisations from which the Transmission Works were to be transferred are as follows;

1. National Thermal Power Corporation Ltd. (NTPC)

2. Nuclear Power Corporation Ltd. (NPC)

3. North East Electric Power Corporation Ltd. (NEEPCO)

4. National Hydroelectric Power Corporation Ltd. (NHPC)

5. Neyyeli Lignite Corporation Ltd. (NLC)

6. Tehri Hydro Development Corporation Ltd. (THDC)

7. Central Electricity Authority (CEA)

Assets as well as personnel connected with the Transmission Works in the aforesaid undertakings were transferred from the different dates. Assets and personnel of the NEEPCO were transferred w.e.f. 14.11.91. Later on Ordinance No. 10 of 1993 was promulgated in 1993 for acquisition and transfer of power transmission system of NHPC and NEEPCO. While absorbing the services of NEEPCO Personnel a fitment package was prepared by the Power Grid Corporation for the personnel to be transferred and absorbed from NEEPCO to Grid Corporation. A copy of the letter of the said placement/fitment of NEEPCO personnel is contained in Annexure-4 to the writ application. Annexure-1, annexed with the said Annexure-4, indicates the appropriate levels in which placement will be made of executive personnel from SDO level to Additional Chief Engineer level and the seniority weightage to be allowed was given. It was also provided that fitment/placement in higher grades as per Annexure-1 will be through screening by a High Power Committee including a representative of NEEPCO. The committee will take into consideration the service record of concerned executives including appraisal reports and may also interview, if deemed appropriate, based on which fitment/placement in higher grade will be agreed to. The concerned executives will be given an offer of absorption for their acceptance and transfer and absorption will follow such acceptance.

3. In terms of the Electricity (Supply) Act, 1948, a Central Electricity Authority has been set up by the Government of India. The function of the said authority inter-alia is to develop a National Power Policy and to co-ordinate the activities of various agencies and State Electricity Board. Later on in pursuance of the amendment in the aforesaid Act the scope of CEA was enlarged with a view to creation of companies for Generation of Electricity. The CEA advises the Ministry of Power on Technical, Financial and Economic Matter. Construction and operation of, power Generation Projects in the Central Sector are entrusted to Central Power Corporation, namely, NTPC, NHPC and NEEPCO and the Power Grid Corporation will be responsible for construction and Operations of Transmission

Projects in the Central Sector. In order to co-ordinate operations of the Grids of the Constituents Power System and to optimise utilisation of the existing Generation Capacity, Regional Load Despatch Centre (in short RLDC) have been set up in each region which functions under the Regional Electricity Board. The Government as stated above decided to transfer the RLDC to Power Grid. There are five RLD Cs, namely, Southern, Eastern; North West, North Eastern and Western. As per the Government decision employees working in the RLD Cs were deemed to be transferred to the Power Grid w.e.f. 1.1.94 with their position as obtaining on 31.12.93 but they were transferred on different dates even subsequent to the aforesaid date. The physical transfer of the Eastern Region and the North Eastern Region alongwith their staff took place in power Grid Corporation w.e.f. 1.1.95.RLD Cs of the Western and Northen region alongwith their staff were, transferred on 1.1.96 and the RLSD Cs Northern Region alongwith their staff were transferred on 31.12.93. A package of placement scheme was also framed with regard to the personnel of RLD Cs, a copy of which has been annexed as Annexure-5 to the writ application. According to which the personnel holding different posts in the transferor organisation were placed in different grades as detailed in the said fitment package.

4. The transfer of power transmission from NEEPCO was challenged by the Association of Engineers of NEEPCO in the Gauhati High Court in Civil Rule No. 3284/91. Several writ applications were also filed by the employees or their association, who were to be transferred to the Power Grid Corporation in different High Courts. The Grid Corporation moved an application in the Supreme Court praying therein that the writ applications filed in various High Courts may be heard by one High Court. The Supreme Court on the said application directed that all the cases filed in the different High Cour'':s to be transferred to the Delhi High Court and thereafter the Delhi High Court heard the matter and dismissed the writ application with a direction to the Central Government to constitute a High Power Committee to go into the pay structure of the employees inducted from various Government companies, bodies, undertakings in Power Grid Corporation and to remove the imbalances and to remedy the grievances of the employees on that account by judgment dated 14th May, 1992. Thereafter, the Government of India Ministry of Power and Non-Conventional Entry Sources appointed a High Power Committee to go into pay structure of employees inducted into the Grid Corporation vide Office Memorandum No. 1/12/91-NPTC (VI) dated 16.6.92 and the Committee has submitted a report on 28th February. 1995 and the relevant extract of which has been filed as Annexure-C to the supplementary counter affidavit. The grievances as made by the Petitioner in this case were also raised and agitated before the High Power Committee and the High Power Committee has rejected their claim which will be referred to in detail at a later stage.

5. The Petitioner at time of transfer to the Power Grid Corporation was in the rank of Superintending Engineer and his grievance is that though the post of Superintending Engineer in NEEPCO and the Director in CEA is of the same rank

but whereas the Superintending Engineer having three years Experience of the NEEPCO has been placed in Grade VI in the Power Grid and the Director of CEA having three" years and above experience has been placed in Grade VII. Thus, both were working in the same grade and doing the same type of work and even after merger they are doing the same type of work. As such it is stated that the Respondent Power Grid has acted arbitrarily and in irrational manner in fixing the fitment policy of the rank of Superintending Engineers of the NEEPCO employees as they have been put at a lower grade though the persons holding the same rank and position in the CEA has been given a higher grade.

6. The employees of CEA who have been added as Respondents have not appeared inspite of valid service of notice. The Respondent Grid Corporation has filed a counter affidavit and the stand of the Grid Corporation is that absorption of NEEPCO personnel and the CEA personnel are two different transactions at two different point of time under two different circumstances and on the basis of two different sets of norms packages were prepared separately and independently. The NEEPCO personnel were absorbed in pursuant to the Government order and agreement of the year, 1991 executed between NEEPCO and National Power Transmission Corporation (now the Power Grid Corporation). The absorption of assets were given legal effect by Ordinance No. 10/ 1993 whereas CEA personnel were absorbed in the Respondent Grid Corporation in pursuance to the government decision in 1993 in phase wise. The detail of organisation structures and pay scales was made available to the NEEPCO management for the purpose of wide circulation amongst the employees. Certain quarries and suggestions were received upon the same and thereafter discussions and consultations were held between the representatives and the executives of NEEPCO with a purpose to formulate the norms and modalities for absorption. The draft package was prepared and circulated and thereafter again discussions were held and revised package was finalised and communicated to the NEEPCO management alongwith letter dated 12.7.91. Thereafter options were received from the concerned executives of NEEPCO-and thereafter letters were issed in favour of the Officers. The Petitioner alongwith other NEEPCO personnel opted their absorption in the Grid Corporation after knowing the terms and conditions of the absorption and now they cannot make any grievance on the grounds that more favourable fitment scheme has been given to the employees of the CEA who were later on absorbed. It is stated that the CEA is the department under the Government of India and all the employees of the CEA are government servant and are governed by the rules framed by the Government of India. The pay scales are prescribed in terms of the pay commission recommendation. They are also entitled to CDA. On the other hand the NEEPCO employees are employees of the Company and their services are not'' regulated by the Government rules. The pay structure or the NEEPCO employees are as per the recommendations of the High Power Committee constituted under the direction of the Supreme Court. As per the Government order all the. employees of the public sector undertakings were required to be brought over to pay structure prescribed for employees in

the industrial establishment with industrial DA. It is false to say that employees of NEEPCO and CEA have CDA pattern of pay scale. It is also stated that two different fitment schemes one in the case of NEEPCO and another in the case of CEA show that norms are totally different in each level. The CEA executives have been allowed to seniority weightage for the past services in the Grid Corporation whereas for NEEPCO employees service weightage is not allowed after certain levels. Thus, the stand of the Respondent Grid Corporation is that two fitment/ placement schemes have been prepared after taking into consideration the relevant considerations as detailed in the fitment packages. The decision to give Grade E6 to the Superintending Engineers having three experience of NEEPCO and Grade 7 to the Officers of the CEA holding the same rank is neither irrational nor inequal and has such no case for interference is made out.

7. The question which falls for determination is as to whether while framing of two different placement schemes for the employees of NEEPCO and CEA the relevant materials have been considered or not and as to whether the placement scheme which is putting the Superintending Engineers of NEEPCO at a lower level to that of personnel of the same rank of the CEA is arbitrary and irrational.

8. Before deciding the said controversy it would be proper to state in brief the power of this Court to examine and interfere with the case of fitment and placement scheme. It is well settled that the court should not test the constitutionality of the service rule or the scheme on the touch stone of fortune of individual. Whenever the service is integrated or fitment or placement scheme is framed, some hardship is bound to be caused to some individuals and on that ground the scheme or policy cannot be declared invalid unless the Court comes to the conclusion that the scheme is either arbitrary or irrational or inequal or is based on some extraneous considerations.

9. In the case of Reserve Bank of India Vs. N.C. Paliwal and Others, the Bank framed a combined seniority scheme. It provided for integration of non-clerical staff with clerical staff of the departments in the Reserve Bank of India. The said scheme was challenged on the ground that it was irrational and violative of the constitutional provision of equality. Dealing with the said matter the Apex Court in paragraph-16 of the said case has held as follows;

Then we come to the question of the rule of seniority adopted by the Combined Seniority Scheme. Now there can be no doubt that it is open to the State to lay down any rule which it thinks appropriate for determining seniority in service and it is not competent to the Court to strike down such rule on the ground that in its opinion another rule would have been better or more appropriate. The only enquiry which the Court can make is whether the rule laid down by the State is arbitrary and irrational so that it results in inequality of opportunity amongst employees belonging to the same class. Now. here, employees from non-clerical cadres were being absorbed in the clerical cadre and, therefore, a rule for determining their seniority vis a vis those already in the clerical cadre had to be devised. Obviously, if the non-clerical sen/ice rendered by the employees from non-clerical cadres were wholly ignored, it would have been most unjust to them. Equally, it would have been unjust to employees in the clerical cadre, if the entire non-clerical service of those coming from non-clerical cadres were taken into account for non-clerical service cannot be equated with clerical service and the two cannot be treated on the same footing. The Reserve Bank, therefore, decided that one third of the non-clerical service rendered by employees coming from non-clerical cadres should be taken into account for the purpose of determining seniority. This rule attempted to strike a just balance between the conflicting claims of non-clerical and clerical staff and it cannot be condemned as arbitrary or discriminatory.

10. Again in the case of Tamil Nadu Education Department Ministerial and General Subordinate Services Association and Others Vs. State of Tamil Nadu and Others, , it appears that the District Board Schools were taken over by the Government and the employees were absorbed. However, the absorbed personnel were kept as a separate service in the Education department, namely, the Tamil Nadu Educational Subordinate Service. Thereafter, the Government schools'' servants were called as a A Wing staff and the staff of the former district Board Schools were called as B Wing staff. The Government considered the case of their integration and came out with an integration formula. The said scheme and formula was challenged by the Government staff of the Government college that is called Grade A Wing. Dealing with the said matter the apex Court has held in paragraph-7 of the said case as follows;

In Service Jurisprudence integration is a complicated administrative problem where, in doing broad justice to many some bruise to a few cannot be ruled out. Some play in the joints, even some wobbling, must be left to Government without fussy forensic monitoring, since the administration has been entrusted by the Constitution, to the executive, not to the Court. All life, including administrative life, involves experiment, trial and error, but within the leading strings of fundamental rights, and, absent-unconstitutional ''excess'', judicial correction is not right.

The court in the said case has further observed;

Counsel for the Respondents explain that when equated groups from different sources are brought together quota-rota expedients are practical devices familiar in the field. Bearing in mind the strength of the District Board staff to be inducted the ratio is rational. May be, a better formula could be evolved, but the Court cannot substitute its wisdom for, Government''s save to see that unreasonable perversity, malafide manipulation, indefensible arbitrariness and like infirmities do not defile the equation for integration. We decline to demolish the order on this ground. Curial, therapeutics can heal only the pathology of unconstitutionality, not every injury." It further appears that in the said case the ratio of 5:3 and 2:3 respectively were prescribed for the ministerial and teaching staff for the purpose of computation of service for determining the common seniority. That was challenged on the ground that the same is irrational. The

Apex court negatived the said submission in the following words:

The more serious charge is that length of service for fixing seniority has inflicted manifest injustice on the A Wing i.e. regular government staff, being born in arbitrariness and fed on malafides. It is fair to state the generalities and then proceed to particularities. Here we must realise that all the schools having been taking over by the State directly the personnel had to be woven into the basic fabric. Some relevant formula had to be furnished for this purpose so that the homogenisation did not unfairly injure one group or the other. In 1970 Government chose not to integrate but to keep apart. Later, this policy was given up. We cannot, as Court, quarrel if administrative policy is revised. The wisdom of yesterday may obsolesce into folly of today, even as the science of old may sour into the superstition now and vice versa. Nor can we predicate mala fides or ulterior motive merely because Assembly interpellations have ignited rethinking or, as hinted by counsel, that the Education Minister''s sensitivity is due to his having been once District Board teacher. Democratic processes-both these are part of such process-are not anatheme to judges and we cannot knock down the order because Government have responded to the Question Hour or re-examined the decision at the instance of a sensitive minister.

11. Again in the case of S.L. Sachdev and Another Vs. Union of India (UOI) and Others, the provision of recruitment of rule was challenged as arbitrary. The said rule provided the U.D. Cs. drawn from the audit office should have 10 years of service for promotion whereas the other U.D. Cs. were eligible for promotion after having five years of service. Rejecting the submission the Apex Court held that the staff of the audit offices which were engaged in Saving Bank work might have faced retrenchment. Instead of subjecting them to that hardship, they were given the option of joining the new organisation. Experience wise also, there would appear to be fair justification for requiring them to put in longer service in the new organisation before they are eligible for promotion to the higher grade.

12. Recently in the case of New Bank of India Employees Union and another Vs. Union of India and Others, , the New Bank of India was amalgamated with the Punjab National Bank in accordance with the provisions of Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980. For the placement of the employees of the New Bank of India a scheme known as New Bank of India (Determination of Placement of Employees (Officers and Workmen) of the New Bank of India in Punjab National Bank Scheme, 1993 was framed by the Government of India in exercise of the power u/s 9 of the Acquisition Act. Clauses 4 (a) (iii) and 4(b) (ii) of the scheme were challenged by the employees of the transferor Bank as well as the employees of the transferee Bank. The aforesaid provisions provided for accounting of 2 years service in transferor Bank as equivalent to one year service in the transferee Bank for determining the length of service for promotion from subordinate cadre to the clerical cadre and from the clerical cadre to the officers cadre. While the computation of years of service rendered is taken into account the computation shall be made in the ratio

of 2:1 i.e. two years of service in the transferor Bank, would be considered equivalent to one year of service in the transferee Bank. According to the employees of the transferor Bank accounting of 2 years of service as equivalent to one year of service in the transferee Bank was irrational and arbitrary. Dealing with the said matter the apex Court has held that no scheme of amalgamation can be held to be bad unless it comes to the conclusion that the scheme is arbitrary or irrational and has been framed on extraneous consideration. It is clear from the authoritative pronouncement of the Apex Court that this Court Will interfere with the placement/fitment scheme only it comes to the aforesaid conclusion.

13. The materials in this case which is to be looked into is to find out as to whether the Petitioner has been discriminated in the matter of fitment or in other words the Respondents have acted arbitrarily or irrationally in providing two fitment schemes to the similarly situated employees of the two organisations.

14. At this stage it is proper to state briefly the fitment package for NEEPCO and CEA staff in the Grid Corporation, so far it relates to the personnel holding the post of Superintending Engineer and equivalent rank. The Superintending Engineer in the NEEPCO having one year experience has been placed at Grade E5 with service weightage of one year. The Superintending Engineer with two years of experience in NEEPCO has been placed at Grade E5 with service weightage of two year of experience and the Superintending Engineers having three years of experience or more in NEEPCO has been placed at Grade E6 whereas the Director in CEA which is admittedly a post equivalent to the post of Superintending Engineer having experience upto 3 years has been placed in Grade E6 and the Director having experience of 3 years to 7 years has been placed at Grade E7. The Grade E6 in the Grid Corporation has been given the designation of Senior Manager, Chief Manager, Chief Engineer and CDE whereas the Grade E7 of the CEA has been given the designation of DGM.

15. The grievance of the Petitioner, as stated above is that the personnel holding the post of Director/Superintending Engineer in CEA has been placed in Grade E7 category whereas the Petitioner and other Superintending Engineer in NEEPCO has been placed at Grade E6 category.

16. It appears that the Government of India after having considered the terms and conditions of the services and other relevant considerations fixed the fitment package in the case of CEA employees, a copy of which has been annexed as Annexure-5 to the application.

17. As stated above, the ex-employees of the NEEPCO represented the matter before the High Power Committee and made the same grievance as has been made in the said writ application. The matter has been dealt with by the High Power Committee under 6.16 and 6.17 of Chapter VI. The Committee having taken note of the fact that personnel of CEA are Central Government employees holding a pensionable job, having very limited benefit of promotion and would

have continued for long years in a specified pay scale held that in order to avoid hardship and to provide motivation to them for option of service in the Grid Corporation which is a PSE registered under the Indian Companies Act, 1956 and where the privilege of Article 311 is not available to its employees grant of different packages was justified. It is also stated that the Ministry of power suggested that ex-RLD Cs executives and staff should be given different treatment at the time of absorption depending upon their length of service. It is relevant to quote paragraph 6.16 and 6.17 of Chapter VI: Representatives of ex-NEEPCO, ex-NHPC employees also brought to the notice of the High Power Committee that Power grid management has worked out a different package for absorbing the employees of the Central Electricity Authority who were/are working at its Regional Load Despatch Centres. This has an element of substance. The Committee has been informed by the POWERGRID management that the RLD Cs at present control and regulate the Grid systems all over India and as per the decision of the Ministry of Power, Government of India, the RLDCS which are the constituent units of the Central Electricity Authority alongwith their staff would stand transferred to the POWERGRID for ensuring better coordination and management of the National Grid.

TRANSFER of RLD Cs (CEA) EMPLOYEES WAS MADE EFFECTIVE FROM 1.1.94.

As per the Government''s decision, the employees, working at the RLD Cs stand transferred to the POWERGRID with their position as obtaining on 1.1.94. Initially, the employees and executives of the Southern Regional Load Despatch centre have already been absorbed in the POWERGRID and their total emoluments drawn by them by way of Basic pay, Dearness Allowance and Interim Relief as an employee of the Central Electricity Authority have been protected i.e. there is no drop in their total emoluments as a consequence of their absorption in the service of the POWERGRID.

DEEMED REVERSE DEPUTATION FORRLD Cs(CEA) EMPLOYEES WHO HAD TO STAY BACK WITH THE CEA DUE TO ADMINISTRATIVE REASONS.

Physical transfer of the RLD Cs of the Eastern Regional and North Eastern Region alongwith their staff took place in POWERGRID w.e.f. 1.1.95 and that of RLD Cs of the Western Region and Northern Region and their staff would be implemented by the Ministry of Power w.e.f. 1.1.96. Even though the physical transfer of the assets and employees of the RLD Cs are deemed to have been transferred to the POWERGRID w.e.f 1.1.94 and they are to be paid pay and allowances as admissible to other RLD Cs employees whose physical transfer took place on 1.1.94. It follows that the employees of the RLD Cs who earlier worked under the administrative control of the CEA in its RLD Cs would be deemed to be on reversed deputation from POWERGRID to RLD Cs beyond 1.1.1994 without payment of deputation allowance as they stand transferred to the POWERGRID as on 1.1.94 and would be entitled to all the benefits and would be subject to the staff regulations, including their eligibility and consideration for promotion to the next higher grade as provided in the POWERGRID''S Regulations. The promotion etc. of the staff absorbed from RLD Cs w.e.f 1.1.94 or thereafter would be regulated as per the promotion policy of POWERGRID.

6.17 The promotional avenues in the RLD Cs, of the Central Electricity Authority, which was a Government organisation, were limited. Consequently, executives as well as employees had to spend long years of service in a specific scale of pay-For example, an executive who, on the basis of the competitive examinations conducted by the, UPSC on All India basis, had joined as an Engineer or Sub-Divisional Officer in any of the RLD Cs or the CEA was found stagnating in the same scale of pay for nearly 10 years or more, as promotions in CEA/RLDC are purely vacancy-based/ seniority-based. The suitability of RLD Cs personnel for placement in a scale of pay in the service of the POWERGRID has been considered having regard to their experience, qualification and the service put in by them while they were in the service of the RLD Cs. Due to the'' peculiar circumstances, specific norms were, therefore, evolved by Govt, in consultation with POWERGRID for evaluation of the executives and employees of the RLD Cs and their placements in the scales of pay and levels existing in POWERGRID. For example. UDCS or LD Cs who have put in nearly 20 years of service in a grade in the CEA/RLDC and still could not be promoted to the next grade of Assistants/UD Cs were considered by POWERGRID for absorption at a level higher than the one has held by them in the RLD Cs. Apart from this, the Committee noted that the executives of the RLD Cs (CEA) being Central Government servants enjoyed the Gazetted status and were also eligible for protection available under the provisions of Article 311 of the Constitution and were also in pensionable jobs. It is also relevant to note that even if they had not been promoted and had languished in the RLD Cs (CEA) they would have continued to draw their salary on the 4th CPC''s scales of pay and DA pattern. In order to avoid hardship and to provide a motivation to them for opting of service in the POWERGRID, which is a PSE registered under the Indian Companies Act 1956 and where the privilege of Article 311 is not available to its employees, the Ministry of Power suggested that the ex-RLD Cs executives and staff should be given a different treatment at the time of absorption depending upon their length of service.

18. The committee has also opined that ex-NEEPCO employees were not discriminated and on the other hand they have been benefitted by the absorption as the NEEPCO has already taken decision to transfer transmission lines systems to the Grid Corporation and in view of these decisions if the ex-NEEPCO personnel would not have opted for absorption then they would have been retrenched. In this connection it is relevant to quote the finding of the committee at paragraph 6.15 under Chapter VI:-

The committee has come to the conclusion that terms and conditions of absorption in (sic) of NEEPCO and NHPC who joined POWERGRID in 1991, should not be reopened and decisions taken by Government or POWERGRID either individually or jointly at a subsequent point of time under dissimilar conditions cannot be a cause for re-opening the settlement already implemented 3/4 years ago. Moreover, the absorption terms have to be viewed in totality and not in respect of individual items of pay and emoluments. The committee therefore regret its inability to make any recommendations to the POWERGRID management to re-opening the cases of absorption of ex-NEEPCO/ex-NHPC executives as a decision in their cases had been taken on the date of their transfer to the POWERGRID i.e. on 14.11.91 and 19.11.91. Level equivalences worked out by POWERGRID in respect of Employees of NEEPCO and NHPC for purposes of absorption in the service of the POWERGRID are summarised in Annexure-XIV.

The levels in the workers grade in NEEPCO and NHPC did not follow the criteria of qualification/professional qualification required for recruitment at various levels in the workers grade. Even non-Matriculates have been inducted and promoted at regular intervals to Supervisors (or equivalent level) and Matriculates have become executives. This has to be viewed with reference to the policy followed by the POWERGRID and the NTPC where recruitment even of a worker was made subject to the satisfaction of certain prescribed qualification. The equivalences were determined by the POWERGRID at the time of absorption of ex-NEEPCO and ex-NHPC employees based on the scales of pay obtaining in the three organisations. Ex-employees of NEEPCO and NHPC had not been discriminated against at the time of determination of the equivalences on account of the lack of educational/professional qualifications.

19. Thus, it is clear that ex-NEEPCO employees were absorbed in 1991 whereas the CEA personnel were absorbed in 1993. Their service conditions were different before absorption. The NEEPCO was the Company registered under the Companies Act whereas CEA was the government department. They had different conditions of service. The Central Government after having taken note of the terms and conditions of service of CEA employees, stagnation in their service and the disadvantage being suffered by them because of absorption formulated the fitment package. The said fitment scheme cannot be said to be either irrational or arbitrary nor the same can be struck down on the ground that it is based on extraneous considerations or creates inequality amongst the employees similarly situated. So far the employees of NEEPCO are concerned it is clear that by virtue of option they have been benefitted otherwise they would have been retrenched and taking into consideration the prevailing situation in 1991 they were absorbed according to the fitment scheme of that year, 1991 which was framed or formulated on the basis of situation prevalent at that time.

20. It is to be mentioned that the High Power Committee constituted by a court has gone into the question and has found that no beneficial treatment has been given to the employees of the CEA and as such taking into consideration the relevant matter a special fitment scheme has been given to them to mitigate the hardship caused to them. It is also to be mentioned that this is not a case where employees of two different organisations after absorption are treated differently. On the other hand at the time of their absorption itself a scheme was framed for

their placement and the placement, as stated above, does not suffer from any illegality justifying interference by this Court.

21. Accordingly, this writ application is dismissed. There shall be no order as to cost.