
(2011) 03 MAD CK 0072

In the Madras High Court

Case No : Writ Appeal No. 2028 of 2010 and M.P. No. 1 of 2010

The Chairman Tamil Nadu Electricity Board

APPELLANT

Vs

M.P. Dhanaraj

RESPONDENT

Date of Decision : 28-03-2011

Acts Referred:

Citation : (2011) 03 MAD CK 0072

Hon'ble Judges : M. Venugopal, J; Elipe Dharma Rao, J

Bench : Division Bench

Advocate : M. Vaidyanathan, for the Appellant; A. Arulmozhi, for the Respondent

Final Decision : Dismissed

Judgement

Elipe Dharma Rao, J.—The present writ appeal is preferred by the Tamil Nadu Electricity Board [for short, "Board" against the order of the

learned single Judge dated 30.6.2010 in W.P. No. 21218 of 2001, filed against non-inclusion of the name of the Respondent in the panel for

promotion to the post of Chief Engineer (Electrical), was allowed.

2. The facts in brief are as follows:

The Respondent was originally appointed as Assistant Engineer in the year 1966 and thereafter, he was promoted to the post of Superintending

Engineer. The grievance of the Respondent before the learned single Judge was that though he was having rich experience in all the fields, like

Generation, Transmission, Distribution, Grid Relay Test and Career Communication, the Board issued the (Permanent) B.P.(FB) No. 12 dated

01.3.2011 communicating the list of 45 Superintending Engineer / Electrical for promotion to the post of Chief Engineer overlooking his name. It is

further stated that though the Respondent made an appeal to the authorities on

12.3.2001, the same was rejected by order dated 13.7.2001. It is also stated that the Respondent was due to retire on 31.8.2002. However, he went on voluntary retirement with effect from 16.3.2002. Hence, he filed the writ petition and also prayed for notional promotion.

3. Considering the submissions made by either side and after going through the materials on record, the learned Judge allowed the writ petition

holding that the name of the Petitioner should have been included in the panel for promotion dated 01.3.2001 for the post of Chief Engineer

(Electrical). Further, the authorities were directed to issue consequential orders giving notional promotion to him with all monetary benefits.

Aggrieved by the said order, the Tamil Nadu Electricity Board has come in appeal.

4. Learned Counsel appearing for the Appellant submitted that the post of Chief Engineer was a selection post and hence, the Respondent cannot

have any right to claim for his promotion to a selection post. He would submit that since the Departmental Promotional Committee, which had

interviewed the Respondent, did not find him suitable for the post based on his performance and, therefore, his name was not recommended. It is

further submitted that the selection of a candidate for a selection post is within the domain of the Departmental Promotional Committee and the

decision of the Committee cannot be interfered with. According to him, the learned Judge has not considered all these aspects and sought for

interference of this Court.

5. Learned Counsel for the Respondent submitted that the Respondent had put in 35 years of service in various fields in the Board and as such, he

is well experienced in all the fields. He would contend that the authorities had not revealed any reason for no inclusion of the name of the

Respondent in the panel of Superintending Engineer (Electrical) fit for promotion to the post of Chief Engineer (Electrical).

6. The fact remains that the Respondent was originally appointed as Assistant Engineer in the Appellant Board in the year 1966 and during the year

2000 - 2001, the Respondent was working as Superintending Engineer in the Tamil Nadu Electricity Board. It is also not in dispute that as per the

Regulations of the Board, the next avenue of promotion for him was to the post of Chief Engineer for which a panel of names was published on

01.3.2001 in which the name of the Respondent was not included. A perusal of

the records would show that the Respondent had retired from service voluntarily on 16.3.2002 thereby rendering about 35 years of service in the Board. It is further seen from the records that though charges were framed against the Respondent in the year 1994 for having fixed the rental place for running the office at Mettupalayam at an enhanced amount than the normal rent, proceedings were initiated and punishment of Censure was awarded in the year 2000. It is only subsequent to that, interview was conducted for promotion for the post of Chief Engineer in which the Respondent also participated.

7. That apart, it is admitted by the Appellant in the counter filed before the learned Judge that the Respondent had more than one year period of service at the time when action was initiated for drawing the panel and also he was within the zone consideration. Before the learned Judge, it was further conceded by the learned Counsel appearing for the Board that no inclusion of the name of the Respondent in the panel for promotion was not due to either pendency of the disciplinary proceedings or due to punishment imposed upon him but it is because the Departmental Promotional Committee did not recommend his name. But no proper reason was forthcoming for not recommending his name. The learned single Judge has rightly come to the conclusion that except some vague statement, nothing else is found in the counter to substantiate the contention of the authorities with regard to the performance of the Respondent in the interview. As such, there is absolutely no reason to deny promotion to the Respondent.

8. Further more, the Respondent was originally appointed as Assistant Engineer and rose to the level of Superintending Engineer and, therefore, the argument of the learned Counsel appearing for the Appellant that the name of the Respondent was not recommended for promotion because of lack of knowledge in the subject cannot be sustained.

9. It is a well settled principle and the fundamental protection given in the Constitution of India that no person shall be condemned unheard. In this case, on a perusal of the records, it is evident that the authorities have violated the basic principles of audi alter am partem and the learned single Judge, has rightly, held that the Promotion Committee has acted in an arbitrary manner to reject the Respondent for being included in the panel for promotion.

In view of the above, considering the facts and circumstances of the case, we are unable to interfere with the reasoned order of the learned single Judge.

The writ appeal is accordingly dismissed. No costs.

Consequently, connected Miscellaneous Petition is closed.