

(2009) 04 MAD CK 0422

In the Madras High Court

Case No : Writ Appeal No. 924 of 2008 and M.P. No. 1 of 2008

The Superintending Engineer, Tamil Nadu Electricity Board,
The Chief Engineer/Personnel, Tamil Nadu Electricity Board
and The Executive Engineer, Operation and Maintenance/
Salem East, Tamil Nadu Electricity Board

APPELLANT

Vs

S. Duraisamy

RESPONDENT

Date of Decision : 27-04-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 12(3)

Citation : (2009) 04 MAD CK 0422

Hon'ble Judges : S.J. Mukhopadhaya, J;N. Kirubakaran, J

Bench : Division Bench

Advocate : Parthiban Padmanaban, for the Appellant; K. Sasindran, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—The respondent-writ petitioner, working as Commercial Assistant in Salem Electricity Distribution Circle of the Tamil Nadu Electricity Board (for short, "the TNEB"), along with 30 persons, were transferred to the post of Wireman, vide order, dated 5.2.2007 issued by the first appellant-Superintending Engineer, Salem Electricity Distribution Circle, as per B.P. No. 256, dated 12.12.2005. The said order dated 5.2.2007 having been set aside by the learned single Judge, the present Writ Appeal was preferred by the appellants-TNEB.

2. The case lies on a narrow compass as evident from the relevant facts stated hereunder.

3. In the Electricity Distribution Circle of the appellants-TNEB, in the Regular Work Establishment (commonly known as "R.W.E") Category, the Helpers used to be promoted as Commercial Assistants, Line Inspectors, Foremen Grade-I. Certain workmen also used to be promoted as Wiremen, Line Inspectors, etc.

The workers' Union requested to introduce separate (double) channels of promotion to R.W.E. category of Electricity Distribution Circle, on the basis of which, a Memorandum of Settlement was arrived u/s 12(3) of the Industrial Disputes Act, between the TNEB and its workmen, on 15.10.2005 on revision of workload/revision of wages and orders were issued, vide B.P.(Ch). No. 219 (Sectt. Branch), dated 16.10.2005, wherein, the following terms were included in the statements:

Based on the request of the Unions, it is agreed to reintroduce the double channel of promotion in the R.W.E. category. The existing employees may be given one more opportunity to go either to choose the line of promotion as Commercial Assistant, Commercial Inspector and Foreman or Wireman, Line Inspector and Foreman based on their seniority in the category of Helper.

4. Subsequently, the TNEB, vide Per.B.P.(Ch). No. 256 (Administrative Branch), dated 12.12.2005, took into consideration the demand of the majority Unions, based on the above settlement, called for options and issued the orders and the relevant portion of the order dated 12.12.2005 is quoted hereunder:

2. After careful consideration of the demand of the majority unions and based on the above settlement provisions, the following orders are issued:

i) On and from the date of settlement (15.10.05) the line of promotion from the R.W.E. categories in Distribution Circles will be Helper-Commercial Assistant-Commercial Inspector-Foreman I Grade AND Helper-Wireman-Line Inspector-Foreman I Grade;

ii) Consequent on the re-introduction of double channel of promotion ordered, there will be no change in the existing condition, qualification prescribed in the Service Regulations/orders in force for promotion to the higher post;

iii) Consequent on the above, one more opportunity shall be allowed to the existing employees to choose any one of the line of promotion on their own choice by exercising an option. The existing employee, except Helpers should exercise the option within one month from the date of this order. The Helpers shall exercise their option at the time of their promotion. The option once exercised shall be final. The option shall be pasted in the Service Book of the employee duly making an entry in the Service Book. If no option is received from the existing Commercial Assistant before the stipulated date, such Commercial Assistant will be deemed to have opted for Commercial Assistant-Commercial Inspector-Foreman I Grade line. Similarly if no option is received from the existing wireman before the stipulated date, such wireman will be deemed to have opted for wireman-Line Inspector-Foreman I Grade line;

iv) Consequent on the separation of categories of Commercial Assistant/Commercial Inspector and Wireman/Line Inspector from the existing Common seniority, the seniority of Wireman, Commercial Assistant, Commercial Inspector and Line Inspector have to be refixed in the present category based on their

seniority in the post of Helper, among the persons in the same panel in which the individual was originally promoted. However, it should be ensured that consequent on the revision of seniority, the already overlooked persons do not get any unintended benefits;

v) Consequent on the refixation of seniority due to revised option exercised by the individuals, the Superintending Engineers of the Distribution Circles are directed to finalise and publish a provisional seniority list in their respective Distribution Circle afresh. The objection/representation if any to/on the revised seniority, may be obtained within a stipulated time by serving a copy of seniority list to each and every individual by obtaining acknowledgement. In case no objection is received within the stipulated time, it would be presumed that the employees are nothing to say in the revised seniority list and the revised list should be treated as final and no representation on the above subject would be entertained thereafter;

vi) Consequent on the above change in the line of promotion, rectification of pay anomaly, if any, of senior in R.W.E. category getting less pay than the junior will not be considered.

5. The respondent-writ petitioner, by representation dated 28.4.2006, thereafter, submitted his option, the English version of which reads as follows:

From S.Duraisamy SR/2637 Commercial Assistant O & M/Karipatty

To

The Executive Engineer O & M/East Salem-636 014. Through Proper Channel

Sir,

Sub: Electricity-Karipatty O & M- Promotion as Line Inspector- single channel-requested-Reg.

I am working as Commercial Assistant in Karipatty O & M Section. I request I may be promoted as Line Inspector instead of Commercial Assistant Please.

Yours faithfully, Sd/- S. Duraisamy.

Date: 28.4.06 Station: Salem.

6. After the aforesaid option, the first appellant-Superintending Engineer issued the impugned order dated 5.2.2007 and along with the respondent-writ petitioner, 30 other Commercial Assistants were posted as Wireman in order to take charge.

7. The learned single Judge, by the impugned common order dated 11.9.2007 in W.P.Nos.5419 and 9883 of 2007, referring to the settlement reached u/s 12(3) of the Industrial Disputes Act, held that the respondent-writ petitioner opted for

promotion to the post of Line Inspector and that there was no occasion to transfer him as Wireman and thereby, set aside the impugned order dated 5.2.2007.

8. Learned Standing Counsel appearing on behalf of the appellants-TNEB, while submitting that the option letter of the writ petitioner, dated 28.4.2006, has not been properly couched, as in the place of promotion, he should have opted for the other channel of promotion, submitted that the respondent-writ petitioner can be promoted to the post of Line Inspector after his posting in the other channel of promotion, i.e. Wireman.

9. Per contra, the stand taken by learned Counsel for the respondent-writ petitioner is that the respondent never opted for the post of Wireman and merely opted for promotion to the higher post of Line Inspector and therefore, the posting order as Wireman was against the settlement u/s 12(3) of the Industrial Disputes Act.

10. We have heard the learned Counsel appearing for the parties and perused the records.

11. From the relevant records, it would be evident that in the R.W.E., in the Distribution Circle, the base post is Helper. From the said post, the persons used to get promotion as Commercial Assistant; thereafter, Commercial Inspector and next to the post of Foreman Grade-I. The Helpers also used to get promotion in another Channel i.e. to the post of Wireman and thereafter, to the post of Line Inspector and thereafter to the post of Foreman Grade-I. The old system of separate promotion in the aforesaid two different channels, was given a go-bye and a common promotion used to be given. For example, a person who was promoted from the post of Commercial Assistant, was also entitled for promotion to the post of Line Inspector; the separate Channel for promotion having been abolished, and therefore, subsequently, the Union wanted re-introduction of separate channel of promotion to the R.W.E. categories in Distribution Circle, which was on introduction, provides the following channel:

(a) First channel of promotion,

(hereinafter called as Channel A):

Helper

Commercial Assistant

Commercial Inspector

Foreman Grade-I

(b) The other channel of promotion,

(hereinafter called as Channel B:

Helper

Wireman

Line Inspector

Foreman Grade-I

12. Admittedly, the respondent-writ petitioner was functioning as Commercial Assistant (the post in Channel-A, which was equivalent to the post of Wireman in Channel-B). After the letter dated 12.12.2005, the respondent-writ petitioner opted for the other Channel, i.e. Channel-B, by representation dated 28.4.2006, whereby, he requested to promote him to the post of Line Inspector, i.e. the post in the other Channel, i.e. Channel-B. Therefore, it will be evident that the writ petitioner opted for the other Channel and as per the Circular/letter dated 12.12.2005, a revised seniority list was to be prepared for two separate Channels, for the purpose of promotion to the higher post in the respective Channels and therefore, the appellants-TNEB authorities posted the writ petitioner to the post of Wireman by the impugned order dated 5.2.2007. The aforesaid aspects have not been noticed by the learned single Judge, nor discussed in the impugned common order.

13. From the facts aforesaid and the submissions made by the learned Counsel appearing for the parties, it would be evident that the respondent-writ petitioner has opted for promotion to the post of Line Inspector, i.e. option for the other Channel, i.e. Channel-B, and the appellants-authorities of the TNEB rightly posted him to the post of Wireman and thereby, there was no occasion to interfere with the impugned order dated 5.2.2007, which being completely in consonance with the settlement u/s 12(3) of the Industrial Disputes Act, and thereby, interference with the same was uncalled for.

14. We accordingly set aside the impugned order dated 11.9.2007 passed by the learned single Judge in Writ Petition No. 9883 of 2007 and allow the Writ Appeal. No costs. The Miscellaneous Petition is closed.