

IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: August 30, 2011
Decision on: September 5, 2011

W.P. (C) 5546/2002

INDRAPRASTHA POWER GENERATION
COMPANY LTD.

..... Petitioner

Through: Mr. S.K. Dubey, Advocate.

versus

PRATAP SINGH (WORKMAN)

..... Respondent

Through: Mr. Sarvesh Bisaria, Advocate.

CORAM: JUSTICE S. MURALIDHAR

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to the Reporter or not? | No |
| 3. Whether the judgment should be reported in Digest? | No |

JUDGEMENT
05.09.2011

1. The Petitioner, Indraprastha Power Generation Company Ltd. ['IPGCL'], challenges an Award dated 12th September 2001 passed by the Industrial Tribunal ['Tribunal']. By the impugned Award the Tribunal held the non-promotion to the Respondent on the post of Operator to be illegal and directed him to be promoted to the said post with effect from 24th June 1985 in the proper pay scale.

2. While directing notice to issue in the writ petition on 3rd September 2002, this Court stayed the operation of the impugned Award.

3. The Respondent joined Delhi Electric Supply Undertaking ['DESU'] with effect from 3rd March 1972 as a workshop caretaker. He was promoted to the post of Assistant Operator ['AO'] with effect from 15th September 1980.

4. An AO can be further considered for promotion to the post of Operator (Electrical) and Operator (Mechanical). In terms of the applicable recruitment regulations ['RRs'], the post of Operator (Electrical) being a selection post is to be filled up hundred per cent by way of promotion from amongst the AO (E/M) with three years' regular service in the grade. Selection was to be made on the basis of trade test and interview and recommendation made by the Departmental Promotion Committee ['DPC']. The post of Operator (Mechanical) is also a selection post and is to be filled up fifty per cent by promotion and fifty percent by direct recruitment. The feeder cadre for the post of Operator (Mechanical) is AO (E/M) with three years' regular service in the grade. Consequently, for the post of Operator (Electrical) and Operator (Mechanical) the feeder cadre, AO (E/M) is common.

5. A DPC was convened to select candidates to fill up ten vacancies in the post of Operator: three vacancies were earmarked for Electrical and seven for Mechanical. Further, there were twenty posts including back log- five posts for scheduled castes ['SC'] and five for scheduled tribes ['ST']-which were required to be filled up. A note prepared by the DVB, a copy of which was marked as Ex. MW1/2 in the Tribunal gives the detail of what transpired at the DPC. This note states that interviews were held by the DPC on 4th and 5th June 1984. The list of AOs (E/M) working on regular and *ad hoc* basis to be interviewed were placed before the DPC but the DPC recommended a panel of 25 persons; 20 general candidates and 5 SC candidates from the list of both regular and *ad hoc* AOs "in order of marks obtained by the individual ignoring the fact that whether they are working on regular or *ad hoc* basis." The validity of the panel was fixed as one and a half years. The Respondent, who belonged to the SC category, was placed at serial No. 22 in the panel. Against his name he was shown as *ad hoc* and as belonging to the Mechanical stream with a pending vigilance case.

6. Para 2 of the note stated that according to RRs there are three trades of Operator i.e. (i) Electrical (ii) Auxillary and (iii) boiler. However, it had already been decided that

there should be only two trades, i.e. electrical and mechanical. Further, according to the RRS the post of the Operator was a selection post required to be filled up by promotion from AOs with three years service in the grade after appointment in regular service on the basis of interview/trade test. It is therefore stated that “in view of this there should be two list of selected candidate i.e. one mechanical and other electrical. Further, the promotions were to be made firstly of candidates working on regular basis and “if vacancy remains then from those working on *ad hoc* basis.”

7. Thereafter, the names of five AOs working on regular basis and thirteen on *ad hoc* basis respectively in the Mechanical Branch were set out, followed by the names of three AOs working on regular basis and three on *ad hoc* basis in the Electrical Branch. It was noted that at that stage there were ten posts of Operators lying vacant – seven in the Mechanical and three in the Electrical which were required to be filled up. It was further noted that of those figuring in the list of selected candidates only one SC candidate was working on regular basis and four were working on *ad hoc* basis.

8. In a further note submitted to the higher official it was stated that due to the joining of two controllers and three Assistant Controllers only five posts were required to be filled up from the approved panel. As there was only one SC candidate on regular basis he along with those at serial Nos. 1 and 2 on the Mechanical side and the regular AOs at serial Nos. 1 and 2 on the Electrical side should be promoted. On that basis, by an order dated 24th July 1984 five posts of Operators were filled up.

9. On 19th November 1984 three more persons were promoted out of the panel. Two of the regular AOs in the Mechanical stream, Brijesh Dixit and Govind Ram, and the third regular AO in the Electrical Stream, Kishan Chand, were promoted as Operators.

10. On 24th June 1985 five AOs were promoted as Operators. Suresh Chand who was *ad hoc* (Mechanical) and four AOs in the Electrical Branch, one of whom i.e. Praveen Kalia was a regular AO and three of whom i.e. Sohan Pal, S.A. Khan and S.K. Das who were AO (Electrical) on *ad hoc* basis were promoted. Interestingly, while Suresh

Chand was appointed as Operator (Lub), the four AOs (Electrical) were promoted as Operator (Ash Sluice Pump). A copy of the order dated 24th June 2005 is annexed as Annexure R-3 to the counter affidavit of the workman in the writ petition. It is not clear if the post of Operator (Ash Sluice Pump), is the same as Operator (Mechanical).

11. The stand of the Petitioner is that the Respondent was regularised as AO on 12th August 1982. Regular AOs (E/M) were given preference while making appointment by way of promotion as Operator. Consequently, while 13 persons from the panel of 25 persons were promoted as Operators, six as Operator (Mechanical) and seven as Operator (Electrical), the Respondent was not promoted and was informed accordingly on 20th August 1985. Thereafter, the panel expired and no promotion of any candidate was made.

12. In 1987-88 fresh applications were invited from eligible candidates for appointment as Operator (both Electrical and Mechanical) and a fresh DPC was constituted. Further, pursuant to the recommendation of that DPC the Respondent was appointed as Operator (Mechanical) on 21st December 1988.

13. Aggrieved by the non-promotion as Operator (Mechanical) from an earlier date the Respondent raised an industrial dispute which was referred to the Tribunal in Case No. 85 of 1990. The Respondent claimed that he should have been promoted as Operator with effect from 15th September 1982 when according to him he became eligible for such promotion. In the statement of claim, the workman claimed that he had been promoted as AO with effect from 15th September 1980 to fill up the back log quota of SC and ST after giving one year's relaxation. Quoting a letter dated 4th/8th January 1979 issued in accordance with the recommendations of the 27th Parliamentary Committee, it was claimed by the Respondent that he was eligible for promotion as Operator with effect from 15th September 1982. He claimed that although he was empanelled by the DPC which met on 5th June 1984 for the post of Operator, he was discriminated as two persons below him in the said panel were promoted as Operators whereas he was denied the said promotion.

14. In reply to the above claim before the Tribunal, the Petitioner pointed out that the DPC found eighteen AOs (Mechanical) fit for the post of Operator (Mechanical) and seven AOs (Electrical) fit for promotion to the post of Operator (Electrical). Out of the twenty five included in the list of selected candidates, thirteen were promoted as Operators: six on the Mechanical side and seven on the Electrical side. The workman's name figured at serial No. 22 and was found suitable for promotion. He was informed that he would be promoted in his turn. Interestingly, the plea before the Tribunal was not that the workman was promoted as AO only on *ad hoc* basis, it was in fact stated that since the minimum service for eligibility for promotion as Operator from AO was three years service and not two years, the workman "was only eligible for promotion on 15.9.1983 and not on 15.9.1982."

15. The statement of MW-1 Shri Mali Ram, Assistant Personnel Officer ('APO') before the Tribunal was as under:

"As a result of judging the suitability by the departmental selection committee, 25 Asstt. Operators were selected for promotion. The selection committee made a list of such candidates on the basis of their merits irrespective of their status of *ad hoc* or regular Asstt. Operator. But the management after such selection bifurcating the first of all in two categories i.e. Mechanical 2) Electrical. First of all out of selected list of candidates, the first preference was given to the employees who stand regular and thereafter on *ad hoc*. In mechanical category, there were 5 regular employees and 13 on *ad hoc* basis. Similarly on Electric side, four on regular and three on *ad hoc* basis."

16. In his cross-examination, he, *inter alia*, stated as under:

"On 24.7.84, there were 4 vacant posts of SC and 15 ST posts. It is correct that the workman concerned was promoted on a regular post of Asstt. Operator w.e.f. 15.9.80. It is correct that he worked continuously and uninterruptedly as such and he is further appointed as Operator w.e.f. 11.12.88. I cannot give any reason whatsoever as to why the workman was shown an *ad hoc* Assistant officer w.e.f. 15.9.80 as just to deny the benefits of the post. It is correct that the

concerned workman has exclusively performed the duties of Asstt. W.e.f 15.9.80. It is correct that the concerned workman has exclusively performed the duties of Asstt. Operator w.e.f 15.9.80. It is correct that the name of Shri S.K. Dass appears at Sr. No. 24 in the merits list Ex. M.W. 2/1 was appointed as Operator w.e.f. 24.6.85. Even Shri Surinder Nath whose name appeared at Sr. No. 23 in Ex. M.W. 1/2 was made Operators. It is correct that all the 25 candidates who were selected for the post of Operator had rendered three years continuous service of Asstt. Telephone Operator however some of them shown as adhoc. It is correct that as per rules first of all the vacant posts of SC and ST are to be filled up. It is correct that in this case, the all the posts of SC and ST were not filled up. Vol. as some of the employees were shown on *ad hoc*. In this case only one SC on mechanical side and one on electrical side from SC category was taken. I do not know if the SC candidates/Asstt. Operator become eligible for the post of Operator after three years continuous service and he is entitled for one year relaxation. The DPC has strictly complied the list of candidates on merit basis. They have not bifurcated the candidates into the mechanical and electrical side. It is incorrect to suggest that the department has bifurcating without any basis.”

17. The Tribunal appreciated the above evidence and concluded as under:

“From the statement of MW1, it is established that on 24.7.84 05 posts of SC and 15 posts of ST were vacant and this workman was regular and permanent Asstt. Operator, but for the reasons not known, he was shown as Ad-hoc Asstt. Operator. He had put up three years service as regular Asstt. Operator at the relevant time. He was not considered for the promotion, but his juniors in the list, who were at S.No. 23 and 24 were given promotion. In fact, the candidates of SC & ST category were to be given priority for filling the post, but that rule was overlooked in this case. The panel prepared by DPC was disturbed by management afterwards without giving hearing to the affected persons. Now, the question arises whether the management is competent to upset the panel prepared by Departmental Promotion Committee.”

18. Thereafter, the Tribunal proceeded to hold that the management could not have upset the DPC recommendations and that the management had illegally deprived the workman of promotion from 24th June 1985 although he was eligible and that his non-regularization on the post of Operator was illegal and unjustified. The workman was

held entitled to be treated as promoted with effect from 24th June 1985 when his juniors Shri Surender Nath and Shri S.K. Dass were promoted.

19. This Court has heard the submissions of Mr. S.K. Dubey, learned counsel for the Petitioner and Mr. Sarvesh Bisaria, learned counsel for the Respondent.

20. Mr. Bisaria contests the stand of the management that the post of Operator was bifurcated as Operator (Electrical) and Operator (Mechanical) and that there was no vacancy for the post of Operator (Mechanical) against which the Petitioner could have been promoted. It is pointed that the promotion of four of the AOs as Operator (Electrical) on 24th June 1985 was without basis as there were no vacancies available for Operator (Electrical) while there was one remaining vacancy in Operator (Mechanical). Further, there was a back log of five SC posts.

21. Mr. Dubey maintains that there were no vacancies in the post of Operator (Mechanical) at the relevant point in time against which the Respondent could be promoted. He submitted that although one common panel was prepared of all eligible AOs (E/M) by the DPC, the promotion as Operator (Electrical) or Operator (Mechanical) depended on the vacancy position in each such stream.

22. Copies of the RRs have been enclosed with the writ petition. The RRs, as clarified in the note of the DPC referred to above, envisage two distinct streams in the post of Operator: Electrical and Mechanical, for which the feeder cadre for the promotion is AO with three years' regular service in the grade. Likewise for Operator (Mechanical), which is to be filled up fifty per cent by way of promotion the feeder cadre is AO (E/M). The statement of MW1 before the Tribunal by way of examination-in-chief listed out two categories and the distinctions between these two categories of Operators. The only response in cross-examination that was elicited was that the DPC had not bifurcated the AOs in the panel into "Mechanical and Electrical side." This does not imply that there was no post of Operator (Electrical) or Operator (Mechanical).

23. The main issue concerns the non-promotion of the Respondent as Operator (Mechanical) from a date earlier to 21st December 1988, the date on which he was ultimately promoted as such. The admitted position is that the Respondent's name figured at serial No. 22 at the panel prepared by DPC in its meeting on 5th June 1984 although he was shown as *ad hoc*. It is seen that as of that date although initially it was stated that there were ten vacant posts, this got reduced to five and only that many regular AOs were promoted as Operators. Within a few months thereafter on 19th November 1984 three more posts of Operators were filled. This brought the total posts of Operators (Mechanical) that were filled to five. One more AO, Suresh Chand who was *ad hoc*, was promoted as Operator (Mechanical) on 24th June 1985 bringing the total promoted in the Operator (Mechanical) stream to six. By the vacancy position initially projected, there was still one vacancy left of Operator (Mechanical). As regards Operators (Electrical) there were three vacancies to begin with. Two were filled up on 24th July 1984 and one more on 19th November 1984. Thus all vacancies were exhausted. On what basis four *ad hoc* AOs from the Electrical stream were promoted as Operators (Electrical) on 24th June 1985 is not clear. On 24th June 1985 Suresh Chand an AO (Mechanical) who, like the Respondent was shown as *ad hoc*, was promoted as Operator (Mechanical). If one went by the vacancy position as of June 1984, there was definitely one more post of Operator (Mechanical) still vacant as on 24th June 1985 after Suresh Chand was promoted. The explanation in the writ petition that there were no vacancies as on that date is not accurate. The other explanation is that the workman was regularized only on 12th August 1982 and since he had not completed three years as on 24th June 1985 he could not be promoted. However, the workman has right from the beginning challenged this. The document placed by him before the Tribunal shows that by February 1985 the vigilance case was closed. In his cross-examination, MW1 could not explain why the workman was shown as *ad hoc* and why he was 'regularized' only on 12th August 1982. Further Suresh Chand who was promoted on 24th June 1985 was also shown as *ad hoc* in the panel. Since there was one vacancy of Operator (Mechanical) available as on 24th June 1985, the workman could have been promoted as such on *ad hoc* basis just like the four *ad hoc* AOs (Electrical) who were promoted as Operators on 24th June 1985 even

when there were apparently no vacancies in the post of Operator (Electrical) if one went by the original vacancy position as on June 1984. The second aspect of the matter is of course that there was a back log of five SC vacancies. No other SC candidate in the panel has come forward to lay a claim for promotion as Operator (Mechanical) earlier than the Respondent. Even assuming that the Respondent workman was short of three years' experience as regular AO if computed from 12th August 1982 by about two months as on 24th June 1985, he could have been promoted on *ad hoc* basis against the remaining vacancy of Operator (Mechanical) with effect from 12th August 1985 as this was within the eighteen months period of validity of the panel prepared by the DPC on 6th June 1984. Therefore the workman was entitled to be promoted as Operator (Mechanical) on 24th June 1985 itself or in any event on 12th August 1985.

24. In the circumstances, this Court does not consider it necessary to interfere with the impugned Award of the Tribunal. The writ petition is dismissed. The interim order is vacated.

S. MURALIDHAR, J

SEPTEMBER 05, 2011

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