

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No.2328 /2012**

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1st August, 2013

NAVAL SINGH

..... Petitioner

Through: Mr. A.K. Trivdei, Advocate.

versus

BSES RAJDHANI POWER LTD. AND ORS. Respondents

Through: Mr. S.N. Choudhri, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. This writ petition is filed by the petitioner-Mr. Naval Singh impugning the office order dated 23.3.2012 of the respondent No.1/employer/BSES Rajdhani Power Limited whereby the petitioner has been transferred and posted to work as a Telephone Operator in complaint centre of respondent No.1. Petitioner states that petitioner is an Assistant Grade-II employee and since the Telephone Operator is at a lower post of Assistant Grade-III, respondent No.1 cannot ask him to perform the duties of a lower post only on the ground that the petitioner will continue to get the

pay of the higher post.

2. Petitioner was appointed by the Delhi Vidyut Board on 31.10.1996 as a Junior Clerk/Telephone Operator. It is not disputed by the respondent No.1 that this post was Assistant Grade-III (AG-III) post. After privatization and unbundling of the DVB, the services of the petitioner were transferred to respondent No.1. Petitioner had in the meanwhile got his promotion from AG-III to AG-II on 25.5.2008. That the post of AG-II is a promotion post from AG-III is again not disputed by the respondent No.1. Therefore, the fact of the matter is petitioner was appointed as AG-III post and he was promoted to AG-II post. At that stage, the impugned order came to be passed asking the petitioner to work as a Telephone Operator, and which post of Telephone Operator is an AG-III post is not disputed by the respondent No.1 because in para 2 of the preliminary submissions of the counter affidavit it is admitted that the post of Telephone Operator is a non-technical post and is equivalent to AG-III post. The only defence of respondent No.1 is that all the three posts of AG-I, AG-II and AG-III are clerical posts and therefore persons appointed in any of these posts can be interchanged so far as their duties are concerned inasmuch as all the posts are clerical posts.

3. In my opinion, the stand taken by the respondent No.1 of AG-III and AG-II posts being interchangeable so far as performance of duties are concerned on the ground that they are clerical posts is a misplaced argument. Once there are three separate posts and there takes place promotion from a lower post to a higher post i.e AG-III to AG-II post and AG-II to AG-I post, then, a person who is promoted to a higher post, cannot be asked to perform duties of a person in a lower post. The contention that the person if he is asked to work at a lower post then he will not be prejudiced because he will get pay of a higher post is not an argument of any merit because no one can be asked to work in a post which is below his status. To give a crude example, an officer cannot be asked to work in a clerical post merely on the ground that the officer will still get the pay of the officer.

4. On behalf of the petitioner, reliance is rightly placed upon ***P.K. Chinnasamy Vs. Government of Tamil Nadu and Ors. (1987) 4 SCC 601*** which holds that an officer should be given posting and work which commensurate to his status and failure to do so calls for equivalence by the Court under Article 226 of the Constitution of India.

5. In view of the above, writ petition is allowed. Transfer of the

petitioner by the order dated 23.3.2012 to work at the post of Telephone Operator is quashed. Respondent No.1 is directed to post the petitioner in a job which is that job which is for a post of AG-II appointment. Appropriate orders in this regard be passed within a period of four weeks from today. Parties are left to bear their own costs.

VALMIKI J. MEHTA, J

AUGUST 01, 2013

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