

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2015

CORAM

THE HONOURABLE MR. JUSTICE D.HARIPARANTHAMAN

W.P.NO.10564 OF 2015

C.Govindaraj alias Tamil Selvan

...Petitioner

Versus

The Chief Engineer (Personnel)  
Tamil Nadu Electricity Board  
No.144, Anna Salai, Chennai - 600 002.

...Respondent

PRAYER: Writ petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondent to grant monetary benefits from 28.01.2012, the date on which the petitioner was given notional seniority pursuant to the exoneration from all charges within the time to be fixed by this Court.

For Petitioner : Mr.M.Venkatakrisnan

For Respondent : Mrs.R.Varalakshmi  
Standing Counsel for TNEB

O R D E R

Heard both sides. By consent, the writ petition is taken up for final disposal at the admission stage itself.

2.The petitioner joined as Assistant Engineer in the Tamil Nadu Electricity Board and he was posted at Gas Turbine Station, Basin Bridge. The respondent Board finalised the panel dated 28.01.2012 for promotion to the post of Assistant Executive Engineer. The petitioner was not included in the panel in view of the pendency of the disciplinary proceedings against him.

3.Since the petitioner's promotion was delayed due to the pendency of the disciplinary proceedings, he filed writ petition in W.P.No.31170 of 2013 seeking direction to conclude the enquiry at the earliest. This Court, by order dated 20.11.2013 disposed of the said writ petition by directing the third respondent therein to conclude the enquiry within a period of six months from the date of receipt of

a copy of the said order.

4. In view of the order passed by this Court in W.P.No.31170 of 2013, enquiry was conducted, concluded and ultimately charges were dropped by separate orders dated 04.03.2013, 17.10.2013 and 07.10.2014. According to the petitioner, in view of the dropping of the charges, his claim for including his name at appropriate place in the panel should be considered by the respondent.

5. Since the petitioner's name was not included at appropriate place in the panel and he was not given notional promotion with retrospective effect from the date on which his immediate junior was promoted, he filed another writ petition in W.P.No.28442 of 2014 seeking direction to the respondent to grant notional promotion in the appropriate place in the panel prepared for the year 2012 with attendant and monetary benefits. In this regard, he has also made a representation dated 16.10.2014 to the respondent.

6. This Court passed an order dated 31.10.2014 in W.P.No.28442 of 2014 directing the respondent to consider and pass orders on the petitioner's representation dated 16.10.2014 and to give notional promotion retrospectively from the date on which his junior was promoted.

7. Based on the aforesaid order of this Court dated 31.10.2014, the respondent passed an order dated 20.01.2015, wherein the petitioner was included in the panel of the year 2012 and he is fixed at Sl.No.13(a) above Thiru S.Srinivasan, Assistant Executive Engineer and below Thiru U.Umashankar, Assistant Executive Engineer. Thereafter, another order dated 20.02.2015 was passed by the respondent posting the petitioner as Assistant Executive Engineer and allotted him to Ennore Thermal Power Station Expansion Project.

8. The petitioner has filed this writ petition seeking direction to the respondent to grant monetary benefits from 28.01.2012, the date on which he was given notional seniority pursuant to the exoneration from all the charges.

9. Though it is prayed in the writ petition that the petitioner should be granted monetary benefits of Assistant Executive Engineer from 28.01.2012, the learned counsel for the petitioner submitted that the petitioner should be notionally fixed the pay of Assistant Executive Engineer, from the date on which his immediate junior was promoted as Assistant Executive Engineer and paid the salary of the Assistant Executive Engineer and accordingly, his pay should be fixed as Assistant Executive Engineer, when he was posted by an order dated 20.02.2015. According to him, the order dated 20.01.2015 including his name in the panel for promotion to the post of Assistant Executive Engineer is silent about his fixation and it is simply stated that his seniority is fixed as Sl.No.13(a) in the

panel. The learned counsel has relied on Note (2) of Regulation 37 of the Tamil Nadu Electricity Board Service Regulations in this regard.

10. On the other hand, the learned Standing Counsel for the respondent Board has submitted that there is no infirmity in the order dated 20.01.2015 of the respondent.

11. I have considered the submissions made on either side and perused the materials available on record.

12. It is true that in the order dated 20.01.2015, the petitioner was included in the panel for promotion to the post of Assistant Executive Engineer retrospectively and he has been assigned Sl.No.13(a). However, it is not made clear as to whether he was given fixation as per Note (2) of Regulation 37 of the Tamil Nadu Electricity Board Service Regulations. In this regard, it is useful to extract Regulation 37 of the Tamil Nadu Electricity Board Service Regulations, which reads as follows:

"37. The Board may grant a premature increment to an employee in a time scale. Such increments will, however, be granted only in exceptional circumstances. Further increments in the time scale should be with reference to the date on which the premature increment is granted.

Note:1 When a Board employee is reverted to a lower post due to administrative reasons, the benefit of advance increment sanctioned to him in the higher post, shall be sanctioned in the lower post also. The pay in the lower post shall be the pay he would have drawn had he been sanctioned advance increment on the date of attaining eligibility for the advance increment in the lower post plus the annual increments due to him in the lower post till the date of reversion.

Note:2 In case where an employee has been overlooked for promotion / appointment to the next higher post but subsequently promoted / appointed to that higher post after restoration of his original seniority on appeal, his pay shall be fixed on the date of assumption of charge in the higher post on par with the pay of his junior, provided, he has drawn the same rate of pay as his junior in the lower post from time to time; if he has not drawn the same rate of pay as his junior in the lower post, his pay shall be fixed, on the date of assumption of charge, at the stage at which he would have drawn pay on that date had he been promoted / appointed to the higher

post along with his junior."

13.As rightly contended by the learned counsel for the petitioner, Note 2 of Regulation 37 of the Tamil Nadu Electricity Board Service Regulations makes it very clear that the pay of the petitioner shall be fixed on the date of assumption of charge in the higher post, on par with the pay of his junior, when he was overlooked for promotion and subsequently, he was promoted to the post.

14.Applying the aforesaid regulation, I am inclined to issue direction to the respondent to grant the petitioner the pay, on par with his junior, from the date of assumption of charge, otherwise, the order dated 20.01.2015 has no meaning. After including his name in the panel of the year 2012 and placing him at Sl.No.13 (a), he cannot be deprived his proper pay that is paid to his junior.

15.Accordingly, the writ petition is disposed of directing the respondent to fix the pay of the petitioner in the post of Assistant Executive Engineer from the date on which he assumed charge, on par with his junior, within a period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/-  
Deputy Registrar(J)

//True Copy//

Sub Assistant Registrar

TK

To

The Chief Engineer (Personnel)  
Tamil Nadu Electricity Board  
No.144, Anna Salai,  
Chennai - 600 002.

1 CC to Mr.M.Venkatakrisnan, Advocate SR.No. 20537

1 CC to Mrs.R.Varalakshmi, Advocate SR.No. 20253

W.P.NO.10564 OF 2015

CA (CO)  
PSI (21.05.2015)