

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

+ W.P.(C) No. 8118/2011

% **27th March, 2015**

DELHI TRANSCO LIMITED ENGINEERS WELFARE ASSOCIATION
(REGD) Petitioner

Through: Mr. R.M.Bagai, Adv. and Ms. Damini
Khaira, Adv.

versus

GOVERNMENT OF NCT OF DELHI & ORS. Respondents

Through: Ms. Avnish Ahlawat and Ms. Latika
Chaudhary, Adv. for R-1.

Ms. Meenakshi Midha, Adv. with Mr.
Siddharth Nagpal, Adv. for Mr.
Sumeet Pushkarna, Adv. R-2.

Mr. Ansit Bhatnagar, Adv. for R-3.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

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

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition filed under Article 226 of the Constitution of India, the petitioner/association, and which is an association of Engineers working with the respondent no.2/Delhi Transco Limited, impugns the selection process to the post of Director (Operations) on the basis of

Recruitment and Promotion Rules, 2007 (hereinafter referred to as ‘the Rules’) framed by the respondent nos.1 & 2 and filed as Annexure P-7 to the writ petition. The case of the petitioner in essence is that by virtue of the amended Rules of 2007, an additional eligibility criteria is fixed whereby the right of first consideration of existing engineers working with the respondent no.2 has been done away and also that the maximum age limit which earlier was not restricted has been restricted to 56 years. The relevant averments in this regard have been made in para 10 of the writ petition and which reads as under:-

“10. That the petitioner was shocked to find out from the said circular that the eligibility conditions for appointment to the post of Director (Operations) are totally at variation with the existing recruitment and promotion rules for the post of Director (Operations) which had been followed by all these years till January 2011. It is submitted that as per the existing rules, the engineers working with the respondent No.2 had first right of consideration which has been done away with but they have also been totally deprived for consideration. Moreover, the maximum age limit has been restricted to 56 years while earlier there was no such age limit and the last appointee i.e. Shri V.P.Dutta was 59 years plus at the time of his appointment to the post of Director (Operations). It is pertinent to submit that in case the respondents are not restrained from finalizing the process for appointment to the post of Director (Operations) under the new rules, the departmental candidates will be deprived even from consideration to that post which otherwise they are legally entitled to and that has been the practice all these years as per the applicable rules. The present

status of the senior most General Managers (Tech.) with their dates of superannuation is as under:-

S.No.	Name of the persons	Date of Superannuation
1	Sh. Raj Bhartiya	30.4.2012
2	Sh. Nirmaljeet Singh	31.01.2013
3	Sh. Bhpinder Nath	31.07.2014
4	Sh. Roop Kumar	31.07.2015
5	Sh. Ved Mitra	31.12.2015
6	Sh. Prem Prakash	30.04.2019

”

2(i) Petitioner/association relies upon Clause 3 (B) of the Tripartite Agreement dated 16.1.2001 which was entered into between the Government of NCT Delhi, the Delhi Vidyut Board (DVB) and the Joint Action Committee of Workers, Supervisors, Engineers and Officers of DVB at the time of unbundling of DVB. As per the petitioner, in view of this Clause, the transferee employer of the petitioner viz respondent no.2 in this case, had no right to change the existing recruitment and promotion rules

which existed at the time of unbundling of DVB. This Clause 3(B) relied upon by the petitioner in the Tripartite Agreement dated 16.1.2001 reads as under:-

“3. xxxxxx

B) The terms and conditions of service upon transfer to the corporate entities, such as promotions, transfers, leave and other allowances, etc regulated by existing regulations/service rules e.g. FR/SR will be guaranteed to continue the same and any modifications shall be by mutual negotiations and settlement with recognised unions/associations without decrement to the existing benefits.”

(ii) Counsel for the petitioner also relies upon Section 16 of the Delhi Electricity Reforms Act, 2000 and Section 133 of the Electricity Act, 2003 to argue that the eligibility criteria of promotion to the post of Director (Operations) of the respondent no.2 cannot be changed for employees of DVB and these Sections read as under:-

Section 16 of the Delhi Electricity Reforms Act, 2000

“16. Provision relating to personnel.-(1) The Government may by a transfer scheme provide for the transfer of the personnel from the Board to a company or companies established as the case may be, under section 14 and distribution companies (hereinafter referred to as "transferee company or companies") on the vesting of properties, rights and liabilities in a company or companies established, as the case may be, under section 14 or the distribution companies.

(2) Upon such transfers the personnel shall hold office in the transferee company on terms and conditions that may be specified in the transfer scheme subject, however, to the following, namely:-

(a) that the terms and conditions of the service applicable to them in the transferee company shall not in any way, be less favourable than or inferior to those applicable to them immediately before the transfer;

(b) that the personnel shall have continuity of service in all respects; and

c) that the benefits of service accrued before the transfer shall be fully recognised and taken in account for all purposes including the payment of any and all terminal benefits.”

Section 133 of the Electricity Act, 2003

“133. Provisions relating to officers and employees.- (1) The State Government may, by a transfer scheme, provide for the transfer of the officers and employees to the transferee on the vesting of properties, rights and liabilities in such transferee as provided under section 131.

(2) Upon such transfer under the transfer scheme, the personnel shall hold office or service under the transferee on such terms and conditions as may be determined in accordance with the transfer scheme:

Provided that such terms and conditions on the transfer shall not in any way be less favourable than those which would have been applicable to them if there had been no such transfer under the transfer scheme:

Provided further that the transfer can be provisional for a stipulated period.

Explanation: - For the purposes of this section and the transfer scheme, the expression "officers and employees" shall mean all officers and employees who on the date specified in the scheme are the officers and employees of the Board or transferor, as the case may be.”

3. Respondents in their counter-affidavits have taken up two basic defences. The first defence is that on the basis of 2007 recruitment rules, and which is that respondent no.2 has acted upon the new Rules since 2007 by making appointments to the post of Director (Operations), and therefore the rules cannot be challenged after the delay of four years. The second defence is that respondent no.2 is a company, and therefore, as a company it

has all the rights to make the necessary rules and for which no notification is required to be issued by the Government of NCT of Delhi and that there is even no gazette notification which is required to be issued by the respondent no.2 at the time of amending its recruitment and promotion rules.

4. In my opinion, so far as the aspect of delay is concerned, in a case such as the present, the challenge to the recruitment and promotion rules is a continuous cause of action with respect to each appointment and therefore, the issue of delay will not go against the petitioner.

5. The issue to be squarely decided in the present case is whether respondent no.2 in view of Clause 3 (B) of the Tripartite Agreement dated 16.1.2001 and Sections 16 and 133 quoted above is entitled to argue that petitioner has no power to challenge the eligibility criteria for recruitment to the post of Director (Operations).

6. In the opinion of this Court, may be a literal interpretation of the language of Clause 3(B) and Sections 16 & 133 reproduced above may on a *prima facie* reading support the petitioner, however, in my opinion, this Court cannot read the Clause 3(B) and Sections 16 & 133 to hold that the transferee employer cannot fix any eligibility criteria for appointment to the post of Director (Operations) by seeking direct recruitment or by reducing

the age limit. This I say so because surely it was open to the original employer i.e DVB to change service conditions i.e eligibility criteria with respect to a particular post, and if therefore the erstwhile employer DVB could have modified its recruitment and promotions rules; assuming DVB was continuing to exist; then there is no reason why the transferee employer cannot change the service rules. Also, when existing rights are treated as vested rights and hence are protected because of Clause 3(B) of the Tripartite Agreement dated 16.1.2001 or Section 16 of the Delhi Electricity Reforms Act, 2000 or Section 133 of the Electricity Act, 2003, all that the Clause and these provisions show is that existing benefits should not be taken away without prejudice of transferee employees. However, neither Clause 3(B) of the Tripartite Agreement or the Sections 16 and 133 when they say that existing vested rights should not be taken away only means that existing promotions or existing appointments will not be taken away and existing monetary emoluments will not be reduced and that with respect to existing posts, no detriment will be caused and monetary benefit will be taken away. However, under no circumstances, on the basis of the Clause and the Sections relied upon, a right of any employer to fix, alter, modify, re-modify etc service rules with respect to eligibility criteria can be urged to have been denied to the employer. If the argument urged on behalf of the

petitioner is accepted that the recruitment and promotion rules can never be changed by the employer, and which will go against the basic tenets of service law jurisprudence that an employee serves an employer in accordance with the service rules as applicable from time to time as existing when the benefit of the specific rules is sought to be taken/invoked.

7. In view of the above, the petition does not have merit, and, it is not possible to grant the relief claimed by the petitioner.

8. Dismissed.

MARCH 27, 2015
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VALMIKI J. MEHTA, J.