

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

WRIT PETITION No.5503 OF 2015

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed to declare the Memo No.CMD/CGM/(HRD)/GM(S)/ AS(Estt)/PO-A/836-A3/14-3, dated 26.02.2015, issued by the third respondent repatriating the petitioner from TSNPDCL to TSTRANSCO while rejecting the representation of the petitioner dated 11.11.2014 and 25.11.2014 as illegal, arbitrary, malafide, unconstitutional and in violation of principles of natural justice and against the order passed in WA No.2034 of 2004 dated 24.07.2014 and interim order dated 08.01.2008 in WP No.273 OF 2008 by issuing writ of Mandamus.

02. The petitioner joined in the erstwhile state of Andhra Pradesh Electricity Board (for short, 'APSEB') as Assistant Engineer in the year 1992 as direct recruit. Subsequently, he was promoted as Assistant Divisional Engineer with effect from 06.11.2000, thereafter promoted as Divisional Engineer with effect from 31.03.2006. Presently, he is discharging his duties as Divisional Engineer, CMD Peshi (Technical) Corporate Office, Vidyuth Bhavan, Warangal, on transfer from Banswada vide order dated 23.02.2015 passed by the third respondent. The then composite state of Andhra Pradesh formulated the A.P. Electricity reforms (Transfer Scheme) Rules 1999 and in pursuance of the said reforms, the Government of A.P. divided APSEB into six companies under the Companies Act. They are as follows:

- 1) Generation Corporation of A.P. Limited
- 2) Transmission Corporation of A.P. Limited
- 3) Eastern Power Distribution Co. of A.P. Limited
- 4) Southern Power Distribution Co. of A.P. Limited
- 5) Central Power Distribution Co. of A.P. Limited
- 6) Northern Power Distribution Co. of A.P. Limited

03. The Government, in pursuance of the said objectives, wanted to organize the staff into these six companies held negotiations with the service organizations and also with the representatives of these companies, entered into tripartite agreement. The tripartite agreement was arrived on various aspects of the service conditions of employees apart from the re-organization of these companies and distribution of assets and liabilities. In pursuance of tripartite agreement, a High Level Committee was constituted to finalize the options of individual employees at various levels for organizing the staff into these six companies.

04. On account of re-organization of APSEB, dividing the same into six companies, a Circular has been issued by the Transmission Corporation of A.P. Limited dated 27.04.2002, to individual employees asking them to exercise their options in any one of the six companies in order of preference, prescribed proforma was annexed to the Circular dated 27.04.2002, addressed to individual members, while fixing last date for submission of options to the Transmission Corporation of A.P. Limited i.e. on or before 10.06.2002. In response to the said Circular dated 27.04.2002, the petitioner submitted his option in the prescribed proforma on 10.06.2002 opting (first preference to) AP TRANSCO and second preference to AP NPDCL. While the matter stood thus, pending consideration of the options, the second respondent – High Level Committee issued press note calling for revised option through Newspaper item on 11.07.2002 published in Eenadu News Daily. In response to the same, the petitioner submitted his revised option on 19.07.2002 inter alia seeking absorption into NPDCL in which he is working all through from the date of joining. While so, in the very same press note, the second respondent–Committee has categorically stated that 25.07.2002 was cut off date for submitting the revised option. Unfortunately, without assigning any reason his revised option was

rejected along with 355 other applicants and prepared the list of employees based on their letter of option exercised on 10.06.2002 while considering the option of 455 employees.

05. Aggrieved by the unilateral and illegal order of the second respondent-Committee, rejecting the revised option of the petitioner, the petitioner along with others, approached this Court by filing writ Petition No.14801 of 2002 and batch, initially this Court was pleased to grant interim orders directing to continue the services of the petitioner and others in AP NPDCL pending disposal of the writ petition vide order 20.08.2002. However, the writ petitions were dismissed by common judgment dated 30.11.2004.

06. Feeling aggrieved by the common judgment, the petitioner along with other employees filed writ appeals and the petitioner filed W.A. No.2035 of 2004 and batch and the Division Bench of this Court was pleased to pass an interim order dated 28.02.2005 in WA MP No.3707 of 2004 directing the respondents to maintain status quo obtaining as on that date and further ordered that the services of all the petitioners with their respective present employees would be treated until further orders, as same on deputation from the erstwhile Board and the same will be subject to the result of the batch of Writ Appeals. In pursuance of the interim order the petitioner is continuing as Divisional Engineer in AP NPDCL for all these years. Pending disposal of the writ appeal and during subsistence of the interim order, the third respondent issued a Memo No. CGM(HRD)/GM(S)/PO-1/984-A2/07 dated 19.12.2007 to show cause as to why the petitioner should not be reverted to the cadre of Assistant Divisional Engineer granting 15 days time to submit his defence. Aggrieved by the show cause notice, the petitioner filed W.P. No.273 of 2008, wherein this Court was pleased to pass an interim order in WP MP No.284 of 2008 on 08.01.2008 initially for a period of four weeks, subsequently the said interim order was made absolute while dismissing the vacate stay petition in WV MP

No.2184 of 2008.

07. While the matter stood thus, with a deep rooted conspiracy of the juniors, who are aspiring promotion, made a complaint to ACB by planting one Laxman Naik, A.E. while the petitioner was working as D.E. at Nizamabad, alleged that he accepted Rs.5,000/- from the said Laxman Naik for doing official favour and the ACB laid a trap at the instigation of his juniors. However, after review of the entire matter, the Principle Secretary, Energy Department, was pleased to order reinstatement of the petitioner into service pending finalization of the case vide order dated 17.09.2010. Accordingly, he was reinstated as D.E. in APNPDCL, Corporate Office, Warangal, thereafter, transferred to Banswada w.e.f. 05.06.2013. The Division Bench of this Court, while deciding W.A.No.2035 of 2004 and batch by order dated 24.07.2014 issued the following directions:

“The subject matter of these two writ appeals is about the acceptance of the option given to the appellants to work either in the A.P.TRANSCO or in the APNPDCL. The appellants preferred the second option. The respondents however appear to be insisting on the appellants to work in A.P.TRANSCO.

Out of the six appellants in W.P.No.2034 of 2004, five have already withdrawn and the writ appeal is pending with reference to only one appellant. In W.A.No.2035 of 2004, out of the five appellants, two have already withdrawn the writ appeal and it is pending with reference to three of them.

After hearing learned senior counsel appearing for the appellants and learned counsel for the respondents, we are of the view that in the changed scenario, that emerged with the division of the State, the matter needs to be examined afresh. It is brought to the notice of this Court that though there were no vacancies in the APNPDCL, at the relevant point of time; due to large scale repatriation of the employees consequent on the division of the State, vacancies are available now.”

Therefore, we dispose of the writ appeals, leaving it open to the appellants to pursue the remedies with the concerned authorities in this behalf and the respondents shall consider the same in accordance with law, within a period of three months from the date of receipt of the representation.

08. As directed by the Division Bench, the third respondent

directed the petitioner to submit representation along with other employees within 15 days from the date of receipt of the Memo with regard to the acceptance of options vide Memo No.CMD/CGM/(HRD)/GM(S)/AS(Estt)/PO-A/836-A3/14-3, dated 26.02.2015 and in compliance of the said Memo, the petitioner submitted his detailed representation on 11.11.2014 and on 25.11.2014 respectively, requesting the authorities to retain him in TS NPDCL as per his revised option dated 15.07.2002 which was the subject matter in WP No.14801 of 2002, but the respondents did not consider the representation afresh in pursuance of their undertaking before the Division Bench of this Court with reference to bifurcation of the State and large scale repatriation of employees consequent upon the division of the State, vacancies available. Therefore, the petitioner challenged the proceedings dated 26.02.2015 on the following grounds:

a) As directed by the Division Bench of this Court, the petitioner submitted his representation, instead of disposing the representation by the second respondent-High Level Committee, the third respondent disposed of the representation without placing the same before the second respondent-High Level Committee for the purpose of option process, rejected the same, and it is illegal exercise of power.

b) As per the purport of the order of the Division Bench in Writ Appeal, the High Level Committee is competent to take final decision on the option exercised by the petitioner and other employees, who vested with the power to allow the employees on the basis of their options exercised by them, but without placing the representation before the competent authority, the third respondent rejected the representation without any authority and the same is illegal and arbitrary.

c) The petitioner further contended that during pendency of the writ petition and writ appeal, he was promoted as Assistant Divisional Engineer initially and later as regular Divisional Engineer, continuing in the said cadre at various stations for all these years i.e. about 9 years. In pursuance of the impugned order, if the petitioner is repatriated to

TSTRANSCO as Assistant Divisional Engineer, his entire services will be effected and it leads unbearable humiliation and hardship to work as Assistant Divisional Engineer. Therefore, against the principles of natural justice and basic principles of service rules, the Memo No.CMD/CGM/ (HRD)/GM(S)/AS(Estt)/PO-A/836-A3/14-3, dated 26.02.2015 was issued by the third respondent and the same is illegal and is liable to be set aside.

09. The third respondent filed counter affidavit denying the material allegations inter alia contending that in terms of the Electricity Reforms Act, 1998, the then A.P. State Electricity Board was unbundled into APTRANSCO, APGENCO, APEPDCL, APCPDCL, APSPDCL and APNPDCL. The employees in Class-I and Class-II of the erstwhile APSEB and Class III employees with state wide seniority in engineering services of erstwhile APSEB are eligible for exercising option for final absorption in any one of the above Corporations. As per the modalities prescribed under the tripartite agreement, the writ petitioner was issued the Circular dated 27.04.2002 to exercise his option. Accordingly, the petitioner exercised the first option to be allotted to APTRANSCO. Accepting the first option, he was allotted to AP TRANSCO. Aggrieved by his allotment to APTRANSCO and seeking for revision of option and re-allotment to APNPDCL, he along with others filed W.P.No.14801 OF 2002 and batch. The said writ petition along with batch of matters, by an order dated 30.11.2004, was disposed of, holding that the petitioners are not entitled to either for retention or for consideration of the revision orders allotting them in other companies other than the company to which they were allotted as per the criteria basing on the first preference exercised by them. The Court also recorded that the petitioners, who are continuing by virtue of interim order, shall be treated as on deputation only and any promotion given pursuant to the interim directions will not ensure any right in their favour and they have to go back to the allotted company only and their seniority will have to be protected based on the original final allotment option criteria.

Challenging the order in the said writ petition, the petitioner filed W.A.No.2035 of 2004 along with others. In the said appeal, during the course of hearing, it was brought to the notice of the court by the appellant/ petitioner that there is changed scenario in view of division of the State and there were no vacancies in NPDCL at the relevant point of time, however due to repatriation of employees, consequent on the division of State, vacancies are available now. Accordingly the writ appeals were disposed of, leaving it open to the appellant to pursue the remedies with the concerned authorities and the respondents shall consider the same in accordance with law. In terms of the observation made by this Court in writ appeal, the petitioner made representation dated 11.11.2014 with a request to continue him in TSNPDCL as per the revised option exercised by him, and similar representations were made again on 25.11.2014.

10. Undisputedly, the petitioner was working as Assistant Divisional Engineer as he was promoted temporarily on 31.03.2006, thereafter proceedings were issued to the petitioner on 19.12.2007 reverting to former post as he has been continuing only by virtue of interim stay granted by the Division Bench in W.A. No.2035 of 2004. Challenging the proceedings dated 19.12.2007, the petitioner approached this Court by filing WP No.273 of 2008, wherein this Court was pleased to pass order dated 08.01.2008, granting interim stay of reversion and the interim orders were extended from time to time, thus, the petitioner is continuing by virtue of interim direction, though he is not entitled to the said post. The said writ petition is still pending.

11. The respondents issued proceedings dated 05.02.2015 transferring him from the post of Divisional Engineer at Banswada, as the regular incumbent one Sri M. Srinivas reported for duty after availing extraordinary leave. There were also complaints with regard to performance of duties by the petitioner. Keeping those in view, he was reverted from the post of Divisional Engineer, O & C, Banswada and directed to approach the Corporate Office for further posting.

Challenging the proceeding dated 05.02.2015 he filed W.P. No.2683 of 2015 and this Court by an order dated 10.02.2015 permitted the petitioner to make representation to the respondents. It was also observed whether it would be possible to accommodate 5th respondent in the writ petition without disturbing the petitioner. The representation of the petitioner was rejected vide Memo dated 23.02.2015. Thereafter he was reported to duty on 24.02.2015. In view of the order in W.A.No.2034 and 2035 of 2004 and after careful examination, it was resolved to repatriate the persons who are working on deputation to the parent unit. Since the petitioner herein is continuing only on deputation as he has opted to APTRANSCO and the same had attained finality, accordingly issued proceedings dated 26.02.2015 repatriating him to APTRANSCO while directing the petitioner to relieve from TSNPDCL with immediate effect. There is no permanent vacancy in which the petitioner was working and he was working only in leave vacancy in the Corporate Office consequent on Sri Mallikarjuna proceeding on leave.

12. The third respondent admitted that the representations of the petitioner dated 11.11.2014 and 25.11.2014 are to retain him in TSNPDCL, in pursuance of the option exercised by him on 25.07.2002, but initially option exercised by him has attained finality and the same was upheld by this Court in W.A. No.10726 of 2002 and batch by order dated 30.11.2004. Therefore, question of considering his representation to continue him in TSNPDCL as per option exercised on 25.07.2002 does not arise. Continuation of the petitioner in TSNPDCL only in pursuance of the interim order passed by this Court in various writ petitions and that were not confer any right to claim his allotment to TSNPDCL and in view of the order dated 30.11.2004 in W.P. No.10726 of 2002 and batch he is working in NPDCL is deemed to be on deputation. Therefore, he is not entitled to claim any relief in the present writ petition.

13. It is specifically contended that there is no provision for repatriating the persons working on deputation. In fact there is no

procedure contemplated in regulations for appointment on the representation of the petitioner to consider his option which was the subject matter in the earlier round of litigation, which ended against the petitioner and that the respondents did not call for revised options and therefore question of considering his representation in terms of the revised option dated 25.07.2002 does not arise, accrue any benefit to the petitioner and accordingly the proceedings dated 26.02.2015 was issued rejecting his request and he was relieved from the post which he was holding in TSNPDCL.

14. It is specifically contended that even if reorganization of the State of Andhra Pradesh, dividing the same into two states viz., Telangana and Andhra Pradesh, has no impact to TSNPDCL except naming it as TSNPDCL in place of APNPDCL. The bifurcation also did not have any repatriation of employees on large scale., the vacancies available in TSNPDCL have to be filled in accordance with certain regulations applicable to it. The petitioner herein working on deputation did not have any right to be continued in TSNPDCL on deputation on consideration of his option dated 25.07.2002. The then High Level Committee, which was constituted for the purpose option process, has been desolved after achieving its object. There is no such High Level Committee in operation under service regulations of the employees working in TSNPDCL. Neither the High Level Committee nor TSNPDCL have any say in the matter of regulations of service conditions of TSNPDCL employees.

15. The High Level Committee has no control over the employees of TSNPDCL as it was desolved as on the date of filing the writ petition. Further the petitioner representations dated 11.11.2014 and 25.11.2014 were addressed to the second respondent as the petitioner is also well aware that such committee is not in existence. Therefore, the order under challenge passed by the third respondent is not in violation of any rule or provision or regulation or direction issued by this Court, since the order under challenge is not in violation of any guidelines, the

administrative order cannot be interfered and prayed to dismiss the writ petition.

16. During the course of argument, learned counsel for the petitioner would contend that when the third respondent is not competent to consider the issue of allotment of employees in pursuance of their option, the High Level Committee constituted by the Government alone is competent. Therefore, the order passed by the third respondent under challenge is without any authority. On this ground, the order is liable to be set aside. If for any reason, the High Level Committee was not in existence, the duty of the third respondent is to place any representation before the Government to constitute another Committee for consideration of representations, instead of adopting such procedure, the third respondent straight away passed the order under challenge, therefore, the order is illegal. It is further contended that when the Secretary of the High Level Committee issued press note calling for revised options, the petitioner submitted his revised option on 15.07.2002. When such revised option are called for, the option initially exercised by the petitioner have ceased to exist. Therefore, the respondents would have allotted him to the TSNPDCL and not TSTRANSCO. Finally it is contended that the petitioner is already promoted twice, during pendency of the litigation before this Court at various levels, and if for any reason, the order issued by the third respondent is implemented, it would adversely effect the career of the petitioner and thereby such order cannot be implemented and prayed to issue writ of Mandamus declaring the proceedings dated 26.02.2015 as illegal and arbitrary.

17. Per contra, Sri G.Vidya Sagar, learned Senior Counsel, appearing on the behalf of the third respondent contended that reconsideration of the revised options has attained finality and the same was upheld by this Court in WP No.10726 of 2002 and 14801 of 2002 and batch by order dated 30.11.2004 and the same was confirmed by the Division Bench of this Court while issuing a direction to the

respondents to consider the representation, if any made by the petitioner, in view of the allotment of the petitioner to TS TRANSCO negating the consideration of the revised option in pursuance of the alleged press notice, which was considered by the learned single Judge of this Court and declined to interfere with the allotment proceedings and the said finding remained undisturbed, the order challenge cannot be re-agitated by filing the present writ petition.

18. It is further contended that promotion of the petitioner as Assistant Divisional Engineer and Divisional Engineer, during the pendency of the writ petitions, in various stations does not accrue any benefit, since, his continuation is litigious continuation in service i.e. in pursuance of the interim order passed by this Court in various writ petition and writ appeals. Hence, the alleged adverse effect of career of the petitioner in the event of implementing the Memo under challenge is not at all a consideration to set aside the same. Viewed from any angle, the petitioner was not conferred any right to claim his allotment to a particular company and no fundamental right of the petitioner is infringed on account of his allotment to TSTRANSCO in pursuance of the option exercised by him initially and finally prayed to dismiss the writ petition.

19. Considering rival contentions, perusing the material available on record, the points that arise for consideration are as follows:

- 1) *Whether the Secretary of the High Level Committee constituted by the Government for the purpose of option process and allotment of Class I, II and III employees (Engineering Services) working in APSEB to various companies issued any press note calling upon revised options?*
- 2) *Whether the High Level Committee constituted for the purpose of option process still in existence? If not, whether the third respondent is competent to pass the impugned order without placing the matter before the Government. Consequently, the order under challenge is vitiated by any illegality and liable to be set aside?*

Point – I:

20. One of the major contentions of the petitioner is that he submitted his option initially opting APTRANSCO (first preference), but later in view of the press note allegedly released by the Secretary of the

High Level Committee, he changed his option, opted APNPDCL (second preference) by submitting revised option. The respondents denied issuance of such press note inviting revised options from the employees of APSEB for their allotment to different companies referred to supra.

21. Even assuming for a moment that such press note was issued, such note will have no evidentiary value. A news item without any further proof of what had actually happened through witnesses is of no value. It is, at best, a second hand or secondary evidence. It is well-known that reporters collect information and pass it on to the editor who edits the news item and then publishes it. In this process, the truth might get perverted or garbled. Such news items cannot be said to prove themselves although they may be taken into account with other evidence if the other evidence is forcible as held by the Apex Court in **SAMANT N. BALKRISHNA AND ANR. v V.GEORGE FERNANDEZ AND ORS.**^[1]

22. In **DR. (MRS.) VIMAL v. BHAGUJI AND OTHERS**^[2] the Apex Court, while deciding the election practice in election, held as follows:

“18.....In our view, the Court should draw adverse inference against the authenticity of the gist of the speeches since published in the newspapers for non production of the said notings. It may be indicated here that the authors of the report did not take down the speeches or even parts of such speeches in the language in which they were expressed. Admittedly, the notes were prepared in the language of the authors of the notes and such portion of the speeches were highlighted in the notes in their own language as appeared to the authors of the reports important or relevant. In such circumstances, even though the authors of the reports were reporters to newspapers by profession, chances of misquoting or quoting some portions of speech out of their context cannot be ruled out. The said reporters deposed about the contents of the speech but such depositions were made at a later date when chances of not fully remembering the speeches in their proper context cannot be ruled out.”

23. Therefore, the reports published in newspaper cannot found the alleged corrupt practice and were disbelieved those reports attaching no evidentiary value to them. In view of the principles laid

down in the above judgment, it is for the petitioners, in the present facts of the case, to prove the press note allegedly released by the Secretary of the High Level Committee by filing affidavits of the reporters of newspaper. But no material is produced to establish that such press note was released by the Secretary of the High Level Committee for the process of options, more particularly, when the respondents denied issue of such press note. Therefore, based on the press note published in Eenadu Daily Telugu Newspaper dated 11.07.2002, the alleged revised option exercised by the petitioner cannot be accepted.

24. In the earlier round of litigation in WP No.14801 of 2002 and Batch, the learned single Judge of this Court discussed about the alleged revised options at length at pages 29 to 32. A copy of the letter addressed to the employee i.e. Pannala Prabhakara Sastry was extracted in the said judgment, whereunder an option was given, accompanied by supporting documentary evidence, if any, justifying the representation of the employees, to reach the same on or before 15.07.2002 and that such representation will be considered on its merits by the High Level Committee and the decision of the High Level Committee shall be final and binding.

25. Thus, it is clear from the letters addressed to the individual employees, an option was given to make a representation, if they were not allotted to the company which they opted (first option) but no such press note was released by the Secretary of High Level Committee as per the material on record. Hence, the alleged press note and submission of revised option in pursuance of the press note is without any basis and no evidentiary value can be attached to such press note in view of the law declared by the Apex Court, since the petitioner failed to produce the affidavit of the reporter who published the press note or by any other material to establish that the Secretary of the High Level Committee issued such press note.

26. On the other hand, the letters addressed by the Secretary of High Level Committee to the individual employees disclosed that the

employees whose first option was not considered, have given an option to make a representation along with material and the same shall reach the Office of the High Level Committee on or before 25.07.2002. Therefore, there is absolutely no evidence on record to establish that the Secretary of the High Level Committee issued any such press note inviting revised option or appeals separately. Hence, the contention of the petitioner that he submitted a revised option in pursuance of the press note cannot be accepted. Even otherwise, the petitioner is not entitled to make revised option as he was allotted to the Company which he opted initially (first preference). Even if any such revised option submitted by the petitioner to the High Level Committee that need not be considered by the High Level Committee, in other words, it is for the High Level Committee to decide the merits of the representation based on the material annexed to such representation, and the allotment made by the High Level Committee is final.

27. In view of my foregoing discussion, I find no such press note was released calling for revised options except addressing letters to the individual employees by the Secretary High Level Committee while allotting them to a particular company giving opportunity to make a representation if their first option was not considered. As such non-consideration of the revised option submitted by the petitioner to the High Level Committee is not illegal and it is not against the scheme of allotment by the High Level Committee as per tripartite agreement. Accordingly the point is answered.

POINT – II:

28. The proceedings under challenge in this writ petition is Memo No.CMD/CGM/(HRD)/GM(S)/AS(Estt)/PO-A/836-A3/14-3, dated 26.02.2015 for failure of the respondents to consider the representation submitted by the petitioner to the respondents, to allot him to TSNPDCL and that the basis for challenge is that third respondent is not competent to issue any Memo considering the representation, but issued the proceedings without any authority, without placing the representation

before the High Level Committee or before the Government, if the committee ceased to exist, cannot pass any order and to issue the impugned Memo. On the above grounds, the petitioner sought to set aside the impugned Memo dated 26.02.2015. It is also contended that on account of interim stay granted by this Court, he was promoted as Assistant Divisional Engineer and Divisional Engineer during the pendency of the writ petitions and writ appeals. In case the impugned Memo is implemented he will be put to substantial loss besides losing the chance of promotion in future and the present promotion.

29. The petitioner along with others filed earlier writ petitions W.P.Nos.10726 & W.P.No.14801 of 2002 and batch challenging the allotment of the petitioner to APTRANSCO on various grounds and the learned single Judge of this Court by order dated 30.11.2004 declined to issue any direction to allot the petitioner to APNPDCL as the High Level Committee considered all the requests and allotted the petitioner to APTRANSCO accepting his first option and that High Level Committee did not violate any terms and conditions of tripartite agreement and rules for allotment, by passing a detailed order.

30. Aggrieved by the judgment dated 30.11.2004 passed by the learned single Judge of this Court, the petitioner preferred an appeal along with others. Curiously, the Division Bench of this Court in W.A.No.2034 and batch (W.A. No.2035 of 2004 is filed by the petitioner) passed an order holding as follows:

“After hearing learned senior counsel appearing for the appellants and learned counsel for the respondents, we are of the view that in the changed scenario, that emerged with the division of the State, the matter needs to be examined afresh. It is brought to the notice of this Court that though there were no vacancies in the APNPDCL, at the relevant point of time; due to large scale repatriation of the employees consequent on the division of the State, vacancies are available now.

Therefore, we dispose of the writ appeals, leaving it open to the appellants to pursue the remedies with the concerned authorities in this behalf and the respondents shall consider the same in accordance with law, within a period of three months from the date of receipt of the representation.”

31. Thus the Division Bench though not directly decided the legality of the order passed by the learned single Judge in the entire judgment permitted the petitioner to make a representation while directing the respondents to dispose of the representation within three months in accordance with law.

32. In W.P. No.10726 of 2002 and batch, the learned single Judge of this Court concluded that the High Level Committee considered criteria as indicated as per the Circular and 94% of the employees in the engineering services were allotted to the companies of their first choice option/ preference. 89.1% of the account services and 90.4% in P & G services were allotted to the company of their first choice/ preference option. The allotment letters were communicated on 06.07.2002 in cases of the employees who were allotted to the companies as per their first option, permitting them to make a representation along with material in case their first option was not considered while allotting the individual employee to a particular company. Accordingly, the representations received from various employees by the High Level Committee in the meeting held on 06.08.2002 keeping in view the categories not allotted in the initial allotment, score review cases, spouse cases, single lady cases, nearing retirement cases, medical cases and domestic and other representations and final allotment was made to the respective companies vide letter dated 09.08.2002. Thus the High Level Committee reconsidered the representations after their initial allotment and allotted to the companies as per their choice depending upon merits of the individual cases.

33. In the present case the petitioner's apprehension is that he will have no chance of promotion in the event he is allotted to APTRANSCO, but that is not a consideration for allotment as per the tripartite agreement and the rules framed by the Government. It is further observed in the judgment that in case no employee wanted to go to other company, from the company to which he was allotted, it shall be considered only on mutual consent of the employees of the concerned

companies as per order in TOO Ms.No.244 dated 13.12.2002 and later certain guidelines were also issued in TOO Ms.No.279 dated 27.01.2003 to provide adoption of service of employees on foreign service subject to certain conditions. Similarly TOO Ms.No.39 dated 30.04.2003 was issued amending the earlier guidelines that the candidates were allotted finally as per the option process to a particular company can be considered for his transfer to other company subject to the condition that he will loose his seniority in the former company and he becomes the junior most and accept last rank in the seniority fixed for that category of grade. Even, the transfers were also put an end by order TOO Ms. No.130 dated 23.08.1963 stating that the absorption of service of an employee on transfer from one company to another company on request may be considered up to 31.01.2004 only. Thus, wherever the request for transfers was considered their seniority in the former company is not protected and they become the junior most in that particular cadre in the transferee company. However, the learned single Judge of this Court at page 37 of the Judgment, after elaborate discussion of various orders issued by the Company, concluded that the perusal of the option letter goes to show that the decision of the High Level Committee is final and binding, including the option criteria and option process. The challenge is only for not considering the revised options, but in fact not with reference to the procedure adopted by the High Level Committee. No foundation has been laid down to challenge the procedure adopted by the High Level Committee, in fact, the record goes to show that the High Level Committee considered the option score based on the length of service, experience, availability of the vacancies and their first option preference and finally relied on the judgment of the Apex Court in **TAMILNADU EDUCATION DEPARTMENT, MINISTERIAL AND GENERAL SUBORDINATE SERVICES ASSOCIATION v. STATE OF TAMILNADU**^[3] wherein the Apex Court held as follows:

“In Service jurisprudence integration is a complicated

administrative problem where, in doing broad justice to many, some bruise to a few cannot be ruled out. Some play in the joints, even some wobbling, must be left to Government without fussy forensic monitoring, since the administration has been entrusted by the Constitution to the Executive, not to the Court. All life, including administrative life, involves experiment trial and error, but within the leading strings of fundamental rights, and absent unconstitutional 'excesses', judicial correction is not right. Under Article 32, this court is the constitutional sentinel, not the national ombudsman. We need an ombudsman but the Court cannot make do."

34. On the strength of the judgment of the Apex Court, the learned Single Judge of this Court declined to disturb the allotment of the petitioner to APTRANSCO, since it attained finality while holding that his retention thereby treated as on deputation. This order though challenged in the writ appeal where a direction was issued. But basing on the direction given by the Division Bench of this Court, the petitioner made a representation to the respondents and the respondents were pleased to consider the same and rejected. In fact, the High Level Committee is only for a temporary period to look after the option process for allotment of employees of APSEB to different companies and it has no permanent existence. In such case after completion of allotment process by TOO Ms.No.130 dated 23.08.1963, the absorption of service of an employee on transfer from one company to another company on request may be considered up to 31.01.2004 only and after consideration of request, the High Level Committee ceased to exist, but still High Level Committee was impleaded as the respondents in the writ petition filed by the petitioner to the earlier round of litigation and in the present writ petition, somehow to get benefit out of the litigation impleaded the non existing High Level Committee as a party in anticipation of disposal of the representation by the third respondent. Since the second respondent ceased to exist as on the date of disposal of the writ petition and appeal, but no specific procedure is provided for disposal of such representations even the order of the Division Bench of this Court in the writ appeal, the respondents were directed to dispose of the representation of the writ petitioner in accordance with law.

35. No specific direction was issued to any of the respondents specifically to dispose of the representation. The High Level Committee ceased to exist as on the date of representation, the third respondent alone is competent to decide such representation being the Head of the Department and that to, he addressed representation to the Chairman and Managing Director, NPDCL, Warangal, dated 11.11.2014 narrating the circumstances, expressing his willingness to continue in TSNPDCL and consider his request for allotment to TSNPDCL as per the option exercised by him on 15.07.2002.

36. When the representation was made to the third respondent, consideration of the same by him and passing a detailed order which impugned in the writ petition cannot be said to be without any authority. When the High Level Committee ceased to exist, the third respondent alone is competent being Head of the Company i.e. TSNPDCL and pass appropriate orders, even otherwise liberty is given to those employees whose first option was not considered by the High Level Committee to make a representation as per the contention of the learned counsel for the third respondent. But as seen from the letters addressed to the employees, it is made clear that if the employee wish to make any representation with respect to their allotment, they may do so not later than 25.07.2002 to the Convener, High Level Committee i.e. Additional Secretary and the representations should be accompanied by the supporting documents, if any, justifying representation. Therefore, it is clear from the contents of the letters addressed to the employees that any employee can make representation questioning their allotment. In the present facts of the case, the petitioner exercised his first option/ preference to allot him to APTRANSCO but made a representation in view of the recitals of the letter and in view of the liberty is given to the employees to make representation, but the same was not considered, since, the High Level Committee did not find any merit in the representation dated 15.07.2002.

37. The only ground on which the Memo impugned in the writ

petition is that the third respondent is not competent to pass such an order on the representation. In fact the High Level Committee ceased to exist and thereby question of placing representation before the Government or before the High Level Committee or the Government does not arise, since no procedure was fixed in the tripartite agreement or in the guidelines framed for allotment of employees of APSEB. Even the direction issued by the Division Bench is silent as to who has to consider the representation and pass appropriate orders except issuing a blanket order to decide the representation by the respondents. Therefore, disposing of the representation of the petitioner by the third respondent, the Principal Officer of the Company is not illegal and it cannot be found fault.

38. Yet, the counsel for the petitioner contended that in the absence of High Level Committee, the representation is to be placed before the Government, but this contention is not based on any rule or guidelines issued by the Government and when the third respondent is the Principal Officer of the APTRANSCO who is appointing authority to whom the representation was made alone is competent, without placing the matter before the Government, to decide such representations.

39. The third ground urged in the writ petition is that he was already promoted as Assistant Divisional Engineer and Divisional Engineer, while continuing him in NPDCL in pursuance of the interim order passed by the learned single Judge and Division Bench. There is no dispute regarding the continuation of the petitioner in NPDCL by virtue of the interim order passed by the learned single Judge and Division Bench in miscellaneous petitions till today and such continuation can be described as litigious employment or litigious continuation. Such continuation would not confer any right to claim retention in NPDCL on account of his promotion twice as Additional Divisional Engineer and Divisional Engineer. Since such retention is against his allotment and he is successfully dragged the matter for years together i.e., more than 14 years as on today and in such circumstances,

when the petitioner's continuation or retention in NPDCL is litigious employment or continuation will not accrue any legal right on the petitioner to claim benefit out of the litigation for his retention in NPDCL on the ground that he will lose promotional opportunity in the event of his transfer to TSTRANSCO. Since such litigious continuation or employment in NPDCL, cannot be taken advantage by the petitioner for his continuation in TSNPDCL and on the strength of such promotion by virtue of interim order or continuation in NPDCL the order cannot be set aside.

40. The main apprehension of the petitioner is that he will not have chance of promotion in TSTRANSCO, if his allotment by the High Level Committee is confirmed. The allotment is not based on the promotional chance, but based on the option initially exercised and representation made with material in support of his contention. The promotional chance in the opted company is not at all consideration for revising the initial or provisional allotment on the basis of representation. Therefore, basing on such litigious employment or continuation in NPDCL, the petitioner is not entitled to get allotment to TSNPDCL. As on today he ceased to be employee of TSNPDCL, while treating his continuation as on deputation.

41. The writ of Mandamus under Article 226 of the Constitution of India is purely discretionary and the Court can exercise power of judicial review only when there is a violation of any statutory provision or rule or any illegality committed by the authorities in passing such order.

42. Here, the petitioner did not bring to the notice of this Court any illegality in passing the Memo impugned in the writ petition, or passing of the Memo in violation of any statutory rule or provision for issue of such writ of mandamus that to the conduct of the petitioner is relevant for consideration in the writ petition while exercising such discretion. The petitioner filed initially W.P.No.14801 of 2002 challenging his allotment to APTRANSCO as per his first option or preference and non consideration of his representation dated

15.07.2002 and dragged the matter sufficiently for two years and later challenged the order of the learned Single Judge in W.A. No.2035 of 2004, obtained interim order, continued in TSNPDCL in pursuance of the interim order for more than 10 years and such litigious continuation or employment that would not confer any benefit to the petitioner. He also filed two other writ petitions before this Court and obtained interim orders. The conduct of the petitioner in filing the writ petitions is one after the other, obtaining the interim order, continuing in NPDCL, is nothing but the abuse of process of the court. Taking into consideration of the conduct of the petitioner in filing successive writ petitions one after the other obtaining interim order, continuing in TSNPDCL. In such circumstances, in the absence of proof of violation of any statutory rule, provision or scheme of allotment, or the terms of tripartite agreement, the order under challenge cannot be interfered, since the scope of judicial review under Article 226 of the Constitution to interfere with the administrative orders is limited, unless the court finds that the order passed by the administrative authorities is illegal or irrational and unreasonable and in such case, the Court can interfere by applying the principle of *Wednesbury* test in view of the law laid down in **INDIAN RAILWAY CONSTRUCTION COMPANY LIMITED VS. AJAY KUMAR^[4]**, **CHAIRMAN-CUM-MANAGING DIRECTOR, COAL INDIA LIMITED AND ANOTHER VS. MUKUL KUMAR CHOUDHURI AND OTHERS^[5]**, **UNION OF INDIA VS. G. GANAYUTHAM^[6]**, and **INDIAN OIL CORPORATION LIMITED VS. ASHOK KUMAR ARORA^[7]**.

43. In the present case, except apprehension of the petitioner that he may lose the chance of promotion there is nothing, and that the impugned order was passed by the third respondent who is competent in pursuance of the direction issued by the Division Bench of this Court in W.A.No.2035 of 2004 as the High level Committee is ceased to exist from the year 2004 itself.

44. The learned counsel for the petitioner also contended that the

third respondent did not undertake any exercise and that there is no justification in repatriating the petitioner to APTRANSCO, but the direction issued by the Division Bench of this Court to dispose of the representation in accordance with law, at best, the third respondent is required to consider the merits in the representation of the petitioner for his retention in TSNPDCL, if his representation is supported by any material. The petitioner made representation on 11.11.2014 to the third respondent narrating the legal proceedings before the learned single Judge and the Division Bench and orders passed by them while referring to various letters, but those are not grounds for re-consideration of his representation to allot him to TSNPDCL, since the High Level Committee in its meeting dated 06.08.2002 categorized the valid representations and decided to accommodate the requests based on the vacancies in the order given below:

- 1) Not allotted in the initial round and based on score
- 2) Score review cases
- 3) Spouse cases
- 4) Single lady cases,
- 5) Nearing retirement cases
- 6) Medical cases and
- 7) Domestic and other representations.

45. In the representation made by the petitioner, as directed by the Division Bench of this Court, no allegation is made for not considering the score review case and it is not his case that his spouse is working within the limitation to TSNPDCL or on medical or other grounds. Therefore, the case of the petitioner does not fall within the parameters of the resolution of the High Level committee dated 06.08.2002 and, in those circumstances detailed order passed by the third respondent which is impugned in the writ petition, suffers from no inherent defect, warranting interference of this court exercising power of judicial review and on the other hand the third respondent clearly discussed about the effect to the petitioner's retention in TSNPDCL canceling his initial allotment rightly rejected the representation. Hence, the contention of the third respondent did not undertake any exercise is devoid of merits.

46. In view of my foregoing discussion, I find no ground to exercise power of judicial review in favour of the petitioner to issue writ of Mandamus setting aside the Memo No.CMD/CGM/ (HRD)/ GM(S)/ AS(Estt)/PO-A/836-A3/14-3, dated 26.02.2015.

47. Hence, the writ petition is deserves to be dismissed.

48. Accordingly the writ petition is dismissed. No costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

M. SATYANARAYANA MURTHY, J

10-06-2016
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[\[1\]](#) AIR 1969 SC 1201

[\[2\]](#) AIR 1995 SC 1836

[\[3\]](#) AIR 1980 SC 379

[\[4\]](#) JT 2003 (2) SC 295

[\[5\]](#) AIR 2010 SC 75

[\[6\]](#) 1997 (7) SCC 463

[\[7\]](#) (1997) 3 SCC 72