

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

**WRIT PETITION NOS.17492 OF 2017, 12697 OF 2006 AND
28860 OF 2014.**

COMMON ORDER:

All these writ petitions are disposed of by way of common order as the issue raised in these writ petitions is one and the same.

2. Heard. Mr.S.Satyam Reddy, learned counsel appearing for the petitioner and Mr.G.Vidyasagar, learned counsel appearing for the respondents.

3. It has been contended by the learned counsel for the petitioner that the petitioner as appointed as Assistant Engineer with the former APSEB on 12.10.1998. While the petitioner was working as Assistant Engineer, APSEB was bifurcated into two companies i.e., A.P. Transmission Corporation and A.P. Generation Corporation. The petitioner was allotted to A.P. Transmission Corporation and while he was working with A.P. Transmission Corporation, the petitioner sought for permanent absorption in Northern Power Distribution Company Ltd., and the request of the petitioner was accepted by the respondents, vide memo, dated 09.06.2005 with a specific condition that the petitioner shall forfeit his lien and seniority in the category of Assistant Engineer in APTRANSCO and accept last rank in the seniority list fixed in the category of AE (E1) in APNPDCL/Warangal, after approved probationer. With the above specific condition, the petitioner has joined the respondents. While the petitioner was working as such with the respondents, the respondents issued another memo after 4 years i.e., memo, dated 08.05.2009 wherein the specific condition that the petitioner will be placed after approved probationer was deleted.

4. The grievance of the petitioner is that vide memo, dated 09.06.2005, he was allowed to join as Assistant Engineer with the respondents, but the respondents are not considering his case for next promotional post of Assistant Divisional Engineer.

5. Learned counsel for the petitioner has contended that the respondents are treating the petitioner as a fresh entrant in the respondent organization w.e.f. 09.06.2005 and placing the petitioner below the persons who were on probation at that relevant point of time. This action of the respondents is challenged on the ground that no further condition can be imposed to deprive the seniority of the petitioner w.e.f. 09.06.2005. The petitioner also challenged the proceedings, dated 09.05.2017 wherein the appraisal in respect of certain Divisional Engineers was called for, for further promotion to Divisional Engineers and the name of the petitioner was not shown in the said list and the petitioner contends that his juniors were included in the list ignoring the name of the petitioner. Therefore, the petitioner is challenging the action of the respondents in not including his name for promotion to the post of Divisional Engineer.

6. The petitioner also filed W.P.No.28860 of 2014 challenging the memo, dated 08.05.2009, wherein without giving an opportunity, the condition of his absorption with the respondents was sought to be altered by deleting after approved probationer.

7. Learned counsel for the respondents contended that the respondents had issued the memo, dated 08.05.2009 because the earlier absorption of the petitioner, vide memo, dated 09.06.2005 was contrary to T.O.O.Ms.244, dated 13.12.2002. The request of the petitioner was

considered in terms of said proceedings, dated 13.12.2002. A perusal of the said proceedings would indicate that there is no mention of seniority to be placed immediately after approved probationer since the memo, dated 09.06.2005 was contrary to T.O.O.Ms.244, dated 13.12.2002. The respondents had issued memo, dated 08.05.2009 in accordance with T.O.O.Ms.244, dated 13.12.2002 and no illegality has been committed by the respondents and erroneously in the original memo, dated 09.06.2005 it was stated that the petitioner would be entitled for seniority immediately after the approved probationer. Since the said condition was contrary to T.O.O.Ms.244, dated 13.12.2002, the same was deleted and the petitioner was accordingly granted seniority the moment he has been absorbed with the respondents and no illegality has been committed by the respondents in not considering the case of the petitioner for promotion and the case of the petitioner would be considered to the next promotional post of Divisional Engineer. Therefore, the entitlement of seniority and suitability of his case would be considered in accordance with rules.

8. It is further contended by the learned counsel for the respondents that the case of the petitioner was considered to the post of Assistant Divisional Engineer on 31.08.2009 as per the seniority of Assistant Engineer and it is not that the case of petitioner will not be considered. As and when he is found suitable, his case will be considered in accordance with rules.

9. This Court having considered the rival contentions made by both parties, is of the considered view that the memo, dated 08.05.2009 was passed without giving an opportunity to the petitioner and memo, dated 08.05.2009 was issued, wherein the right given to the

petitioner in memo, dated 09.06.2005 was sought to be taken away without giving an opportunity to the petitioner. Therefore, the memo, dated 08.05.2009 is liable to be set aside as it is in violation of principles of natural justice.

10. Accordingly, the memo, dated 08.05.2009 is set aside and the respondents are at liberty to give an opportunity to the petitioner and pass afresh orders as far as inclusion of the petitioner's name in the seniority list as well as consideration of his case to the next higher post is concerned. The petitioner is given liberty to submit a representation to the respondents to include his name at appropriate place in the seniority list and upon such representation received, the respondents shall consider his case and pass appropriate orders for inclusion of his name at appropriate place in the seniority list and also for consideration of his case for next promotional post of Divisional Engineer in accordance with rules.

11. With these observations, the writ petitions are disposed of. No order as to costs. Miscellaneous petitions, if any pending in these writ petitions shall stand closed.

ABHINAND KUMAR SHAVILI, J

DATED: 08-10-2018

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