



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2021

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P. NO.3823 OF 2001
AND WMP NOS.5419 AND 5420 OF 2001
AND WVMP NO.18859 OF 2001
AND WPMP NO.259 OF 2002

K.Srinivasan

...Petitioner

Vs

1. The Chief Engineer (Personnel)
Tamilnadu Electricity Board,
800, Anna Salai, Chennai - 600 002.
2. The Superintending Engineer,
Villupuram Electricity Distribution Circle,
Villupuram - 605 602.
3. Tamilnadu Electricity Board,
Workers' Federation,
Registration No.2970 (Recognised),
Villupuram, rep. by its Secretary,
Mr.N.Balaraman,
Vandimedu T.N.E.B. Colony,
Villupuram - 605 602.

(R3 impleaded vide order dated 13.03.2002
in WPMP No.9881 of 2002)

... Respondents

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order in Memo No.002139/016/Adm2/A1/F.15A/2001 dated 19.01.2001 on the file of the second respondent herein and quash the same and consequently direct the respondents herein to grant notional promotion to the petitioner for the post of Commercial Inspector/Line Inspector with effect from 27.12.1999, with all consequential and attendant benefits including backwages.



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For Petitioner : Mr. Bharath Kumar
for M/s. Arumugaraja
For Respondents : Mr. P. Subramanian (TANGEDICO)
Standing Counsel

O R D E R

The petitioner was appointed to the post of Helper in the Tamil Nadu Electricity Board (TNEB) and posted in the Electricity Distribution Circle (EDC) at Cuddalore. His appointment was along with four others who have been specifically referred to by the petitioner qua the fixation of seniority and they are K. Palanivelu, D. Raju, K. Aruldoss and Munnusamy. Normally, it would have been appropriate had the petitioner arrayed the aforesaid persons as respondents in this Writ Petition. He has however choose not to do so and I am, at this distance of time, also not inclined to order their impleadment. Hence, I refer to them collectively as 'employees'. At the time of entry into service on 25.09.1987, their seniority fixed was on the basis of entrance tests and the seniority fixed was as follows:

Cuddalore Circle		
K. Srinivasan	55	(Selection Level Seniority)
K. Palanivelu	101	
D. Raju	117	
K. Aruldoss	145	(Helper Level Seniority)

2. It is thus an admitted position that the seniority of the petitioner was head and shoulders above the three at the time of appointment. Though the seniority of Munnusamy has not been provided, he was, at the time of recruitment, admittedly, also placed after the petitioner.

3. The Revenue District of South Arcot came to be bifurcated for administrative convenience with effect from 17.06.1982, into Cuddalore EDC and Villupuram EDC. In line with the usual practice, the employees were extended the option to either remain in the EDC to which they had been recruited originally or to transfer to the other, bifurcated EDC. The employees chose to transfer to the Villupuram EDC on 01.11.1989, whereas the petitioner chose to remain with the parent EDC itself.



4. Guidelines dated 19.07.1989 had been issued by the Chief Engineer, TNEB indicating that a uniform policy be adopted in the transfer of employees against their willingness during bifurcation and these guidelines are referred to by the petitioner. However, nothing really turns upon the same in deciding the question that arises for resolution in this matter.

5. Briefly put, the petitioner questions the fixation of his seniority lower to that of the employees at the time of his exercising the option to be transferred from Cuddalore to Villupuram EDC on 12.07.1994. Upon his transfer on 29.07.1994, the fixation of seniority in the Villupuram EDC was as follows:

Date	Name	Seniority List
20.09.1993	K.Srinivasan	803
30.09.1992	K.Palanivelu	632
30.09.1992	D.Raju	783
04.06.1992	K.Aruldoss	745
04.06.1992	Munnuamy	616

6. Thus, as against the original seniority wherein the petitioner was placed far above the employees, the seniority of the petitioner came to be fixed at seniority No.803, below the four others. This came to be questioned repeatedly by the petitioner who made several representations and objections for re-fixation of seniority above that of the employees in Villupuram. His case hinges on Regulation 97 of the Tamil Nadu Electricity Board Service Regulations and Leave Regulations Manual (in short 'Regulations') governing the question of seniority and reading as follows:

97. SENIORITY:

(a) The seniority of a person in a class of service, category or grade shall, unless he has been reduced to a lower rank as a punishment, be determined by the rank obtained by him in the list of approved candidates drawn up by the Board or other appointing authority, as the case may be. The date of commencement of his probation shall be the date on which he joins duty irrespective of his Seniority.

Provided that the seniority of Assistant Engineers (Electrical) / (Civil) / (Mechanical) recruited both by Internal Selection and direct recruitment in the ratio of 1: 1 in a particular calendar year shall be fixed in the following cyclic order:



(1) Internal Selection

(2) Direct Recruitment

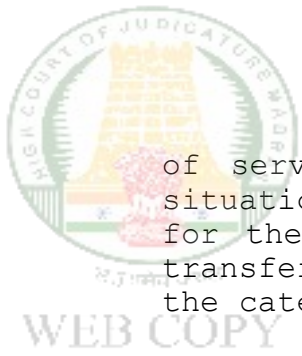
(b) The transfer of a person from the category or grade in a class of service to another category or grade in the same class of service carrying the same pay or scale of pay shall not be treated as first appointment to the latter for purpose of seniority and the seniority of a person so transferred shall be determined with reference to the rank in the category or grade from which he was transferred. Where any difficulty or doubt arises in applying this Sub-Regulation, seniority shall be determined by the appointing authority.

(c) Where a member of a class of service, category or grade is reduced to a lower class of service, category or grade, he shall be placed at the top of the latter unless the authority ordering such reduction directs that he shall take rank in such lower class of service, category or grade, next below any specified member thereof.

(d) Application for the revision of seniority of a person in a service, class, category or grade shall be submitted to the appointing authority within a period of three years from the date of appointment to such service, class, category or grade or within a period of three years from the date of order fixing the Seniority, as the case may be. Any application received after the said period of three years shall be summarily rejected. This shall not, however, be applicable to cases of rectifying orders, resulting from mistake of facts.

7. It is the petitioner's case that the seniority must be fixed as per the seniority fixed at the time of his original recruitment by the appointing authority and if, at any time at his service he is placed below the rank of a candidate to whom he had originally been superior, that would amount to a demotion which could only be done by way of punishment. In the present case, the question of punishment would not arise. Thus to put him lower in rank to the employees shall be a demotion which is not contemplated under, or in line with Regulation 97 (a).

8. Moreover, Regulation 97(d) deals with seniority at the time of transfer of a person from the category or grade in one class of service to another category or grade in the same class



of service carrying the same pay or scale of pay. In such situations, transfer shall not be treated as a first appointment for the purpose of seniority and the seniority of a person so transferred shall be determined with reference to the rank in the category or grade from which he is transferred.

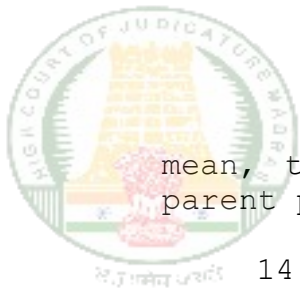
9. Thus, according to the petitioner, upon transfer to Villupuram EDC what should have weighed consideration with the authorities was the fact that originally the petitioner had been placed far senior to the employees and this position should continue even upon transfer.

10. The respondents rely on Board proceedings B.P.Ms.(Ch.) No.66 (Administrative Branch) dated 01.02.1985 (in short 'proceedings') which streamlines the procedure in the matter of fixation of seniority and has been formulated after taking into account various alternatives that were discussed in 1984 with the unions and taking note of the suggestions made by them. According to the respondents, the aforesaid proceedings that have been applied in the present matter and as such, and applying the said proceedings, there is no infirmity in the fixation of seniority qua the petitioner and the employees. He also refers to Memorandum No.541/IR/1(2)/Adm.Br./85-5 dated 29.11.1985 that confirm the position that all movement within the Electricity Department is governed by the aforesaid proceedings only.

11. Having heard both learned counsel, my decision is that the issue raised by the petitioner may be answered on a combined reading of the Proceedings as well as Regulation 97. Regulation 97(a) which deals with the fixation of seniority of a person in a class of service, category or grade shall be based on the list of approved candidates drawn up by the Board or other appointing authority, as the case may be.

12. Regulation 97(b) dealing with fixation of seniority states that the transfer of a person from the category or grade in a class of service to another category or grade in the same class of service carrying the same pay or scale of pay shall not be treated as first appointment to the latter for purpose of seniority and the seniority of the transferred person shall be determined with reference to the rank in the category or grade from which he was transferred.

13. This seems to be in line with paragraph 4 of the Proceedings which also states that inter-se seniority in regard to Regular Work Establishment workmen (RWEW) transferred from one Project Circle to Distribution Systems/Circles on administrative grounds shall be with reference to their date of entry into that category. The term 'category' is defined to



mean, the category in which the workmen were working in their parent project circle at the time of their transfer.

14. Thus, there are two events that would assume importance in deciding the question before me. One, the date of transfer of the petitioner and employees from Cuddalore to Villupuram EDCs and two, the dates of their promotion from post of Helper to Commercial Assistant.

15. The employees were transferred was on 01.11.1989 while holding their original posts as Helper. Thus they were placed at the fag end of the seniority list in Villupuram EDC. They then moved through the ranks and were promoted to the post of Commercial Assistants on 30.09.1992 in Villupuram EDC. The petitioner however chose to remain in Cuddalore EDC, his parent circle, and moving through the ranks, was promoted to the post of Commercial Assistant on 29.09.1993. He then opted to move from Cuddalore to Villupuram on 01.07.1994 while holding the post of Commercial Assistant.

16. On a combined reading of paragraph 4(i) of the Proceedings and Regulation 97(b), what should determine his seniority in Villupuram EDC would be the position that he held at the time of his transfer, which would be that of Commercial Assistant. Since the employees had already been promoted to the post of Commercial Assistants as early as on 30.09.1992, the promotion of the petitioner having been only later, nearly a year later on 29.09.1993, he naturally fell below in the seniority list.

17. This Writ Petition is dismissed. No costs. Connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Engineer (Personnel)
Tamilnadu Electricity Board,
800, Anna Salai, Chennai - 600 002.



2. The Superintending Engineer,
Villupuram Electricity Distribution Circle,
Villupuram - 605 602.

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Registration No.2970 (Recognised),
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+1cc to Mr.P.Subramanian, Advocate, S.R.No.45387

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RLD(CO)
PM/06/10/2021