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WP.No.11969 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2023

CORAM

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

WP.No.11969 of 2022
and W.M.P.Nos.11394 & 11395 of 2022

1.N.Shanmugam
2.M.Varadharaj
3.P.Kandasamy
4.K.Murugan
5.R.Venkatachalam

.. Petitioners

Versus

1.Tamil Nadu Generation and Distribution Corporation
Rep by its Chairman and Managing Director
No.144, Anna Salai
Chennai – 600 002

2.The Chief Engineer (Personnel)
Tamil Nadu Generation and Distribution Corporation
No.144, Anna Salai
Chennai – 600 002

3.The Superintending Engineer
Namakkal Electricity Distribution Circle
Tamil Nadu Generation and Distribution Corporation
Namakkal

4.A.Ashok Kumar
5.T.S.Muthusamy
6.R.Palanivelu
7.N.Sivasundaram
8.P.Saravanan
9.R.Maniraja

(R5 to R9 impleaded vide Order dated 14.11.12022
made in WMP.No.20985/2022 in W.P.No.11969/2022 by AQJ

.. Respondents



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Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration, declaring the Proceedings bearing Memo No.011464/1142/Adm.II/AI/F.F.M/2022 dated 24.03.2022 of the 3rd respondent as illegal, arbitrary, contrary to the law and consequentially direct the respondents to amend the Tamil Nadu Electricity Board Service Regulation by incorporating the recommendations of the committee made in the report which is enclosed along with the letter dated 26.10.2014 of the 2nd respondent and thereafter draw the panel for promotion to the post of Foreman I Grade on the basis of the approved Probationers List in the category of Commercial Inspector and Line Inspector and effect promotion to the post of Foreman I Grade.

For Petitioner : Mr.Balan Haridas

For Respondents : Mr.K.Purushothaman for R1 to R3
Mr.C.K.Chandrasekar for R5 to R9

ORDER

This Writ Petition has been filed seeking to declare the Proceedings bearing Memo No.011464/1142/Adm.II/AI/F.F.M/2022 dated 24.03.2022 of the 3rd respondent as illegal and consequently direct the respondents to amend the Tamil Nadu Electricity Board Service Regulation by incorporating the recommendations of the committee made in the report which is enclosed along with the letter dated 26.10.2014 of the 2nd respondent and thereafter draw the panel for promotion to the post of Foreman I Grade on the basis of the approved Probationers List in the category of Commercial Inspector and Line Inspector and effect promotion to the post of Foreman I Grade.

<https://www.mhc.tn.gov.in/judis> 2. The case of the petitioners are that they are all working as Line



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Inspector and their next avenue of promotion is to the post of Foreman Grade-

II. The petitioners joined as Helper. The promotion from the post of helper is to the post of Wireman and Commercial Assistant. From Wireman, the next promotion avenue is Line Inspector, likewise, from Commercial Assistant, the next promotion is to Commercial Inspector. Thereafter, the next promotion category for both Line Inspector and Commercial Inspector is Foreman I Grade.

3. It is the contention of the writ petitioners that the post of Wireman is a field post and the post of Commercial Assistant involves desk work. The feeder category for promotion to the post of Foreman I Grade is from Line Inspector and Commercial Inspector. The person choosing Commercial Assistant/Commercial Inspector channel get quicker promotion than the person choosing Wireman/Line Inspector channel. This is because the ratio among Wireman and Line Inspector is 7:1 and the ratio among Commercial Assistant and Commercial Inspector is 1:1. The minimum service stipulated for promotion to the post of Line Inspector is 8 years, however, no minimum period has been stipulated for promotion from Commercial Assistant to Commercial Inspector. This has caused grave imbalance at the time of promotion to the Foreman I Grade. In this regard, the committee by its report



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dated 31.05.2014, recommended to separate the Wireman and Commercial

Assistant Channel and recommended to retain the structure below in respect of helper/Wireman channel.

Helper
?
Wireman
?
Line Inspector
?
Foreman I Grade
?
Special Grade Foreman

and in respect of Helper/Commercial Assistant recommended for the following channel of promotion:

Helper
?
Commercial Assistant
?
Commercial Inspector
?
Assistant Commercial Supervisor
?
Commercial Supervisor

4. A writ petition is also filed in this regard in W.P.No.6744 of 2016 to implement the report dated 31.05.2014 before this Court. By order dated 31.03.2016, this Court directed the first respondent to consider the representation of the Tamil Nadu National Electricity Workers Federation's



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representation dated 15.12.2014 and 28.12.2015. Thereafter, the Board has issued Board Proceedings bearing No.(Per)(FB)/TANGEDCO Proceedings No.2 dated 01.02.2017. The Board taking note of the fact that wiremen are languishing without any promotion, permitted to create supernumerary post in the post of Line Inspector and promoted them as Line Inspector without back-wages with effect from the date of issue of the order and in the said proceedings, it was made clear that the supernumerary post will be abolished as and when the person promoted to the regular post. Accordingly, the petitioners were promoted by proceedings dated 16.02.2017 in the supernumerary post of Line Inspector.

5. Similarly, some employees filed W.P.No.4454 of 2017 challenging the Board Proceedings of the first respondent dated 01.02.2017. This Court, by Order dated 08.06.2017 directing the respondent to promote all the eligible employees from both side. It was further held that as the regulation is clear that the promotions are to be given on the basis of merit and ability, while taking up the promotion process, the higher qualification should be considered. It was further held that in the event of amending service regulations in the terms of the Committee's report dated 31.05.2014, the respondent should follow the amended service without regulation without reference to the Regulation 98 of



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the TNEB Service Regulations. However, without amending the Service Regulation, the respondents are continuing to effect promotion to the Foreman Grade I. Hence, seeks this Court to declare the proceedings in Memo No.011464/1142/Admn.II/AI/F.F.M/2022 dated 24.03.2022 is illegal.

6. It is the contention of the respondents 1 to 3 that based on 12(3) settlement dated 15.10.2005, Double Channel Promotion system was reintroduced on 12.12.2005. In the Double Channel System, the RWE employees can choose any one of line of promotion, i.e., either Helper-Wireman-Line Inspector – Foreman I Grade – Special Grade Foreman (Eligible qualification below 10th Standard completed). They can opt in the Commercial Assistant/Commercial Inspector based on the qualification.

7. Based on the Memorandum of settlement under section 12(3) of the ID Act 1947 arrived before the Commissioner of Labour, Chennai dated 09.01.2014, a Committee was constituted for reviewing the convergence of different cadres in various categories in the existing Double Channel Promotion in RWE vide Letter dated 26.10.2014 and the Committee reviewed and recommended the reports as follows:-

"Separating the channel of Two categories without creation of posts and duly abolishing the posts as follows:-



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1. *Helper - Wireman - Line Inspector Foreman I Grade - Special Grade FM.*

2. *Helper - Commercial Assistant - Commercial Inspector - Assistant Commercial Supervisor - Commercial Supervisor."*

8. Further, due to retirement of the Committee Members, two members were nominated vide (Per.) CMD TANGEDCO Proceedings No.23, dated 10.02.2015. Again the meeting was held with Unions in various occasions to finalize the issue of disparity of the Double Channel Promotion system of RWE employees. Based on the above, the Committee has submitted its report on 31.03.2015 and the same was communicated to the Unions for their views vide letter dated 26.03.2015. Again a meeting was held with Unions on 27.10.2015. Based on that, particulars was called for from the field about the service particulars of the employees promoted as Commercial Assistant / Commercial Inspector and Wireman / Line Inspector.

9. Pursuant to the Order of this Court, Orders were issued stating that "the eligibility criteria of experience of 5 (Five) years for each channel, namely, Commercial Inspector and Line Inspector from the feeder category of Commercial Assistant and Wireman shall be followed until further orders and promotion to all other RWE categories shall be issued as per existing



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guidelines/order".

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10. Subsequently, orders were issued for "fixation of inter-se-seniority and to draw a panel for promotion to the post of Foreman I Grade, obviously, an inter-se-seniority has to be arrived at in the first instance from among the workmen in the feeder category post of Commercial Inspector and Line Inspector. While doing so, the analogy of the orders in para 2 (iv) of (Per.) B.P. (Ch.) No.256 (Adm.Branch) dated 12.12.2005 and Memo. No. 051836/555/G.46/G.462/2010-6 dated 05.11.2010 read with the order issued in paragraph 5 (ii) of (Per) B.P. (F.B.) TANGEDCO Proceedings No.2 (Adm.Branch) dated 01.02.2017 shall be taken. Therefore, while considering the same, the following were adhered to:-

"a. The inter-se-seniority for considering promotion to the post of Foreman I Grade should to be drawn based on the year-wise panels drawn for promotion to the post of Commercial Inspector and Line Inspector (i.e.) 2005, 2006,...2017. The workmen ranked in the first year's Commercial Inspector and Line Inspector panels should be considered for fixation of inter-se-seniority in the first instance and such inter-se- seniority within that year's panels shall be based on Helper seniority.

b. The same method shall be followed for every year's panels (i.e.) C.I. and L.I.

c. Accordingly, inter-se-seniority for considering promotion to the post of Foreman I Grade shall be fixed and published as per the orders/instructions in force.



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d. No Commercial Inspector or Line Inspector in the subsequent year(s) of panel shall be considered for fixation of inter-se-seniority over the Commercial Inspector or Line Inspector who was in the previous year's panel."

Consequently, the executive orders was issued in Memo.No.034374/414/G.46/G.462/2016-17 dated 27.12.2017 and Memo.No.034374/414/G.46/G.462/2016-20 dated 05.02.2018 and the promotions have been issued to the RWE employees of Electricity Distribution Circles.

11. Further, the said orders are being enforced in the Double Channel Promotion of RWE employees as per the Memorandum of settlement under section 12(3) of the ID Act 1947. Consequently, as per the Board's B.P.No.2, dated 01.02.2017, the 3rd respondent issued promotion order from Wireman to Supernumerary Line Inspectors vide Memo No. 003240/166/Adm.II/A2/F.SNLI/2017-1 dated 16.2.2017 (totally 92 persons are promoted from Wireman to Supernumerary Line Inspector).

12. During the year 2018, 92 persons are promoted from Supernumerary Line Inspectors to Regular Line Inspector vide Memo No.003240/166/Adm.II/F.LI/2018-3 dated 19.1.2018 and also 32 persons promoted as Line Inspector (22 Supernumerary Line Inspector and 8



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Wireman). Hence, all the senior Wireman are promoted initially as Supernumerary Line Inspectors and promoted as Regular Line Inspectors. Due to the posting as Regular Line Inspectors, all the Supernumerary Line Inspector post is automatically abolished based on (Per) (FB) TANGEDCO Proceedings No.2 (Adm.Br) dated 01.02.2017.

13. Based on the orders issued in Memo No.034374/414/G.46/G.462/2016-20, dated 05.02.2018 cited, the panel has been considered for the post of Foreman I Grade by inter-se-seniority of Commercial Inspector/Line Inspector and there are no violation of rules as alleged in this regard. At present, the panel of Foreman I Grade is running based on the year of 2015 with adopted Memo No.034374/414/G46/G462/2016-20 dated 05.02.2018.

14. It is to be noted that Petitioners herein have not yet reached their respective Zone of Consideration as per the present revised scheme as per Memo No.0343374/414/G46/G462/2016-20, dated 05-02-2018 wherein upto the year 2015 has been operated uniform basis. As and when the Petitioners herein reach the zone of consideration their respective claim will be considered for promotion to the post of Foreman-I Grade. Having chosen their



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option as Line of promotion as Helper-Wireman-Line Inspector-Foreman-I Grade they have to await for the respective turn as per the revised scheme in memo dated 05-02-2018 as stated supra. Hence, seeks to dismiss this writ petition.

15. The learned counsel for the petitioner namely Mr.Balan Haridas submitted that earlier, this Court in W.P.No.6744 of 2016 has passed an order dated 31.06.2016 directing the first respondent to consider the representation of the petitioner's Association. Based on the above directions, the supernumerary posts were created by proceedings dated 01.02.2017. Thereafter, again, this Court in W.P.No.4454 of 2017 passed an order dated 08.06.2017 directing the respondents to amend the service regulation and adhere to norms mentioned in the regulations without reference to the Regulation 98 of the TNEB Service Regulation. Despite, the same, now panel has been prepared based on the Regulation 98 of the TNEB Service Regulation. Hence, the entire panel is sought to be set aside

16. Mr.C.K.Chandrasekar, the learned counsel for the impleading respondents 5 to 9, on the other hand, submitted that admittedly, as per the Orders of this Court, orders have been passed fixing the suitability of the



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candidates of promotion which has not been challenged. Therefore, now the petitioners cannot stall the promotion of forty three persons. It is the contention that only at the option of the petitioners, they joined as Helper and promoted to the post of Wireman. They, then promoted as Line Inspector. Therefore, once, they had opted for the post of Wireman from the post of Helper, they cannot challenge the panel approved by the respondent Board. It is the pleasure of the employer to frame the Rules. Though, this Court has directed the respondent Board to amend the Service Rules, admittedly by way of Memo No.034347/414/G46/G462/2016-20 dated 05.02.2018, the respondent board has clearly mentioned the mode of fixation of inter-se seniority. Therefore, without challenging the above memo, now the writ petitioners who are only 5 members cannot stall the promotion of 43 persons who have been qualified. The learned counsel for the Respondent Board supported the same.

17. Heard both sides and perused the materials placed on record. The panel prepared by the respondent for the promotion of Grade Foreman-I is put in challenge. There are two distinct channel promotion from the category of helper. From helper one can become a wireman and also commercial Assistant. So, in wireman, next promotion is Line Inspector, then the Foreman I Grade.



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Likewise, from commercial assistant, next promotion is Commercial Inspector and then the Assistant Commercial Supervisor and then the Commercial Supervisor. The line Inspector and commercial inspector merged for the next promotional avenue namely Foreman I Grade. It is also not disputed, that it is only at the option of the individuals, they become wireman or commercial Assistant and both the Line Inspector and the Commercial Inspector having 5 years of service are eligible to move the panel of promotion for the post of the Foreman I Grade. The relevant order of service for the next higher category normally should be counted from the date of the earlier promotion. Though in the W.P.No.6744 of 2016, this Court by order dated 31.03.2016, has directed to consider certain representation of the petitioner, after that the supernumerary post in the post of Line Inspector was created by proceedings No.2 dated 01.02.2017 and the wireman was promoted as Line Inspector, this fact is not disputed. In another writ petition in W.P.No.4454 of 2017 by order dated 08.06.2017, this Court has held as follows:

"... 4.In these circumstances, it is not known as to why the Electricity Board has not proceeded with as per Regulation 98 of TNEB Service Regulations, which provides under sub-clause [1][a] that no employee can be found eligible for promotion to a higher post unless he is an approved probationer in the category from which promotion to the higher post is admissible. Further, the next clause namely, Regulation 98[1][b][i] of the Regulations makes it clear that promotion in all cases shall be made on grounds of merit and ability, seniority being considered where merit and ability are approximately equal. Accordingly, in the matter of promotion to the higher post, namely, the



post of Foreman Gr-I, which is sought to be filled in under Regulation 98 of TNEB Service Regulations, without waiting further for amendment of the Regulation, for the available promotion vacancies, the respondent/Electricity Board is directed to promote all the eligible employees from both sides, namely, from Commercial Inspector and Line Inspector to the higher post, namely, Foreman Gr-I, on the basis of the Committee's Report, from the list prepared, i.e. the approved probationer list in the category of Commercial Inspector and Line Inspector. Since the Regulation is quite clear that promotions are to be given on the basis of merit and ability, it is needless to mention that the respondent/Board, while taking up the promotion process, shall consider any higher qualification possessed by the incumbents by way of acquiring Diploma/B.E. in the subject concerned.

5.It goes without saying that, after carrying out amendment to the Regulation, the respondent/Board shall scrupulously adhere to the criterion/norms mentioned in the amended Service Regulations without reference to Regulation 98 of TNEB Service Regulations. The respondent/Electricity Board shall complete the exercise by amending the Service Regulations within a period of six months from the date of receipt of a copy of this order."

18. On perusal of the above direction contained in para 4 and 5, this Court, in fact, this Court, directed the respondents to promote all the eligible employees from both sides, namely from Commercial Inspector and Line Inspector to the higher post, namely Foreman Grade-I, on the basis of Committee's report from the list prepared, i.e. the approved probationer list in the category of Commercial Inspector and Line Inspector. Since the Regulation is quite clear that promotions are to be given on the basis of merit and ability, it is needless to mention that the respondent/Board, while taking up the promotion process, shall consider any higher qualification possessed by the



incumbents. Further, the respondent/Board shall scrupulously adhere to the criterion/norms mentioned in the amended Service Regulations without reference to Regulation 98 of TNEB Service Regulations.

19. Though such directions are given, it is an admitted fact that no amendments have been brought in so far. However, a Memo in Memo No.034347/414/G46/G462/2016-20 dated 05.02.2018 has been issued which has clearly mentioned the mode of fixation of inter-se seniority and the same is also considered by the Respondent Board itself in para 6 of the said memo, which is extracted below for better appreciation:

"...6. Insofar as fixation of inter-se-seniority and to draw a panel for promotion to the post of Foreman 1 Grade, obviously, an inter-se-seniority has to be arrived at in the first instance from among the workmen in the feeder category posts of Commercial Inspector and Line Inspector. While doing so, the analogy of the orders in paragraph 2 (iv) of (Per) B.P.(CH) No.256, Administrative Branch dated 12.12.2005 and Memo. No.051836/555/G.46/G.462/2010-6 dated 5.11.2010 read with the orders issued in paragraph 5 (11) of (Per) B.P.(FB) TANGEDCO Proceedings No.2, Administrative Branch dated 01.12.2017 shall be taken. Therefore, while considering the same, the following shall be adhered to:

(i) The inter-se-seniority for considering promotion to the post of FM-I Grade should be drawn based on the year-wise panels drawn for promotion to the post of Cl and LI (i.e., 2005, 2006, 2017).

(ii) The workmen ranked in the first year's Cl and LI panels should be considered for fixation of inter-se-seniority in the first instance and such inter-se-seniority within that year's panels shall be based on Helper Seniority.



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(iii) The same method shall be followed for every year's panels (i.e., CI and LI).

(iv) Accordingly, Inter-se-seniority for considering promotion to the promotion to the post of FM 1 Grade shall be fixed and published as per the orders/ instructions in force.

(v) No CI or LI in the subsequent year(s) of panel shall be considered for fixation of inter-se-seniority over the CI or LI who was in the previous year's panel. "

20. This memo has not been challenged so far. Now, it is relevant to note that the panel has been prepared on the basis of the guidelines set out in the memo. Such view of the matter, merely, because, the Court has directed amendments in the regulations to adhere to, it cannot be said that the regulations cannot be followed at all. This Court in W.P.No.4454 of 2017 has clearly gave directions as to the manner in which the regulations 98 should be complied.

21. When the Regulations 98 also stipulates that the promotion in all cases shall be made. The Regulation 98 of TNEB Service Regulations which are as follows:

"98. (1) Promotion:

(a) No employee shall be eligible for promotion to a higher post unless he is in approved probationer in the category from which promotion to the higher post is admissible.

(b) (i) Promotion in all cases shall be made on grounds of merit and ability, seniority being considered where merit and ability are approximately equal.



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(ii) On and from 1-9-1998, no Superintending Engineer shall be eligible for promotion to the post of Chief Engineer unless he has a minimum service of one year of service before his retirement is otherwise qualified may be considered for inclusion in the panel for promotion as Chief Engineer, but such Superintending Engingeer will be appoined as Additional Chief Engineer from the date on which their respective junior is promoted as Chief Engineer and he will continue to discharg the duties and exercise the powers assigned to the post of Superintending Engineer only."

Thus, Rule (b) makes it clear that Promotion in all cases shall be made on grounds of merit and ability, seniority being considered where merit and ability are approximately equal

22. When the writ petitioner opted to become wireman, thereafter, promoted as Line Inspector and the panel is prepared on the basis of merit and ability, the same cannot be found fault with. Accordingly, I do not find any merits in this case. Such view of the matter, this writ petition stands dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

19.07.2023

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Internet: Yes/No
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To

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Rep by its Chairman and Managing Director
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(1/2)