



W.P(MD)No.10710 of 2020

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.03.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.10710 of 2020

G.Raghavalu

... Petitioner

Vs

1.The Senior Manager (HR – NEE),
Bharat Heavy Electricals Limited,
Tiruchirappalli – 620 014.

2.The Additional General Manager,
Human Resource,
Bharat Heavy Electricals Limited,
Tiruchirappalli – 620 014.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceeding in No.BP.P2.2179342 (Retd) dated 16.03.2020 passed by the first respondent and quash the same as illegal consequently direct the respondents to notionally promote the petitioner as Chief Technician with effect from December 2013 and as Senior Chief-Technician with effect from December 2016 and grant him all applicable monetary and attendants benefits within the period that may be stipulated by this Court.

For Petitioner : Mr.M.Jerin Mathew

For Respondents : Mr.A.V.Arun
Standing Counsel



W.P(MD)No.10710 of 2020

ORDER

WEB COPY

Heard the learned counsel appearing for the petitioner and the learned Standing Counsel appearing for the respondents.

2.The writ petitioner joined the second respondent unit as NMR worker in the year 1982. He was absorbed as Welder Grade IV in the year 1983. He was promoted as General Technician (HPW-AS) on 27.12.2010. The petitioner became eligible to be considered for promotion as Chief Technician in December 2013. When the departmental promotion committee considered his case, the decision was put in a sealed cover. Sealed cover procedure was resorted to. During the relevant time, the petitioner was facing disciplinary action. The petitioner challenged the charge memo issued against him on 28.05.2013 only in W.P(MD)No.6226 of 2014. An interim order of stay was granted on 10.04.2014. Since the cloud on the petitioner was temporarily removed, the Departmental Promotion Committee (DPC) was convened in June 2014 and it once again resorted to sealed cover procedure. The petitioner retired from service on 25.06.2018. The writ petition filed by the petitioner challenged the charge memo came to be allowed on 28.03.2019. Thereafter, the sealed covers were opened. While the DPC held in December 2013 did not select the petitioner for promotion to the post of Chief Technician, the DPC



W.P(MD)No.10710 of 2020

convened in June 2014 had favourably considered the petitioner. The petitioner was accordingly promoted as Chief Technician vide proceedings dated 30.07.2018 with effect from 25.06.2014. The petitioner thereafter represented to the authorities on 28.09.2019 contending that he should have been promoted as Chief Technician in December 2013 and as Senior Chief Technician in December 2016. The petitioner's request was rejected vide order dated 16.03.2020. The same is put to challenge in this writ petition.

3.The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and grant relief as prayed for. He also drew my attention to the decision of the Hon'ble Apex Court reported in **(2013) 9 SCC 566 (Sukhdev Singh Vs Union of India (UOI) and others)**.

4.The respondents have filed counter affidavit and also additional counter affidavit. They have also filed typed sets of papers. The learned Standing Counsel appearing for BHEL took me through their contents. The primary contention of the learned counsel for the Management is that the petitioner was not found suitable for promotion when his case was considered in December 2013 and that the Management had only been applying their



W.P(MD)No.10710 of 2020

policies without any discrimination. He also submitted that the impugned order is a reasoned one and that it does not call for interference. He pressed for dismissal of the writ petition.

5.I carefully considered the rival contentions and went through the materials on record. Even though the petitioner has asked for twin prayers in the writ petition, in my view unless the petitioner's case for promotion as Chief Technician in December 2013 is considered, the question of considering his request for further promotion will not arise for the present. I therefore focus my attention only on the proceedings of the Departmental Promotion Committee which was convened in December 2013.

6.I accept the stand of the respondents that the petitioner's case was in fact considered when DPC met in December 2013. The only question that calls for examination is regarding the manner of consideration. From the materials enclosed in the typed set of papers filed by the Management it is seen that the Departmental Promotion Committee distributed the total marks of 100 in the following manner:

a) Performance Appraisal /

Annual Confidential report

MAP Score for past 3 years

- 50 marks



W.P(MD)No.10710 of 2020

- | | |
|------------------|------------|
| b) Qualification | - 20 marks |
| c) Experience | - 10 marks |
| d) Suitability | - 20 marks |

7.The petitioner was awarded 10 marks for qualification and 5 marks for experience. The petitioner has no grievance as regards awarding of marks under the said two heads. The dispute is only regarding awarding of five marks for suitability and 23 marks towards performance appraisal. It is admitted that performance appraisal is based on annual confidential reports. It is too obvious that unless the petitioner had been credited either as good or below, he would not have been awarded 23 marks. For performance appraisal an awarding of marks is based on the grading obtained by the employee. The marks awarded to the respective grades is as follows:

a) (I) Performance Appraisal (SAP-ACR/PMS-S Scores) in respect of employees having minimum three years eligibility period:

Maximum marks – 50

Grading	1 st preceding year	2 nd preceding year	3 rd preceding year	Total
Outstanding	18	17	15	50
Very Good	14	13	11	38
Good	11	10	8	29
Fair	8	7	5	20
Poor	5	4	3	12



W.P(MD)No.10710 of 2020

8. The proceedings produced before me did not indicate as to how 23 marks were awarded towards the petitioner's performance appraisal. I have to necessarily come to the conclusion that based on uncommunicated adverse grading, the aforesaid decision was arrived at. It has been held time and again by the Hon'ble Supreme Court that not only adverse entries will have to be communicated to the employee concerned but even remark such as "good" which if otherwise would have entitled the petitioner to be promoted will also have to be communicated to the employee; otherwise such entries cannot be relied upon. Since on account of such uncommunicated entries, the petitioner's performance appraisal has been made, I hold that the proceedings were DPC held in December 2013 stand vitiated. As regards suitability I have to necessarily make a comment. The petitioner was awarded 19 marks towards suitability in the DPC held in June 2014. However, he was awarded only 5 marks in December 2013, I fail to understand this large variation in awarding of marks. I am tempted to think that the issuance of charge memo had swayed the decision of the departmental promotion committee. Then the pendulum swung the other way since the petitioner had obtained an order of interim stay during the intervening period. In this view of the matter, the order impugned in the writ petition is quashed. The respondents are directed to re-visit the issue. The respondents will communicate to the petitioner the entries



W.P(MD)No.10710 of 2020

made regarding his performance appraisal for the three preceding years before December 2013. This shall be done by the Management within a period of five weeks from the date of receipt of a copy of this order. The petitioner is entitled to respond. Thereafter, a special DPC will be convened again and decision regarding the petitioner's case for promotion as a Chief Technician with effect from December 2013 will be considered. The petitioner's case for further promotion will of course depend on the outcome of the Special DPC.

9.This writ petition is allowed on these terms. There shall be no order as to costs.

28.03.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
MGA

To

- 1.The Senior Manager (HR – NEE),
Bharat Heavy Electricals Limited,
Tiruchirappalli – 620 014.
- 2.The Additional General Manager,
Human Resource,
Bharat Heavy Electricals Limited,
Tiruchirappalli – 620 014.



WEB COPY



W.P(MD)No.10710 of 2020

G.R.SWAMINATHAN, J.

MGA

W.P(MD)No.10710 of 2020

28.03.2023