

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 27.04.2023

% **Judgment delivered on: 24.05.2023**

+ LPA 84/2022

PIYUSH KUMAR SINGH

..... Appellant

Through: Mr. Shakeel Ahmed, Adv.

versus

NTPC LTD.

..... Respondent

Through: Mr. Sanjoy Ghose, Sr.Adv. with Mr.
Naman Jain and Mr. Rohan, Adv

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The present LPA is arising out the judgment dated 26.10.2021 passed by the Learned Single Judge in W.P.(C.) No. 1632/2021 titled ***Piyush Kumar Singh Vs. NTPC Ltd***, dismissing the writ petition preferred by the Appellant herein claiming appointment to the post of Assistant Engineer in the services of National Thermal Power Corporation (NTPC).

2. The undisputed facts of the case reveal that an Advertisement no. 02/2019 was issued by the NTPC and was published in Employment News dated 06.08.2019 inviting applications for 203 Engineers in the Discipline of Electrical/ Mechanical/ Electronics/ Instrumentation at E2 Grade for shift operation of Thermal Power Plant.

3. As per the qualifications prescribed in the advertisement, a candidate was required to hold Engineering Degree in Electrical/ Mechanical/ Electronics/ Instrumentation with minimum 60% marks from recognized

University/ Institute, and for candidate belonging to SCs, STs and PWDs, the passing marks was the minimum eligibility requirement.

4. The Advertisement also stipulated a condition of having minimum 3 years post qualification experience in executive and/ or supervisory cadre in the relevant field. The Advertisement dated 06.08.2019 issued by the NTPC is reproduced as under:

“Engineer A Powerful Career With NTPC

NTPC Limited, India's largest power conglomerate with an installed capacity Of 55, 786 MW and is presently contributing to 114th Of the country's electricity needs. Commensurate with our country's growth challenges, NTPC has embarked upon an ambitious plan to attain a total installed capacity Of 130 GW by 2032. NTPC has been adjudged 14th rank in "The best companies to work for in India" awarded by Great Place to Work Institute and Economic times.

NTPC is looking for 203 experienced Engineers in Electrical/ Mechanical/ Electronics/ Instrumentation disciplines at E2 grade for Shift Operation Of Thermal power plant. The qualifying requirement is as under:

Qualification:

Engineering Degree in Electrical/ Mechanical/Electronics/ Instrumentation with minimum 60% marks from recognized University/institute (passing marks for SC/ST/PwBD candidates). A candidate with the prescribed degree identified for the disciplines as given below can only apply in the respective discipline:

<i>Discipline advertised</i>	<i>Prescribed full time degrees in Engineering</i>
<i>Electrical Engineering</i>	<i>Electrical / Electrical & Electronics / Electrical, Instrumentation & Control /</i>

	<i>Power Systems & High Voltage/ Power Electronics / Power Engineering</i>
<i>Mechanical Engineering</i>	<i>Mechanical / Production / Industrial Engg./Production & Industrial Engg./Thermal /Mechanical & Automation / Power Engineering</i>
<i>Electronics Engineering</i>	<i>Electronics/ Electronics & Telecommunication/ Electronics & Power/ Power Electronics/ Electronics & Communication/ Electrical & Electronics</i>
<i>Instrumentation Engineering</i>	<i>Electronics & Instrumentation /Instrumentation & Control</i>

Experience Requirement:

Minimum 3 years post qualification experience in Executive and / or Supervisory cadre in relevant area.

Experience Profile: *Experience in operation & maintenance/ commissioning*

/erection of power plant equipment & auxiliaries.

Upper age limit: *30 years*

Pay Scale: *Rs. 50,000 to 1,60,000- (E2 Grade)*

VACANCIES

<i>Discipline</i>	<i>U R</i>	<i>O B C</i>	<i>S C</i>	<i>S T</i>	<i>Total</i>	<i>Identified type of disabilities for PwBDs.</i>
<i>Electrical</i>	<i>3</i>	<i>2</i>	<i>1</i>	<i>0</i>	<i>7</i>	<i>1.</i>

<i>l</i>	<i>7</i>	<i>1</i>	<i>1</i>	<i>6</i>	<i>5</i>	<i>Deaf and Hard of hearing.</i> <i>2. Locomotor Disability (OA, OL) including leprosy cured, dwarfism and acid attack victims. Combination of 1 & 2</i>
<i>Mechanical</i>	<i>39</i>	<i>21</i>	<i>11</i>	<i>05</i>	<i>76</i>	
<i>Electronics</i>	<i>13</i>	<i>07</i>	<i>04</i>	<i>02</i>	<i>26</i>	
<i>Instrumentation</i>	<i>13</i>	<i>07</i>	<i>04</i>	<i>02</i>	<i>26</i>	
<i>Total</i>	<i>102</i>	<i>56</i>	<i>30</i>	<i>15</i>	<i>203</i>	

**OA-OneArm, OL-One Leg*

*** 8 vacancies are reserved for PwBD candidates.*

**** Vacancies for EWS candidates are as per Govt. guidelines subject to final outcome Of SC order.*

HEALTH

The candidate should have sound health. Before joining, candidates will have to undergo medical examination by

the NTPC Medical Board and the decision of the board will be final and binding. NO relaxation in health standards is allowed. Detailed medical norms are available on the website www.ntpccareers.net. ”

5. The Appellant herein applied pursuant to the advertisement and an Admit Card was issued to the Appellant assigning him a Roll No. 20313790. Online selection test was held on 04.03.2020. The Appellant who is a member of Reserved Category (OBC) was successful in the online selection test held on 04.03.2020 and was shortlisted for interview to be conducted by NTPC Board via Video Conferencing.

6. The Appellant was successful in the process of interview and a Call Letter was issued to him for verifying his document. The verification was scheduled for 10.06.2020.

7. The aforesaid Call Letter which was issued to the Appellant for verification of documents for the first time from Para A of note 4 included a rider stating that the post qualification experience shall be 3 years and will not include the training period. However, no such condition was mentioned in the advertisement. It is pertinent to note that the present Appellant was never under any training, and, in fact, he was appointed as a probationer and had 3 years experience including the probationary period. Call Letter dated 10.04.2020 is also reproduced as under:

“Dated:10.04.2020

REF NO.01:HR:Rectt: Advt. 02.19/2020

NTPC Reg. No. : 115191

Discipline: Electronic

Name : PIYUSH KUMAR SINGH

Email ID: oak.piyush@gmail.com

Dear Sir/ Madam,

**SUB: INTERVIEW CALL LETTER FOR THE POST OF
EXP. ENGINEER FOR SHIFT OPERATION**

Please refer to your candidature for the post of Experienced Engineers for Shift Operation against our advertisement number-02/19. Based on the information furnished by you in the online application & your marks in the online selection test held on 04.03.2020, you have been shortlisted to appear for Interview (to be conducted on Video Conferencing mode). The interview will be conducted in 2 parts and details are as under:

- 1.0 Automated Video Interview:** The interview will be conducted in AI mode on **15.04.2020** and it will assess the behavioural skill. For this purpose, a link will be sent to your mail Id (mentioned above) & the detailed instruction is placed at Annexure. **Your photograph will be captured during the interview in order to avoid impersonation.**
- 2.0 Face to face interview through video conferencing (VC).** The interview will be conducted through VC in place of physical interview with the NTPC Selection Board on **16.04.2020**.

(Please note that you will receive link for 1 & 2 separately through donot-reply@amcatmail.com. To familiarize with the above interview processes, instructions will also be given to you through phone calls on your registered mobile number.)

Please Note that Following for further information:

- A.** Your candidature is being considered for the said post on provisional basis. The fact that you have been called to appear/attend for the interview (on VC mode) does not guarantee the adequacy of your candidature for being considered for the advertised post. **Your candidature is subject to your meeting the prescribed / notified criteria**

such as qualification, experience (excluding training period, if any) etc. and further verification of facts as stated by you in your application / at the time of pre-interview proceedings / during interview etc. In case you do not meet the advertised specifications or your candidature is in variance to the advertised specifications, please do not report for the interview.

- B. *Kindly note that qualifying in Personal Interview separately (in addition to the marks obtained in the online selection test) is required for consideration in final Merit list.***
- C. *The testimonials in support of Age, Category, qualification, experience, experience profile etc. will be verified before issuance of offer letter.***
- D. *Posting is likely to be at one of our Projects/Stations/Joint Venture Companies/ Subsidiaries.***
- E. *In the event of your failure to comply with the instructions / guidelines as mentioned above, or in case it is detected that you have attempted to misrepresent facts, your candidature for the post/ this call letter shall be treated as cancelled and withdrawn ab-initio.***
- F. *Canvassing in any form shall disqualify the candidate. Thanking you.***

Yours faithfully

*(S R Sahoo)
DGM(HR-Rectt.)"*

8. The Appellant pursuant to the Call Letter appeared for the purposes of document verification on 10.06.2020, and inspite of the fact that he possessed the required qualification, he has proved his worth in the written examination as well as in the interview, no appointment was made and the Appellant submitted various representation to the Authorities.

9. The Respondents in response to the representation submitted by the Appellant issued another letter on 29.05.2020 for verification of documents and for the first time the Appellant was informed through an e-mail dated 10.11.2020 that he does not fulfill the criteria of 3 years experience excluding training period and, therefore, the question of issuance of appointment order does not arise. The E-mail/ Letter dated 10.11.2020 is reproduced as under:

“Dear Mr Piyush

This has reference to document verification for the post of Exp Engineers (Advt No. 02/19). It is stated that as per documents submitted by you, you are not meeting the eligibility criteria of experience requirement of 3 years excluding training period.

Regards,

*HR-Recrt. Team
NTPC Ltd.”*

10. The undisputed facts also reveal that the Appellant before this Court has served as an Assistant Engineer from 19.11.2015 to 07.09.2018 (*i.e.*, almost 2 years & 10 months) at Chennai Radha Engineering Work(s) Pvt. Ltd. at PTPS in Haryana, and the experience certificate has been issued by the Company, the experience certificate issued by the Radha Engineering Work(s) is reproduced as under:

“CREW\HRD\EXP\18\0432

Date: 09.10.2018

TO WHOMSOEVER IT MAY CONCERN

This is to certify that Mr.Piyush Kumar Singh S/o Mr.Indrajeet Singh worked in our Organization under the contract work with

PTPS Site at Haryana from 19.11.2015 to 07.09.2018 in the capacity of Assistant Engineer in C and I Department as per our employment records.

Mr.Piyush Kumar Singh has resigned from the services of the Organization on his own accord.

During this period his conduct and character were found to be good.

We wish him all success in his future endeavors.

For Chennai Radha Engineering Works (P) Ltd.,

*-sd-
(Sanker.D)
Manager- HR”*

11. The Appellant has thereafter worked as Contract Engineer in at Bharat Electronics Ltd. (BEL), Bengaluru and was posted in Agra. He has been working with Bharat electronics Ltd. from 11.02.2019 until now which shows he does have 3 years of work experience as stated by him.

12. Another significant aspect of the case is that another application for the post of 250 posts of Experienced Engineers in the month of July, 2020. However, for the first time, the terms and conditions of the advertisement were modified and it was stated that the 3 years requisite experience shall exclude training period. The Advertisement issued on 15.07.2020 is reproduced as under:

“NTPC

Energize your Career...

Empower the Nation!

NTPC Limited, India's largest power conglomerate has an installed capacity of 62,110 MW. Commensurate with our country's growth challenges, NT PC has embarked upon an ambitious plan to attain a total installed capacity of 130 GW by 2032.

NTPC is looking for 250 experienced Engineers in Electrical/Mechanical/ Electronics/ Instrumentation disciplines for Shift Operation of Thermal Power Plant and 25 Experienced Assistant Chemists for our Stations/Projects and details are as under:

A. Engineer (E2 grade, 250 posts)

Qualification

Engineering Degree in Electrical/ Mechanical/Electronics/Instrumentation with minimum 60% marks from recognized University/institute (passing marks for SC/ST/PwBD candidates). A candidate with the prescribed degree identified for the disciplines as given below can only apply in the respective discipline:

<i>Discipline advertised</i>	<i>Prescribed full time degrees in Engineering</i>
<i>Electrical Engineering</i>	<i>Electrical / Electrical & Electronics / Electrical, Instrumentation & Control / Power Systems & High Voltage I Power Electronics / Power Engineering</i>
<i>Mechanical Engineering</i>	<i>Mechanical / Production / Industrial Engg./Production & Industrial Engg./Thermal /Mechanical & Automation / Power Engineering</i>
<i>Electronics Engineering</i>	<i>Electronics/ Electronics &</i>

	<i>Telecommunication/ Electronics & Power/ Power Electronics/ Electronics & Communication/ Electrical & Electronics</i>
<i>Instrumentation Engineering</i>	<i>Electronics & Instrumentation /Instrumentation & Control</i>

Experience Requirement & Profile

Minimum 3 years post qualification executive experience (excluding training period) in Operation/ Maintenance [Erection / Construction /Engineering in Main Plant Thermal or Main plant Gas Power Plant. Out of 3 years, the candidates must have worked at least 2 years in power plant sites.

Upper age limit:

30 years

Pay Scale:

Rs. 50,000 -1,60,000/- (E2 grade) at the basic pay of Rs. 50,000/-

13. The Appellant again appeared in respect of subsequent advertisement. However, to his hard luck, he could not clear that process of selection.

14. The Appellant, thereafter, approached this Court by filing a Writ Petition *i.e.* W.P.(C.) No. 1632/2021 and the Learned Single Judge has dismissed the Writ Petition by excluding the period spent on probation for the purposes of experience. The operative paragraphs *i.e.* paragraph Nos. 13 to 21, of the order passed by the Learned Single Judge are reproduced as under:

“13. Having heard the learned counsel for the parties, the short issue that arises for consideration is whether the petitioner has three years of experience for the post in question.

14. It is the case of the petitioner and so contended by his counsel that the advertisement specified only three years experience for the post and nowhere it was mentioned that the training period has to be excluded. In other words, it was his plea that the rules of the game cannot be changed in the midst of the selection process. It is the case of the petitioner that he worked in the capacity of Assistant Engineer from November 19, 2015, to September 07, 2018, i.e., for almost two years and ten months at CREW and thereafter, as Contract Engineer in BEL, Agra w.e.f. February 11, 2019, till the date of application.

15. In substance, it was the plea of the learned counsel for the petitioner that he worked for more than three years and has the necessary experience on the cut-off date of online application i.e., August 26, 2019, and could not have been made ineligible only on the ground that he has not completed three years of service. No doubt, that the advertisement did not stipulate that the three years experience shall not include the training period undergone but the fact remains that even the admit card dated February 27, 2020, mentions the post qualified experience does not include the training period; interview call letter dated April 10, 2020, indicates that prescribed experience excludes training period; call letter for document verification dated May 29, 2020, indicates that the prescribed experience excludes the training period. If that be so, the respondent had informed the petitioner much in advance, before the petitioner sat in written examination that the postqualified experience does not include the training period. It is not a case where any prejudice has been caused to the petitioner. No right has accrued to the petitioner merely because he had applied for the post, in

terms of the advertisement, which had stated that the post qualification experience would not include the training period. The only right he had was of consideration. Before he sat in the examination he was informed that experience shall exclude training period which stipulation was not challenged by the petitioner. In fact he sat in the examination without demur and protest. Similarly, pursuant to the interview call letter dated April 10, 2020, containing the stipulation excluding the prescribed experience not to include the training period, he participated in the interview process without challenging the stipulation and without demur and protest, cannot now contend, the advertisement having not stipulated the exclusion of training period for the purpose of three years experience, he need to be appointed. Mr. Ghose is justified in relying upon the judgment in the case of Madras Institute of Development studies (supra) wherein it was held that when a candidate consciously takes part in the selection process, he subsequently cannot turn around and question the very selection process.

16. The reliance placed by learned counsel for the petitioner in the cases of K. Manjusree (supra) and Hemani Malhotra (supra) have no applicability in the facts of this case and are clearly distinguishable. In fact, it is the case of the petitioner that even after excluding the training period, the petitioner has three years of service. In this regard, a mention needs to be made to the documents attached by the petitioner with regard to his experience. The document on page 37 (Annexure P-7) is an appointment letter, issued by CREW dated October 28, 2015, which I reproduce as under, which stipulates that the employment of the petitioner was as a Graduate Engineer Trainee-Electrical and he was on probation for a period of 12 months from the date of joining and during that period, he was being paid a salary of ₹ 8,000/- on a consolidated basis.

““To,

28.10.2015

Mr. PIYUSH KUMAR SINGH,

Dear Mr. PIYUSH KUMAR SINGH,

Sub: Issue of Offer of Appointment-Reg.

With reference to your application and further interview had with us, you have been selected for employment as “GRADUATE ENGINEER TRAINEE-ELECTRICAL”. Your placement nature will be on All Indian Service Liability (AISL) basis. However, your initial place of employment is at our PTPS site @ HARYANA. Your Monthly Gross Salary will be Rs.8,000/- (Rupees Eight Thousand Only) with free food and bachelor accommodation at our CREW facilities.

According to this offer, you will be under probation for a period of 12 months from the date of joining. After successful completion of your probation, you may be given further employment confirmation. Your service nature is liable to be transferred for work in any area within the site or any other site I India depending upon company's requirement.

Note: This offer letter is valid up to 01(One) month to join from the date of issue.”

17. The experience certificate issued by CREW dated October 09, 2018, which I reproduce as under, depicts that he has worked in the said organization between November 19, 2015, till September 07, 2018, in the capacity of Assistant Engineer.

“Date: 09.10.2018

TO WHOMSOEVER IT MAY CONCERN

This is to certify that Mr. Piyush Kumar Singh, S/o Mr. Indrajeet Singh worked in our Organization under the contract work with PTPS Site at Haryana from 19.11.2015 to 07.09.2018 in the capacity of Assistant Engineer in C and I Department as per our employment records.

Mr. Piyush Kumar Singh has resigned from the services of the Organization on his own accord.

During this period his conduct and character were found to be good.

We wish him all success in his future endeavors.”

18. *With regard to the services of the petitioner in BEL, Agra, there is no dispute that he was working on the date of application in the said Organization w.e.f. February 11, 2019, till the cut-off date of August 26, 2019, i.e., for a period of six months. The case of the respondent is primarily that the petitioner, being a Trainee Graduate Engineer with 12 months of probation, the said period needs to be excluded from the experience.*

19. *According to Mr. Ghose, the experience letter issued in 2018 is not in accordance with the appointment letter issued to the petitioner, when for 12 months he was on probation which need to be excluded, the combined service of the petitioner in CREW would not constitute three years of post-qualification experience. It is in view of the aforesaid position, the petitioner was made ineligible.*

20. *Mr. Ghose submitted that it is only at the time of verification of documents, the aforesaid factum was noticed by the respondent and it was within its right to treat the petitioner as ineligible for the post in question. The above stand of the respondent need to be accepted, inasmuch as the appointment letter of the petitioner in CREW clearly stipulates the petitioner was a Trainee Graduate Engineer and put on probation for 12 months, the said period could not have been calculated for the purpose of experience, as sought for and also communicated by them in their subsequent communications to the petitioner. Similar communications would have been sent to the other candidates, who may not have appeared in the selection process for the post in question. It is not a case where the respondent has conducted arbitrarily.*

21. *In view of my aforesaid conclusion, this Court is of the view that the impugned action does not require any interference. The petition is dismissed. No costs.”*

15. The Learned Single Judge has dismissed the Writ Petition on the ground that the Appellant was not having 3 years requisite experience for the post in question. The facts on record reveals that the Appellant has worked in the capacity of Assistant Engineer from 19.11.2015 to 07.09.2018 for almost 2 years and 10 months at Chennai Radha Engineerings Work(s) Pvt. Ltd. at PTPS at Haryana, and later on keeping in view his experience as an Assistant Engineer in the services of Radha Engineerings Work(s) Pvt. Ltd., he was appointed at BEL as a Contract Engineer on 11.02.2019 and is continuing as Contract Engineer till date. The letter appoint him as Assistant Engineer issued by Radha Engineers Works Pvt. Ltd. is reproduced as under:

“OFFER LETTER

REF: HRD\OI LCH-WS3\ 2075

28.10.2015

To,

Mr. PIYUSH KUMAR SINGH,

Dear Mr. PIYUSH KUMAR SINGH,

Sub: Issue of Offer for Appointment – Reg.

With reference to your application and further interview had with us, you have been selected for employment as “GRADUATE ENGINEER TRAINEE - ELECTRICAL” Your placement nature will be on All India Service Liability (AISL) basis. However your initial place of employment is at our PTPS site @ HARYANA, Your Monthly Gross Salary will be Rs. 8,000/- (Rupees Eight Thousand Only) with free food and bachelor accommodation at our CREW facilities.

According to this offer, you will be under probation for a period of 12 months from the date of joining. After successful completion of your probation, you may be given further employment confirmation. Your service nature is liable to be transferred for work in any area within the site or any other site in India depending upon company's requirement.

Note: This offer letter is valid up to 01(one) month to join from the date of issue.

For Chennai Radha Engineering Works (P) Ltd

-sd-

Designated HR.

I accept the offer and terms and conditions mentioned in the aforesaid letter and take charge on the post with effect from

Signature of the Applicant

(PIYUSH KUMAR SINGH)"

16. M/s Radha Engineering Works Pvt. Ltd. has also issued an experience certificate date 09.10.2018 and the same is also reproduced as under:

"CREW\HRD\EXP\18\0432

Date: 09.10.2018

TO WHOMSOEVER IT MAY CONCERN

This is to certify that Mr.Piyush Kumar Singh S/o Mr.Indrajeet Singh worked in our Organization under the contract work with PTPS Site at Haryana from 19.11.2015 to 07.09.2018 in the capacity of Assistant Engineer in C and I Department as per our employment records.

Mr.Piyush Kumar Singh has resigned from the services of the Organization on his own accord.

During this period his conduct and character were found to be good.

We wish him all success in his future endeavors.

For Chennai Radha Engineering Works (P) Ltd.,

-sd-

(Sanker.D)

Manager- HR”

17. The Appointment order dated 30.01.2019 issued by BEL appointing him as a Contract Engineer is reproduced as under:

“Dear Sir/ Madam,

Sub: Offer of appointment for the post of “Contract Engineer (Electronics) on Contract Basis

Further to the selection held on 16.11.2018, we are pleased to inform you that you are selected as "Contract Engineer" (Electronics) provisionally on contract basis of HLS&SCB SBU, BEL, Bengaluru on the following terms and conditions:

TERMS OF CONTRACT APPOINTMENT:

*1.0 You will be engaged on contract basis temporarily for a period of **ONE YEAR** with effect from the date of your joining duty. Your temporary engagement on contract basis is subject to the following:*

a. You should produce a recent medical fitness certificate from a Medical Officer not below the rank of Civil Surgeon/ Assistant Surgeon.

b. Satisfactory verification of your credentials / testimonials etc.

c. You will have to give a declaration to the effect that there is nothing adverse against you (either presently or in the past) which would disqualify you for this contract.

2.0 You will be paid a consolidated amount of Rs. 23,000/- per month during the contract period. Income Tax / Professional tax deductions and other statutory deductions will be made as per rules. You are required to produce a copy of your Permanent Account Number (PAN) for IT purpose.

3.0 You will not be entitled to any other benefits applicable to regular employees of the Company such as DA , HRA , CCA , PE, Gratuity, Medicals, and Incentive etc.

4.0 You may be deputed to outstation duties as and when necessity arises. You may also be required to work in shifts as decided by the Departmental Head / Divisional Head.

5.0 You are eligible for one day paid leave per completed month of service.

6.0 Your performance will be reviewed periodically with reference to the tasks assigned to you for necessary corrective action taken from time to time in order to ensure completion of assigned job/ project on time.

7.0 You are required to give an undertaking/ Bond on e-stamp paper worth Rs. 100/- (Format enclosed) to give 1 month's Notice (or) remuneration in lieu of Notice Period if you resign/ leave during the contract period.

8.0 You shall not communicate, directly or indirectly, any official document or any part thereof, or part with any information, which comes into your possession or knowledge, in connection with your official duties, to any other persons to whom you are not authorized to communicate such document, article, paper, etc. without obtaining prior and specific permission of the superiors. In other words, you will maintain utmost secrecy of the work related aspects of the above assigned job/project, any classified/ secret/ critical information relating to the assigned job/ project in the interest of the progress of the project, and the national interest and also safeguard the security of all such information/ documents to which you have access in the course of official duties or which you come in possession of in any other way.

Further, you shall at all times during the period of the tenure of this contract:

- i) Maintain absolute integrity;
- ii) Maintain devotion to duty; and
- iii) Do nothing, which is against the interest of the Job/ Project/ Company.

9.0 The Employment would come to an end on completion of the tenure of the contract Appointment or on completion of the

project whichever is earlier. Management has the right to terminate your services without notice and any compensation in lieu of notice for any reasons. Before leaving the Company you should hand over all tools and fixtures, drawings, designs, Documents, etc. related to your assignment to the concerned authorities.

10.0 During your contract you will be bound by rules and regulations of service including Conduct and Discipline as applicable to the personnel engaged on contract , that may be in force and your acceptance of this offer of appointment carries with it your agreement to observe all such rules and regulations.

11.0 Any other matter regarding your services not dealt with herein shall be governed by the discretion or decision of the Management.

12.0 You will not have any right to claim for permanency of employment or for extension of contract period. At the end of the Contract Period i.e., on completion of one year, your services shall stand terminated.

13.0 We reserve the right to check your work experience certificate for its authenticity/ validity from the concerned Organization which issued Certificate/s and you are liable for action as deemed fit, if the Certificates are found to be not genuine etc.

14.0 You are required to take Medical claim Insurance Policy for a period of one year for a minimum coverage of Rs. 1,00,000/- from the Government approved Corporation/ Company for self, and the copy of the same to be submitted for our records.

15.0 While reporting please bring the following:

- a) One set of attested copies along with the original certificates as proof of your Qualification , Experience, Date of Birth etc., and SC/ST/OBC certificate, if applicable.*
- b) Original Degree Certificates for verification*
- c) Experience Certificates in original*
- d) Copy of Bank Pass Book (SBI only)*
- e) Copy of Aadhar Card*

f) Satisfactory pre-employment police verification report from Police Authorities

g) Copy of PAN card

h) Medical Insurance policy

i) Service Bond on e-stamp only

j) Medical fitness certificate from a Medical Officer not below the rank of Civil Surgeon/ Assistant Surgeon

16.0 If all the above terms and conditions are acceptable to you , you are required to report to Shri Rakesh Kumar Bharti , Manager (HLS&SCB), Agra Smart City Project , House No . 7 I , First Floor, Sector 4, Vibhav Nagar, Agra - 282001 with your acceptance letter on 11.02.2019 at 9.00 a.m. failing which the offer will be treated as cancelled .

Yours faithfully

For BHARAT ELECTRONICS LIMITED

Assistant Manager (HR/T&BS/HLS&SCB)]

Declaration/ Acceptance

I, _____ S/D/o: _____, aged about _____ years, residing at _____ Do hereby declare that I have read and understood the terms and conditions of the offer of appointment letter dated 30.01.2019 and accept the same as it is and abide by the same.

Signature of the Contract Engineer

Date:”

18. The Learned Single Judge merely because the Appellant was appointed on probation for a period of one year has arrived at a conclusion that he was not having 3 years experience. The Learned Single Judge has in fact not at all distinguished the term probation and training.

19. The appointment order of the appellant appointing him at Radha Engineering Work(s) Pvt. Ltd. states that he has been appointed as Graduate Engineer Trainee-Electrical on probation for a period of one year. The appointment order makes it very clear that he was appointed on probation. He was drawing a regular salary, and, therefore, by no stretch of imagination, the probationary period could have been excluded from the

period of experience obtained by the Appellant. The Appellant was certainly fulfilling the eligibility condition. He was having a legal right to be appointed as he has proved his worth and in fact the action of the Respondents has violated his fundamental rights guaranteed under Articles 14, 16 and 21 of the Constitution of India.

20. Learned Counsel for the Appellant has vehemently argued before this Court that the Rules of a game cannot be changed in between the game. Reliance has been placed upon judgment delivered in the case of *Srinivas K. Gouda v. Karnataka Institute of Medical Sciences*, (2022) 1 SCC 49.

21. In the present case, the initial advertisement issued on 06.08.2019 nowhere provided that the probationary period or training period has to be excluded for the purposes of experience while computing total period of experience and wisdom prevail over the Respondents as later on while issuing subsequent Advertisement on 15.07.2020, for the first time, the condition was inserted that the period spent on training will not be included while computing total period of experience and, therefore, in the considered opinion of this Court, earlier when such a condition was not in existence in Advertisement, the Petitioner/ Appellant could not have been outstayed only because he was on probation for a period of one year.

22. The Appellant belongs to weaker section of society. He belongs to Other Backward Class, and he does have 3 years of experience including probationary period, and, therefore, as the Respondents have changed the rules of the game mid-way, he is certainly entitled to relief and consequential appointment.

23. The Appellant has also placed reliance upon a judgment delivered in the case of *Anuj Kumar Dey & Anr. Vs. Union of India & Ors.* (1997) 1 SCC 366. The Hon'ble Supreme Court in the aforesaid in Paragraph Nos. 5 & 17 has held as under:

“5. The first question in this case is whether the appellant can be regarded as a “sailor”. The argument on behalf of the respondents has been that the appellant was undergoing training as an Artificer Apprentice. He could not be treated as a sailor during this period of training. It was only when he was advanced to Electrical Artificer Vth Class after completion of his training that he became a sailor.

17. We are of the view that the Division Bench of the High Court was in error in holding that the period of four years when the appellant was employed Artificer Apprentice could not be counted for computation of the qualifying period of pension.”

24. The Hon'ble Supreme Court in the aforesaid case has taken into account the period of the person therein for completion of qualifying service during which the Appellant therein has worked as Artificial Apprentice.

25. In the present case, the Appellant was not an Apprentice. In fact, he was on probation and stand on a better footing, and, therefore, he is certainly entitled for appointment as he has proved his worth in the process of selection.

26. It is reiterated that the Advertisement issued on the subject does not include the condition that the training period or probationary period shall be excluded from total experience and for the first time, the Admit Card dated 27.02.2020 mentioned that post qualification experience will not include

training period, and, therefore, the Appellant's candidature could not have been rejected in the manner and method as done by the Respondents.

27. The Respondents have rejected the candidature of the Petitioner. The plea canvassed by the Learned Counsel for the Respondent is that the Petitioner/ Appellant was informed *vide* Admit Card dated 27.02.2020, Call Letter dated 10.04.2020 and *vide* letter dated 25.09.2020 that the prescribed qualification regarding experience shall exclude the training period also does not help the Respondents, as he was a probationer, and subsequent change in the terms and conditions of the recruitment after the Appellant has qualified the written examination as well as interview amounts to changing the rules of the game after the game is over. Therefore, denial of appointment to the Appellant on this ground only is bad in law.

28. The Learned Counsel for the Respondents has also placed reliance upon a judgment delivered in the case of *Madras Institute of Development Studies and Anr. V. K. Sivasubramniyan and Ors. (2016) 1 SCC 454* and *Ashok Kumar and Anr. V. State of Bihar and Ors. (2017) 4 SCC 357*, and, his contention is that once a candidate who participates in a selection without demur, taking a calculated change to get selected, cannot be allowed to turn around and challenge the criteria of selection once he is declared unsuccessful, is a well settled proposition of law.

29. In the considered opinion of this Court, the aforesaid judgments are not at all of any help to the Respondents as the Appellant participated in the process of selection keeping in view the terms and condition of the Advertisement. The Advertisement nowhere provided that the period spent

on training or on probation will be excluded from total experience, and, therefore, the Learned Single Judge has misdirected himself based upon the aforesaid judgment in declining the reliefs prayed by the Petitioner/Appellant herein.

30. Learned Counsel for the Respondents have also taken a ground that the Appellant was in fact appointed as a Trainee, and he was on probation for 12 months, and he could not have worked in an executive/ supervisory role from the beginning of his career.

31. In the present case, the Appellant was a probationer. He was granted a regular pay-scale. He does have an experience right from day one on the post he was working, and, therefore, in the considered opinion of this Court, the question of denying relief to the Appellant does not arise.

32. In the considered opinion of this Court, keeping in view the terms and condition of the Advertisement, the Appellant was eligible to apply against the vacancy Advertisement *vide* Advertisement No. 2/2019. He was having 3 years experience as required under the notification, and as already observed earlier, the notification nowhere mentioned that the training/probationary period shall be excluded for computing of 3 years work experience, and, therefore, the order passed by the Learned Single Judge deserves to be set aside and is accordingly set aside.

33. This Court, in light of the documents placed on record, and after hearing Learned Counsel for the Parties and also keeping in view the terms and conditions of the Advertisement, is of the considered opinion that the Appellant, who belongs to OBC category, is entitled for reliefs as prayed

for. The order of rejection dated 10.11.2020 issued by the Respondents is hereby set aside. The Respondents shall review the process of selection to the extent the Appellant is concerned, and, in case, the Appellant finds place in the merit list prepared by the Respondents, the Respondents shall take all consequential steps in the matter in respect of issuance of appointment in respect of the Appellant in accordance with law.

34. It is needless to mention that the Appellant shall not be entitled for back-wages. However, he shall be entitled for appointment from the date the other persons from the same selection process have been appointed as Engineer in the services of NTPC. The Appellant shall be entitled for notional fixation of salary, seniority and all other consequential benefits except back-wages.

35. The exercise of passing necessary consequential order be concluded within a period of 60 days from today.

36. With the aforesaid, the present LPA stands disposed of. No order as to cost.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SUBRAMONIUM PRASAD)
JUDGE

MAY 24, 2023