

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 1065/96

Date of Decision : 27th July 2001

M.B.Shelar Applicant

Shri S.P.Kulkarni Advocate for the
Applicant.

VERSUS

Union of India & Ors. Respondents

Shri G.K.Neelkanth for R-1,2,4 Advocate for the
and Shri S.A.Bhalwal Respondents

CORAM :

The Hon'ble Shri S.L.Jain, Member (J)

The Hon'ble Shri V.K.Majotra, Member (A)

(i) To be referred to the reporter or not ? *yes*

(ii) Whether it needs to be circulated to other *No*
Benches of the Tribunal ?

(iii) Library *yes*

S.L.Jain
(S.L.JAIN)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.1065/96

Dated this the 27th day of July 2001.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Shri V.K.Majotra, Member (A)

Manohar Bhagchand Shelar,
Daftary, in the office of
Member Secretary, Western
Regional Electricity Board,
M.I.D.C. Area, Marol,
Andheri (E), Mumbai.

...Applicant

By Advocate Shri S.P.Kulkarni

vs.

Union of India through

1. Assistant general Manager,
Power Grid, Corporation of India,
Western Region, M.I.D.C.Area,
Marol, Andheri (E), Mumbai.
2. Member Secretary,
Western Regional Electricity Board,
Central Electricity Authority,
M.I.D.C. Area, Marol, Andheri (E),
Mumbai.
3. Chief Managing Director
Power Grid Corporation of India Ltd.,
Corporate Centre, Hemkunt Chamber,
10th Floor, 89, Nehru Place,
New Delhi.
4. The Director (Administration)
through Secretary (Chairman),
Central Electricity Authority,
Seva Bhawan, R.K.Puram,
New Delhi.

...Respondents

By Advocate Shri G.K.Neelkanth
for Respondents No.1,2 and 4,
Shri S.A.Bhalwal for Respondent
No. 3.

P. S. G. ...2/-

O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 seeking the declaration that acceptance and absorption of Junior staff in Power Grid in January, 1996 by ignoring option of the applicant is violative of Article 14 of the Constitution of India as also the O.M. dated 21.12.1993 with a direction to the respondents to complete process of absorption of the applicant in Power Grid as per the option given by him in December, 1993 at par with those absorbed in January, 1996 and extend all benefits since then as per O.M. dated 21.12.1993 and dispose of representations sent by the applicant by a reasoned order.

2. The applicant entered service as a Peon in the Western Regional Electricity Board as per Appointment Order issued in April, 1976 w.e.f. 26.4.1976. On 23.11.1987 he was appointed on promotion as Daftary in the scale of Rs.775-1025 vide order dated 9.11.1987. The pay scale of Daftary was revised to Rs.775-1150. He was drawing Rs.1050/- plus usual allowances. The Government of India, Ministry of Power decided to transfer 5 Regional Load Despatch Centres (RLDC) in a phased manner to the Power Grid Corporation of India Limited as per programme commencing from 31.12.1993. O.M. dated 20.12.1993 was issued and as per the said O.M. Establishment at Mumbai was to be transferred to Power-Grid

Sd/-

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on 31.12.1995. This transfer of Establishment was to be preceded by exercising of option by existing regular staff by 27.12.1993. The scale of pay offered in Power Grid are higher than those existing in Western Regional Electricity Board by about Rs.400/- with connected and consequential rise in allowances etc. The staff was to be benefitted in all respects. The applicant exercised the option well in time. The option of the applicant was not forwarded by Respondents No. 2 and 4 to Respondents No. 1 & 3. The applicant represented the matter vide his representations dated 31.12.1995, 10.1.1996, 16.1.1996, 7.2.1996 and 4.7.1996 but neither reply nor any action was taken in respect of the same. Hence, this OA. for the above said reliefs.

3. The defence of Respondents No. 3 is that they have not received the option of the applicant. Hence, question of consideration of the same does not arise. They have pleaded that vide Exhibit-'R-3' which was circulated, it was specifically mentioned that in the first phase willingness to join Power Grid by the employees shall be given before 27.12.1993 and in second phase option shall be given just before the actual transfer of RLDCs. The second option would be irrevocable and unconditional. The employees were to be absorbed in Power Grid and would be placed in the equivalent and corresponding grade prevailing in Power Grid as per formula. Accordingly, several employees of RLDCs who opted for transfer and absorption in Power Grid were taken in Power Grid which issued letters indicating their

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designation, scale of pay, basic pay and date of annual increment. All the employees who were absorbed in Power Grid accepted those terms and conditions. The Power Grid has absorbed the RLDC personnel for whom it had received the option letters. Since, the option of the applicant has not been received, it has not issued absorption letter and as such the applicant could not have any grievance with the Power Grid. The names of the personnel forwarded by CEA had been absorbed in Power grid. CEA has even confirmed this position in their letter D.O. No. 1.12.95 Admn.IV dated 21.8.1996. Consequent to the receipt of the above said letter, the absorption letters for left out six persons only have also been issued by Power Grid. RLDC obtained the option letter from their employees and forwarded the list to Power Grid for absorption. Power Grid has absorbed all those personnel contained in the list of RLDC. Hence, prayed for dismissal of the OA. along with the cost.

4. The Respondents No.1,2 & 4 have filed a separate written statement stating the fact that while forwarding the option letters, the principle of seniority was being observed. They have alleged that majority of the employees including the applicant who belonged to the subordinate cadre of CEA did not want to be declared surplus nor to be shifted to New Delhi and hence opted for Respondent No. 3. When the applicant exercised his option, it cannot be said that he was not conscious that ultimately he would or would not be absorbed in Respondent No.3.

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Smt.Chandabai Shinde and Shri Santosh Rahate - Helpers though junior in service as compared to the applicant, belonged to the grade or cadre different from that of the applicant, whose options were forwarded as they formed altogether a different group or class by themselves. There was no discrimination. No junior to the applicant was selected for appointment in Respondent No.3. There were two daftaries with Respondent No.2 and the official senior to the applicant, namely, Shri G.D.Katakar was allowed to join Respondent No.3. They have further stated that if both the daftaries would have been released, the work was likely to suffer, moreover there was also a shortage of group D staff in the secretariat of Respondent No.2. Principle of seniority was strictly applied. Out of a total number of 42 Group D officials working with Respondent 2, 33 were placed in the list of officials to be absorbed with Respondent No. 3. Thus, leaving a depleted strength of 9 class IV employees in WREB, CEA, out of which, one is going to retire shortly. There is a government ban on creation of new posts or filling up the vacancies for a period of one year and therefore it was imperative to see that atleast a skeleton staff of Class IV employees was maintained so that the secretariat of Respondent No. 2 would run smoothly and discharge its duties. Hence, prayed for dismissal of the OA. along with cost.

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5. Annexure-'6' letter dated 21.12.1993 option for absorption in the regular service of Power Grid - the relevant portion is as under :-

"As per this, all officers and staff of WRLDC are required to exercise option not later than 27.12.1993 regarding absorption in Power Grid."

"Those who do not wish to opt for absorption in Power Grid may also please intimate their decision in the proforma enclosed within the stipulated time."

Perusal of the same makes it clear that it was incumbent on the staff either to opt for absorption in Power grid or to intimate otherwise their decision. This is the letter issued by Government of India, CEA, Western Regional Electricity Board, Bombay. It was with a view to be certain about the employees who intend to join the Power Grid or remain at WRLDC. Page 22 of the OA. letter dated 20.12.1993 issued by Government of India, CEA, para 4 is as under :-

"4. In case you desire to be absorbed in Power Grid, you may please furnish your written option together with the relevant particulars in the enclosed proforma to your Member Secretary positively by 27.12.1993. Option once exercised shall be final. No representation or request for further clarifications regarding terms and conditions of absorption beyond what is stated in the enclosures or on any matter connected therewith shall be entertained."

Perusal of the same makes it clear that option once exercised shall be final. It was for the Power Grid either to absorb or not. In view of this situation, the Respondents No.2

and 4 were having no authority to with-held the option of the applicant. The decision was to be taken whether to absorb or not is by the Power Grid and the said decision cannot be taken until and unless the option/intimation is being forwarded to them.

6. The principle adopted by the Respondents No.2 and 4 of seniority is nowhere mentioned in the above referred letters. Further more, Group 'D' is one cadre. Peons, Daftaries, Helpers, Drivers, Chowkidars, all are covered in it, though they may be drawing different scales. The applicant was also senior to the persons whose options were forwarded by Respondents No. 2 to 4. Hence, the principle adopted by Respondents No. 2 to 4 for forwarding the option cannot be said to be just and proper and hence arbitrary. The respondents ought to have adopted the principle to forward all options of all employees to Power Grid without adopting any principle and deciding accordingly. The duty of Respondents No. 1 to 3 to consider the option and decide the matter was not envisaged.

7. An employee cannot be compelled to work against his wish or desire even if the employer has difficulties in pulling on with the existing staff. So the defence raised by the Respondents No. 2 & 4 in this respect deserves no consideration.

8. Even the respondents failed to reply the representations dated 31.12.1995, 10.1.1996, 16.1.1996, 7.2.1996 and 4.7.1996 and explanation now coming for this is that the representations of the applicants could not be replied pending settlement of issue

of absorption of CEA in Respondent No. 3 for making up the short fall which was settled in or about November, 1996 when it was decided that employees of Central Electricity Authority even though they submitted their option for joining Respondent No. 3 should not be allowed to join Respondent No. 3. We are unable to find any relevance to this explanation for not replying the representations of the applicant.

9. As it is admitted position that the Power Grid Corporation of India, the service conditions are better one, the applicant submitted the option, the Respondents No. 2 & 4 were duty bound to forward the same to Respondents No.1 and 3 for their consideration. Regarding the absorption, it is sufficient to mention that there were number of vacancies say more than 9 times as sanctioned strength was 56 in RLDC while 500 personnel were required. Hence, the consideration in respect of the applicant appears to be a mere formality having better chances to be absorbed.

10. While hearing the arguments as the present position was to be ascertained from Respondents No. 1 & 3, we could not get any satisfactory answer in respect of the same. In these circumstances, the only relief which can be provided to the applicant is that the option of the applicant which was submitted well in time be forwarded by Respondents No. 2 to 4 to Respondents No. 1 & 3 for consideration as per provisions of law.

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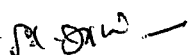
..9/-

11. The learned counsel for the applicant stated that if his case is considered for being absorbed in Group 'D' any category, he would be satisfied even with this relief. The said fact be kept in view while considering the option of the applicant by Respondents No. 1 & 3.

12. In the result, OA. is partly allowed with a direction to Respondents No.2 & 4 to forward the option of the applicant to Respondents No. 1 & 3 for being considered in accordance with law, keeping in view the concession made by the learned counsel for the applicant, either in existing vacancies or in future first available vacancies. available immediately thereafter. The Respondents No. 1 to 4 shall decide the consideration of the option of the applicant within three months with an intimation to the applicant accordingly. OA. stands disposed of. No order as to costs.


(V.K. MAJOTRA)

MEMBER (A)


(S.L. JAIN)

MEMBER (J)

mrj.

dl. 27-7-2001
order/Judgement despatched
to Applicant/Respondent (s)
on 27/8/01

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