

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

O.A.NO. 060/00441/2014 Date of order:- 30.10.2015.

Coram: **Hon'ble Mr. Sanjeev Kaushik, Member (J)**
Hon'ble Mr. Uday Kumar Varma, Member (A).

Sucha Singh s/o Shri Karam Chand (Retired Junior Engineer) of the office of SDO (Electricity) Operation, Sub Division No.8, Division No.2, Chandigarh, r/o House No.3181, Sector 40-D, Chandigarh.

.....Applicant.

(By Advocate :- Mr. Vijay Pal)

Versus

1. Union Territory, Chandigarh, through its Secretary, Engineering Department, Chandigarh Administration, U.T. Secretariat Building, Sector 9, Chandigarh.
2. Chief Engineer, Engineering Department, Chandigarh Administration, U.T. Secretariat Building, Sector 9, Chandigarh.
3. Superintending Engineer, Electricity Operation Circle, U.T. Secretariat Building, Sector 9, Chandigarh.

...Respondents

(By Advocate : Mr. Aseem Rai).

O R D E R

Hon'ble Mr. Uday Kumar Varma, Member (A):

Applicant Sucha Singh has filed the present Original Application praying for quashing the order dated 23.10.2013.

2. Facts as projected by the applicant are that he was appointed as Work-charge T-Mate on 22.2.1969 and was promoted to the post of Line-man from Assistant Lineman on 16.1.1975. On completion of three years, the applicant was brought on regular cadre vide order dated 11.7.1979. The applicant has pleaded that his further promotion is to the post of JE-II in view of Rule 18 of the Punjab State Electricity Class-II Employees Regulations, 1972. Rule 18 of the Regulations, 1972 reads as follow:-

"18. 40% of the cadre posts of Linesmen shall be filled in by promotion as under:-

- a) 20% posts from amongst the ALMs, who are Matriculates/ITI Certificate holders whether Matriculates or Non Matriculates, with 5 years experience;
- b) 20% of posts from amongst the Non-Matriculates ALMs with 7 years experience".

The applicant has averred that in view of Regulation, 1972, he is to be promoted as ALM in the year 1972 instead of 24.12.1975 and his further promotion as JE-II with effect from 1979. The applicant has stated that in view of Regulation, 1972, he requested the department to grant him seniority from due date i.e. from the date when he became eligible for promotion to the post of JE-II. Thereafter, the applicant filed OA & CWP before the Tribunal and jurisdictional High Court. The writ petition filed by the applicant was disposed of with the observations that "promotion to the post of Lineman could be made

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from the ALM to the extent of 40% and through other modes including direct recruitment to the extent of 60%".

3. In view of the observations made by the Hon'ble High Court, the applicant again approached the Tribunal by filing OA No.892/CH/2011 which was disposed of on 21.12.2012 with directions that the applicant is entitled to further promotion to the post of Junior Engineer as per the seniority which will be fixed afresh. In pursuance of the order dated 21.12.2012, the applicant sent representations to the respondents. However, the respondents have rejected the claim of the applicant for giving him seniority w.e.f. 16.1.1975 vide order dated 23.10.2013. Hence the present OA.

4. Pursuant to notice, the respondents have contested the claim of the applicant by filing written statement, wherein they have stated that the present OA deserves dismissal as the applicant has not exhausted the alternate remedies available to him. They have further stated that the applicant was brought on regular cadre after completion of 3 years service as Lineman, as such, his claim from 16.1.1975 is not justified. The applicant was never appointed as Lineman through direct recruitment. The services of the applicant was regularized as Trade Mate from 22.2.1972 in view of award of the Industrial Tribunal and he was further promoted as Lineman from

16.1.1975. By getting such promotion with retrospective date i.e. 16.1.1975 in the year 1980, the applicant and other similarly situated employees wrongly got placement in the seniority list of Lineman over and above the other employees who were otherwise senior to him in the cadre of Lineman. As per PSEB Regulation, 1972 the post of Lineman is to be filled up by promotion from Assistant Lineman to the extent of 40% on seniority cum merit basis and through direct recruitment to the extent of 60%. The applicant was never appointed as Lineman through direct recruitment, rather, his services was regularized as T-mate from 22.2.1972 by virtue of award of the Industrial Tribunal, which is not permissible under the 1972 regulations. They have further stated that in view of the order dated 21.12.2012, the seniority of the applicant was fixed in the cadre of AML, LM and Junior Engineer against the vacancies available under promotion quota. They have thus prayed for dismissal of the OA.

5. The applicant has filed a rejoinder by generally reiterating the averments made in the O.A.

6. We have given our thoughtful consideration to the entire matter and perused the pleadings available on record with the able assistance of the learned counsel for the parties.

7. The key factor that distinguishes the case of the applicant is with regard to his promotion as Lineman and further as Junior Engineer is the fact that his services was regularized as Trade-man w.e.f. 22.2.1972 as a consequence of award specifically No.12 & 15 by the Industrial Tribunal. As has been mentioned above, this matter has been under several rounds of litigation and compliance of decision of the Tribunal in O.A.No.544/CH/1996 titled as **Kasturi Lal & Ors** versus **Union of India & Ors** vide order dated 9.1.2002 which in turn relied upon the earlier order dated 17.11.1993 in T.A.No.754/CH/1986, the respondents recast the seniority list for Assistant Lineman, Lineman and Junior Engineer in consonance with the provisions of Punjab State Electricity Board, Class III Regulations, 1972 reckoning the seniority from the date of joining the service as work charged Lineman/Work-charged Trace Mate. This exercise resulted into major changes. The date of appointment of all the employees were changed and they were shown to be adjusted against various posts as per the availability of vacancies under respective quota at the relevant point of time. The seniority of the applicant was also accordingly fixed. This action of re-fixing of the seniority was challenged by the applicant before the Tribunal in O.A. No.454/CH/1997, but was, however, rejected by up-holding the action of the respondents regarding re-fixing the seniority of Assistant Lineman, Lineman and Junior Engineer-II. This order of the Tribunal

was challenged before the Hon'ble Punjab & Haryana High Court and while disposing of CWP No.12597-CAT/2002, the Hon'ble High Court gave the following directions:-

"As a sequel to the above, we are not tinkering with any of the directions issued by the Tribunal and are modifying the italicize observation of the Tribunal by incorporating in the order that promotion to the post of Lineman could be made from the ALM to the extent of 40% and through other modes including direct recruitment to the extent of 60%".

This direction was also applied in the case of the present applicant and it was found that since the applicant was never appointed as Lineman through direct recruitment, but was regularized as Trade-mate with effect from 22.2.1972 by virtue of operation of award 12 & 15 of the Industrial Tribunal, his case could not be considered under the directions of the Hon'ble High Court. Subsequently, this Tribunal in O.A.No.892/CH/2011 vide its order dated 21.12.2012 declined the relief claimed by the applicant regarding giving him seniority from the date when he was promoted to the post of Lineman i.e. 16.1.1975 and also promote him to the post of JE.

8. We take note of the fact that while re-fixing the seniority of the applicant, the monetary benefits given to the applicant on account of his earlier seniority was not recovered from him as a special dispensation. The respondents had placed the applicant at sr.no. 61

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as Assistant Lineman with effect from 24.12.1975, at sr.no.54 as Lineman with effect from 7.11.1984 and sr. no.81 as Junior Engineer with effect from 7.11.1988.

9. The respondents have contended that only three feeder cadre candidates namely Shri D.P.Singh(Sr.no.34), Navtej Vijay(Sr.No.36) and Gurnam Singh(SC) (Sr.no.70) were promoted from the post of JE-II to JE-I vide office order dated 4.12.2006 and 9.6.2006 respectively well before the retirement of the applicant on 30.4.2007. It is the claim of the respondents that the name of the applicant appeared at sr.no.81 was not considered by the duly constituted DPC for promotion to the post of JE-I (AAE) as the name of the official was not in the zone of consideration. They have also contended that the applicant had not passed the safety code test till his retirement on superannuation which is mandatory condition for promotion.

10. Given the above facts, we have no hesitation in concluding that the claim of the applicant is without any merit. He cannot be equated with other ALM/Linemen who joined the department through direct recruitment in the department or through regular promotions. His case is also not covered by the High Court directive dated 6.10.2010 because the applicant was neither covered under the

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promotion quota nor through direct recruitment quota. His claim to upset the seniority list was also rejected by the Tribunal earlier. Once as a result of judicial pronouncement the issue of seniority is settled, any matter relating to his promotion or further financial benefits will flow only by taking into account his place in the final seniority list. Seen in this context, the claim of the applicant for re-fixing his seniority(which has been earlier negated by the Tribunal), his promotion and any consequential benefits flowing out of any such promotion, cannot be accepted. We find that the order passed by the competent authority in pursuance of the directions of this Tribunal is speaking, reasoned and clearly elaborates the facts, the circumstances and the grounds on which the claim of the applicant is not maintainable.

11. After carefully considering the whole matter, we find no justification for any interference in the impugned order. The OA is accordingly dismissed. No costs.

Uday Kumar Varma
(UDAY KUMAR VARMA)
MEMBER (A).

Sanjeev Kaushik
(SANJEEV KAUSHIK)
MEMBER (J)

Dated:- 30.10.2015.
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