

T.N. ELECTRICITY BOARD & ANR.

v.

T.N. ELECTRICITY BOARD THOZHILALAR AYKKIYA
SANGAM

(Civil Appeal No. 1279 of 2008)

FEBRUARY 14, 2008

(A.K. MATHUR AND AFTAB ALAM, JJ.)

Service Law

Tamil Nadu Electricity Board Service Regulations, 1967:

Note-3 – Prescribing criteria of N.T.C. or N.A.C. Certificate for post of Helper – Further laying down that “candidates holding N.T.C./N.A.C. recruited as Helper shall not be eligible for internal selection to post of Junior Assistant and Typist including Steno-typist” – HELD: The T.N. Electricity Board has, on a rational basis, decided to lay down a qualification for appointment to the post of Helper i.e. NTC/NAC, and provided a channel of promotion for such persons to the higher post on technical side – Such provision cannot be said to be ultra vires Articles 14,16 and 19(1)(g) of the Constitution – This is a policy decision of Board and it is the Board who has to decide suitability and channel of promotion for such post – It is prerogative of Board to decide that what shall be the channel of promotion for technical and for non technical persons – Constitution of India – Articles 14,16 and 19(1)(g) – Administrative Law – Policy decision of administrative authority.

P.U. Joshi and Ors. Vs. Accountant General, Ahmedabad and Ors. 2003(2) SCC 632 – relied on.

Civil Appellate Jurisdiction : Civil Appeal No. 1279 of 2008.

From the final Judgement and Order dated 20/04/2006 of

A the High Court of Judicature at Madras in W.A. No. 1692/1999.

P.H. Parekh, E.R. Kumar, Shakun Sharma, Arjun Garg (for M/s Parekh And Co.) for the Appellants.

B V. Shekhar, Gulnar, G. Umapathy, Rohit Singh and Rakesh K. Sharma for the Respondent.

The following Order of the Court was delivered

We have heard learned counsel for the parties.

C Leave granted.

This appeal by special leave is directed against the order passed by the Division Bench of the Madras High Court dated 20th April, 2006 whereby the Division Bench has affirmed the order passed by the learned Single Judge where the learned Single Judge has struck down Note 3 of the Tamil Nadu Electricity Board Service Regulation, 1967 (hereinafter referred to as the "Regulations") and directed that all the persons who were appointed Helpers may be considered for the post of Junior Assistant and other administrative posts.

D Aggrieved against the said order of the Division Bench, the present Special Leave Petition has been filed.

E For disposal of this appeal, it is necessary to refer a few facts :-

F Petition No.3314 of 1993 was filed by the Tamil Nadu Electricity Board Thozhilalar Aykkiya Sangam, represented by its General Secretary praying that Note 3 of the Regulation may be declared as ultra vires being violative of Articles 14 and 16 of the Constitution.

G The grievance of the Sangam was that the classification of candidates, holding I.T.I. Certificates and who have got National Trade Certificate/National Apprenticeship Certificate (NTC)/NAC) and recruited as Helpers in Regular Works Establishment (REW) as a distinct class is not based on any

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intelligible differentia, which has rational nexus to the objective of selection to the post of Junior Assistant/Assessors, etc. It is also their grievance that in view of the above mentioned Note 3, the members of their Association are debarred from applying for the post of Junior Assistant along with other similarly placed candidates, possessing lesser qualification.

It was also alleged by Electricity Board that the nature of work and channel of promotions to the Helpers in Regular Works Establishment is entirely different from that of Junior Assistant/Typist/Assessors. According to them, the Helpers are utilized for field work of technical nature and their channel of promotion is Wireman, Lineman, Foreman and Junior Engineer whereas, Junior Assistants are posted for clerical works in office in Administrative and Accounts Cadre and their channel of promotion is Assistant, Administrative/Accounts Supervisor and Assistant Administrative Officer/Assistant Accounts Officer.

Therefore, channels of promotions for these Helpers was in technical side. It was submitted that this was a policy decision taken by the Board in pursuance of the office order dated 23rd May, 1986 on recommendations of Government. Henceforth the post of Helper i.e. Fitter, Turner, Machinist etc. will be recruited out of the persons who possess N.T.C. or N.A.C. certificates awarded by the National Council for Training and Vocational Trade. Consequent to this resolution of the Board the T.N. Service Regulations were amended and Note 3 was inserted in those regulations. Therefore, after the insertion of Note 3 the criteria for selection for the post of Helper is that the incumbent should have the N.T.C. or N.A.C. certificate issued by the National Council for Training and Vocational Trade and it was also clearly stipulated in the resolution of the Board dated 23rd May, 1986 that "the candidates holding N.T.C./N.A.C. recruited as Helper shall not be eligible for internal selection to the post of Junior Assistant and Typist including Steno-Typists".

This resolution of the Board was incorporated in the regulation in the same terms. Note 3 reads as under :-

A "National Trade Certificate/National Apprenticeship Certificate candidates recruited as Helpers shall not be eligible for internal selection to the post of Junior Assistants and Typists including Steno-Typists."

B Therefore, this is a matter of policy decision taken by the Board that henceforth the persons holding N.T.C./N.A.C. appointed as Helpers will have the channel of promotion to the technical post and not to the administrative post. It is true that prior to 1986 the persons who were appointed as Helpers were also appointed as Junior Assistants and Technicians in the office. After the decision taken by the Board Helpers have been appointed who only possess the N.T.C./N.A.C. certificate. The Board has now channelised the promotions of these persons in the category of technical posts and not in the administrative posts.

D This is a policy decision taken by the Board and it has been incorporated in service regulation. Therefore, the candidates were recruited on the post of Helper possessing this qualification, their channel of promotion is only to technical post and there cannot be any doubt about it. This was a categorical policy decision taken by the Board and therefore, the channel of promotion of these persons now will be only to the technical post and not to the administrative post. Therefore, this provision which has been made in the service condition cannot be said to be discriminatory or arbitrary or violative under Article 19(1)(g) in any manner. This is a policy decision of the Board and it is the Board who has to decide that who will be suitable for the post and what should be the channel of promotion for such post. It is not for the incumbent serving as a Helper to insist that the Board should amend the Regulation which suits him. It is the prerogative of the Board to decide that what shall be the channel of promotion for technical and for non technical persons. In this case the Board has decided on a rational basis that the channel of promotion of technical persons will be on technical side and not on the administrative side.

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In this connection, our attention was invited to the decision of this Court in the case of P.U. Joshi and others versus Accountant General, Ahmedabad and others reported in 2003(2) SCC 632 and this Court has very categorically stated that "There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service."

Therefore, in this view of the matter that the Board has decided to lay down a qualification for appointment to the post of Helper i.e. NTC/NAC and provided a channel of promotion for such persons to the higher post on technical side, such provision cannot be said to be ultra vires of Articles 14, 16 and 19(1)(g).

Consequently, we allow this appeal, set aside the order of the learned Single Judge and also the order of the Division Bench of the High Court.

No order as to costs.

R.P.

Appeal allowed.