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Court : Andhra Pradesh

Decided On : Mar-19-1994

Reported in : (1995)ILLJ476AP

Judge : Syed Shah Mohammed Quadri, J.

Acts : [Industrial Disputes Act, 1947](#) - Sections 10(1)

Appeal No. : W.P. No. 9064/1990

Appellant : B. Narayana

Respondent : Additional Tribunal-cum-addl. Labour Court and ors.

Advocate for Def. : C.V. Mohan Reddy and ;A. Veeraswamy, Advs.

Advocate for Pet/Ap. : G. Bikshapathy and ;G. Vidyasagar, Advs.

Disposition : Petition allowed

Judgement :

ORDER

Syed Mohammed Quadri, J.

1. The petitioner challenges the validity of the award dated April 26, 1990 in I.D. No. 48/83 passed by the first respondent and prays for a direction to the second respondent to promote him to the post of Line Inspector with effect from December

18, 1978 with further promotion to the post of Foreman Grade II with effect from June 28, 1992 with all consequential benefits.

2. The dispute between the petitioner and the third respondent relates to seniority and consequential promotion to the post of Line Inspector. The petitioner was appointed as Helper in the office of the Divisional Engineer (Electrical), A.P. State Electricity Board, for short 'the Board', Nagarjunasagar. About two years earlier, the third respondent was appointed in the office of the Divisional Engineer, Lines Division of the Board at Hyderabad. The third respondent was promoted as Lineman in the Lines Division, City Circle, on September 17, 1968. The petitioner was promoted as Lineman on March 20, 1969. It appears, the Board called for options from the employees to undergo training in 'Hot Line Technique'. The petitioner gave his option in 1970. He was sent for training and on March 9, 1973 he was transferred and posted in the Hot Line Sub-Division from that date. The third respondent was sent for training in 1976 at his option and he joined the Hot Line Sub-Division of his parents' division, viz. Lines Division on July 18, 1976. In the Lines Division, the seniority list of the Linemen was prepared on June 3, 1976 and objections were invited. The petitioner was shown at Sl. No. 43 whereas the third respondent was shown at Sl. No. 31. That seniority list became final. While so, the Divisional Engineer (Operation) Lines Division, Hyderabad sought for clarification from the Superintending Engineer, Operation, City Circle on the question as to how the seniority of Hot Line Staff should be maintained. Thereafter, on December 18, 1978 the third respondent was promoted by the Divisional Engineer, Electrical Operations, Lines Division as a Line Inspector. The petitioner raised an industrial dispute over the question for fixation of seniority in the Lines Division and promotion of the third respondent as Line Inspector. While the conciliation proceedings were pending, the petitioner was also promoted as Line Inspector on October 10, 1980. In the meanwhile, the Electricity Board issued proceedings in BPMS No. 640 dated August 18, 1980 prescribing certain norms of work load and staff pattern and also the procedure for filling up vacancies in Hot Line Sub-Division. A clarification was sought with reference to the said BPMS from the Chief Engineer. In Memo No. MPS/DM-1/A-3/1083/80-1 dated December 1, 1980 the Chief Engineer clarified the position to the Superintending Engineers to treat MRT workshop, Hot Lines and Power Houses in the operation circles as

separate units and to maintain seniority among the staff including the posts of Foreman Grades I and II in those units separately. The seniority list of Hot Line Sub-Division was prepared on April 20, 1982 wherein the petitioner was shown at S. No. 2 and the third respondent was shown S. No. 1. This is also complained of by the petitioner.

3. The dispute relating to the seniority of the petitioner over the third respondent and the promotion of the third respondent was referred by the Government, under Section 10(1)(c) of the Industrial Disputes Act, through G.O. Ms. No. 508, dated March 19, 1987 to the Additional Industrial Tribunal-cum-Additional Labour Court, A.P. Hyderabad - the first respondent herein. The question referred to reads as follows:-

'Whether the denial of promotion to Sri B. Narayana, Lineman to the post of Line Inspector in Hot Line Division when he had undergone the requisite training in 1970 and has been working in this Division from 1973, when others who joined later than Sri B. Narayana in Hot Line Division have been promoted i.e., Sri T. Ramakrishna who joined in 1976, has been promoted to Line Inspector post is justified? If not, to what relief the affected workman is entitled?'

This industrial dispute went through several vicissitudes. Eventually the dispute was remanded to the first respondent by the High Court by a common Judgment dated September 12, 1988 in W.P. Nos. 6697 of 1985 and 7002 of 1987. After the matter was remanded, the first respondent passed the award on April 26, 1990 which is now assailed in this writ petition.

4. Sri G. Bikshapathy, the learned counsel for the petitioner, contends that the Labour Court committed an error apparent on the face of the record in treating the seniority list dated June 3, 1978 (Ex. M3), as that of the seniority list of Hot Line Sub-Division and in holding that the question that the third respondent was senior to the petitioner, had become final and therefore, he was entitled to be promoted to the post of Line Inspector. He further contends that the Hot Line Sub-Division was treated as a separate unit from December 13, 1978, so thereafter the Lines division and the Hot Line Sub-Division could not be treated as one unit, therefore, the impugned award has to be quashed.

5. However, the contention, of Sri Veera swamy, the learned counsel for the third respondent, is that the Hot Line Sub-Division was treated as a separate unit after the issuance of clarification on December 1, 1980. Before that, it was a part of Lines Division and in that Division, the petitioner was junior to the third respondent as per the seniority list (Ex. M. 3) dated June 3, 1978 which had become final and therefore, the petitioner cannot reagitate the issue of either seniority or promotion of the third respondent.

6. It may be pointed out that Hot Line Sub-Divisions were formed as long back as in February, 1963. Initially, three Sub-Divisions were formed; one at Hyderabad, another at Vijayawada and one more at Vishakapatnam. For all purposes, the personnel of the Hot Line Sub-Division were under the territorial jurisdiction of the Superintending Engineers concerned in the said area. The petitioner joined Hot Line Sub-Division, Lines Division, Operation Circle, Hyderabad in 1973 whereas the third respondent joined the Hot Line Sub-Division in 1976. The seniority list relied upon by the third respondent and which was accepted by the first respondent relates to the Lines Division and not to the Hot Line Sub- Division as is evident from the heading 'Provisional Seniority List of LM/LMO's of Lines Division' (Ex. M3). Whatever might have been the seniority list of the petitioner and the third respondent in the Lines Division, we are concerned only with Hot Line Sub-Division. For purposes of seniority and promotion in the Hot Line Sub-Division, the Superintending Engineer, Operation, City Circle had issued orders in Memo. No. SE/O/CC/Adm. A3/1424/78 dated December 13, 1978 which read as follows:

'Sub: - O&M-Maintenance; of seniority list and filling up of vacancies of Hot Lines Sub-Division - Reg.

Ref: From DE/(O) Lines Lr. No. DE/O/L/Admn./A1F1 dated November 27, 1978.

In the letter cited, the Divisional Engineer, O.P. Lines, Hyderabad has requested to clarify as to how the seniority of Hot Lines staff is to be maintained.

The matter has been examined and the Divisional Engineer is informed that seniority in respect of staff trained in Hot Line Technique is to be maintained separately and their future promotions regulated with reference to seniority strictly

being followed irrespective of the date of training, all other conditions being equal.'

From the above order issued by the Superintending Engineer, City Circle, it is clear that the seniority in respect of the staff trained in the Hot Line Technique has to be maintained separately and their future promotions regulated with reference to their seniority, have to be made strictly. It is also made clear that date of training was immaterial. As stated above, the petitioner joined the Hot Line Sub-Division in 1973 whereas the third respondent joined in 1976. Therefore, the petitioner is senior to the third respondent in the Hot Line Sub-Division. The promotion of the third respondent by the second respondent on December 18, 1978 as Line Inspector after the memo of the Superintending Engineer, City Circle, is contrary to the instructions contained in the circular extracted above. The same position is reiterated by the Chief Engineer in Memo No. MPS/DM/1/A/3/1083/80-1 dated December 1, 1980. Therefore, the promotion of the third respondent cannot be maintained. However, the Labour Court erroneously proceeded on the basis of the seniority list of the Lines Division and erred in coming to the conclusion that the seniority list had become final, that seniority list does not relate to the Hot Line Sub-Division. It is also not correct in assuming that for the first time the Hot Line Sub-Division came into existence as a separate unit in 1980 whereas from the instructions issued by the Superintending Engineer, Operation, City Circle in Memo, dated December 13, 1978, it is clear that it was being treated as separate unit from 1978 itself. In the circumstances, the impugned award is quashed. The seniority and the consequential promotion of the third respondent is also declared as illegal. The second respondent is directed to treat the petitioner as senior to the third respondent in the 'Hot Line Sub-Division' and grant him promotion notionally from the date the third respondent was promoted with consequential benefits of such promotion.

7. It is represented by Sri Bikshapathy that pursuant to the orders of this Court dated November 26, 1985 in W.P. No. 9138 of 1985 and W.V.M.P. No. 1756 of 1985, the petitioner is being paid salary on par with the third respondent, therefore, the question of granting any monetary benefits to the petitioner does not arise.

8. At this stage, Sri Veeraswamy, the learned counsel for the third respondent submits that as the third respondent was promoted in 1978 and subsequently had another promotion as Senior Line Inspector (Foreman Grade-II), a direction may be given to the second respondent not to disturb his promotion. The only observation that can be made is that it is open to the second respondent to continue the third respondent, if the exigencies of the work so require, in the same post without affecting the rights of the petitioner as declared herein, above.

9. The writ petition is accordingly allowed. No costs.

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