

(1988) 12 CAL CK 0041

Calcutta High Court

Case No: None

West Bengal State Electricity
Board Engineers" Association
and Another

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: Dec. 13, 1988

Acts Referred:

- Constitution of India, 1950 - Article 14, 16, 309
- Electricity (Supply) Act, 1948 - Section 79

Citation: (1989) 1 LLJ 328

Hon'ble Judges: Paritosh Kumar Mukherjee, J

Bench: Single Bench

Judgement

Paritosh Kumar Mukherjee, J.

A judicial interpretation of Regulation 14(4) of the West Bengal State Electricity Board Employees" Service Regulations (hereinafter referred to as "the said Service Regulations") is called for, in the instant writ petition filed on behalf of the West Bengal State Electricity Board Engineers" Association and Anr. (hereinafter called "the petitioners herein").

2. The said provisions of Service Regulations is set out hereinbelow:

14(4). In the case of promotion, the appropriate Selection Committee shall consider the claims of all candidates eligible for promotion and examine their service records. It may also hold an examination and/or interview of the candidates. Thereafter it will advise the appointing authority as to the candidates deserving promotion.

3. Although in the writ petition, the vires of the said Service Regulations has not been challenged in express terms, but at the hearing, Mr. Pravat Kumar Sengupta., learned Senior Advocate appearing with Mr. Bhaskar Gupta., Mr. P. Guha and

Mr. Pranab Kumar Dutta, argued that the said Regulation 14(4) gives unguided and uncanalised power to the West Bengal State Electricity Board (hereinafter referred to as "the Board") and the engineers, who are thus affected by the arbitrary, whimsical, uncanalised and unfettered exercise of power by the Board expressed, in their diverse action and/or conduct in effecting promotions by way of "interview" only, through Regulation 14(4) of the Service Regulations which cannot be sustained in law and should be struck down.

4. Mr. Sengupta further submitted that from the averments made in the writ petition, it would be evident that the respondent Board had a throughout been acting and, to be precise, after July 19, 1984, in an illegal and arbitrary fashion.

5. According to the writ petitioner Association, the respondents had thereby picked and chosen some of the engineers in the service of the respondent Board by examination of the service records only and in respect of some other engineers by calling them in a written interview.

6. Further, according to the writ petitioners, the respondent Board did not and could not disclose why they chose some by interview and some only by examination of the Personal Appraisal Reports (P.A.R.).

7. Mr. Sengupta further contended that the conduct of the Board is clearly suggestive of the fact that the Board had adopted an illegal and hostile discrimination between the engineers in service of the Board who are similarly circumstanced. In the process, as aforesaid, the Board had resorted to a plethora of supersessions according to their own sweet will, whim and caprice and without conforming to the prescribed rules and regulations, which not only smacks of mala fide, but the same have been purportedly made by a pretended exercise of power and/or colourable exercise of power. Further, the purported promotion policy of the Board effected by the Board is not only contrary and/or opposed to the past practice and procedure, but the same is also in clear contravention of the prescribed Regulations for promotion apart from the fact that the same is violative of the Fundamental Rights guaranteed to the members of the Petitioner No. 1 Association, by the Constitution and in particular violative of Articles 14 and 16 of the Constitution and also the cardinal principles of natural justice.

8. In elaborating this branch of submission, Mr. Sengupta added that all on a sudden, the system of effecting promotion to all ranks of engineers was changed overnight and to be precise on and from July 19, 1984, the Board totally departed from the practice/procedure that was in vogue prior to July 19, 1984, without any rhyme or reason and effected a total change in effecting promotion to the engineers and in a most arbitrary fashion without the least respect and regard to the Regulation 14(4) of the said Regulations, and sought to effect promotion by way of "interview" only, without at all taking into account the first and foremost precondition of looking into the Personal Appraisal Reports/Service Records of the

engineers as also their seniority in service.

9. In this context, he submitted that the said Service Regulation was framed in exercise of power conferred u/s 79(c) of the Electricity (Supply) Act, 1948, and hence the said Regulation is statutory in nature, whereas the Revision of Pay and Allowance Rules, 1983 is a compilation of various recommendations of the Pay Committee constituted vide Office Order No. 3291 dated September 7, 1981, and Office Order No. 3302 dated October 1981, and also Office Order No. 3660 dated July 19, 1984.

10. According to Mr. Sengupta further Office Order cannot supplement the provisions of the Rules. Moreover, the said Revision of Pay and Allowance Rules, 1983 cannot by any stretch of imagination change the nature, character, spirit, colour and complexion of any of the Regulations contained in the said Service Regulations, including Regulation 14(4) thereof. Hence, according to the petitioners, any reference to the said Revision of Pay and Allowance Rules, 1983 cannot alter in any way the spirit of Sub-regulation (4) of Regulation 14 of the Said Service Regulations and there is no scope to obliterate and/or to wipe out and/or to give a go-bye to Standing Selection Committee.

11. Mr. Sengupta alleged that there was no individual assessment made of each of the candidates, who were interviewed, and Personal Appraisal Reports were not looked into, and no records are available to show before this Court that the members of the Selection Committee had applied their mind and made their comments on the Personal Appraisal Reports of each of the candidates, no separate, sheets with the comments of each of the members have been maintained.

12. At the hearing, I had directed the respondent Board to produce all records which were given for inspection to the petitioners' learned Advocate and certain documents, including the proceedings of the Standing Selection Committee, were placed by the Board for scrutiny and examination, before this Court.

13. It appears from the proceedings of the meeting of the Standing Committee, which was placed before this Court, that persons present in the said meeting, were Sri A.K. Majumdar, Retired Principal Chief Engineer of Damodar Valley Corporation, Sri S.K. Deb, Executive Director (T & D), Sri D.C. Sengupta, Executive Director (Gen.), Sri A. Laskar, Chief Engineer (Civil), West Bengal State Electricity Board and Sri P.K. Kar, Member-Secretary, Eastern Regional Electricity Board.

14. But according to Mr. Sengupta, their presence have not been reflected in the said proceedings. Mr. Sengupta has further drawn attention of the court that injustice has been meted out to Subhendu Mitra, Divisional Engineer (Civil), Swapan Kumar Dattagupta, Assistant Engineer (Electrical) and P. Chatterjee, Additional Chief Engineer (Electrical) in the process of resorting to an illegal promotion policy by the Board. Superseding Senior Engineers would reveal from paragraphs 15, 16, 17, 18 and 19 of the writ petition at pages 21 to 24 in respect of Sri Subhendu Mitra,

paragraphs 24 to 26 of the writ petition at pages 28 to 33 and Annexure "F" to the writ petition at pages 93 to 96 in respect of Sri Swapan Dattagupta and paragraphs 29 and 30 of the writ petition at pages 35 to 37 in respect of Sri P. Chatterjee, respectively.

15. In support of his contention, Mr. Sengupta has relied on the observations of the Supreme Court in the case of Union of India (UOI) Vs. Mohan Lal Kapoor and Others, , wherein the Supreme Court in dealing with the Indian Administrative Service/Indian Police Service (Appointment by Promotion) Regulations 1955, observed as follows at p. 519:

The required number has thus to be selected by a comparison of merits of all the eligible candidates of each year. But in making this selection, seniority must play its due role. Seniority would, however, only be one of the several factors affecting assessment of merit as comparative experience in service should be.

16. In my view, the aforesaid case cited by Mr. Sengupta really does not help the writ petitioners, as it cut both ways.

17. Mr. Sengupta has further relied on a decision in the case of Gurdial Singh Fiji Vs. State of Punjab and Others, , In the said case, the Supreme Court dealt with the question of consideration of adverse report, in confident roll and effect of non-consideration of explanation offered by the servant, effect of non-issuance of integrity certificate, whether should be upheld or not?

18. In my view, the aforesaid case even does not support the challenge of selection by the Selection Committee, as the said case related to non- consideration of explanations offered by a servant and effect of non- issuance of utility certificate.

19. Appearing for West Bengal State Electricity Board, Mr. Naranarayan Gooptu, learned Advocate General followed by Mr. Indrajit Sen, submitted that as the writ petitioners have not challenged the vires of Regulation 14(4) of the said Regulations, and no prayers have been made to the effect for declaring the said provisions to be ultra vires any provision of the Constitution, the writ petitioners should not be allowed to take and urge such point, at the time hearing.

20. In refuting the submissions made on behalf of the petitioners that there was no proper guideline or proper mode of selection and/or there was no rational policy for recruitment and/or promotion of the West Bengal State Electricity Board, he submitted that the language of the impugned Sub- regulations (1), (2), (3) and (4) of Regulation 14 is clear enough to indicate the power and jurisdiction of the Selection Committee to decide whether selection should be made on the result of a competitive examination or by interview or both.

21. Thereafter, the learned Advocate General has referred to the said provision, which is quoted hereinbelow:

14.(1) The Selection Committees will decide whether the selection will be made on the results of a competitive examination or by interview or both.

(2) When it is decided to hold an examination, the Selection Committee concerned will-

(i) frame question papers for examination,

(ii) make arrangement for actual conduct of the examination,

(iii) arrange candidates in order of merit on the result of the examination,

(iv) interview some or all the candidates, if considered necessary, and

(v) forward a list of the candidates considered suitable for appointment, arranged in order of merit, to the appointing authority.

(3) When it is decided that recruitment will be made by interview, the Selection Committee concerned will consider all applications received in response to the advertisement and interview such candidates as it considers most suitable for appointment, and submit to the appointing authority a list consisting of such number, as that authority may fix, of the candidates whom it considers most suitable for appointment arranged in order of preference.

(4) In the case of promotion, the appropriate Selection Committee shall consider the claims of all candidates eligible for promotion and examine their service records. It may also hold an examination and/or interview of the candidates. Thereafter it will advise the appointing authority as to the candidates deserving promotion.

22. He also submitted that in Regulation 14(1), it has been provided that the Selection Committee would decide whether the selection would be made on "the result of a competitive examination or by interview or by both". In Regulation 14(4), it has been provided that in the case of promotion, the appropriate Selection Committee shall consider the claim of all candidates eligible for promotion and examine their service records. It may also hold an examination and/or interview of the candidates. Thereafter, it will advise the appointing authority as to the candidates deserving promotion.

23. In this context, the learned Advocate General has relied on the affidavit affirmed by Swapan Kumar Chakraborty, Secretary of the Board, in particular, the statements made in paragraph 6 of the said affidavit. which runs as follows:

The terms and conditions of service of engineer employees of the West Bengal State Electricity Board are, inter alia, governed by the contract of employment as well as West Bengal State Electricity Board Employees" Sevice Regulations. The said Regulations were framed by the West Bengal State Electricity Board in exercise of powers conferred by the Electricity (Supply) Act, 1948, (LIV of 1948) in due compliance with the conditions prescribed in Section 79(c) of the said Act. The said

Regulation has been framed by the Board in exercise of statutory power and, as such, the said Regulations being statutory in nature are binding on all categories of employees mentioned in the said Regulations. In terms of the said Regulations, engineer employees of the Board belong to the technical cadre and have varying nature of responsibility pertaining to grade/scales in which a particular engineer has been placed/categories in terms of the said Regulations and Pay and Allowance Rules framed under the said Regulations. The engineer and/or technical employees of the Board in terms of the said Regulations have been categorised and/or grouped in four grades, viz, Class-I, Class-II, Class-III and Class-IV.

24. He has further drawn my attention to the statements made in paragraph 14 of the affidavit-in-opposition, wherein it has been stated that it was the respective Selection Committee to decide in accordance with the provisions of the said Regulations, as regards holding of the interview or written test or both, in regard to the candidates for consideration of their candidatures for promotion to the next higher post and he submitted that if such confidence is reposed upon such Selection Committee, which consisted of eminent persons coming from outside the Board, such selection could not be challenged, as violative of Article 14 of the Constitution.

25. The learned Counsel for the Board has further drawn my attention to paragraph 21 of the affidavit-in-opposition, wherein it was asserted that the Board has not deviated from the general accepted principles to decide the promotional cases. The interview of the Assistant Engineer was held following the principles of promotion adopted by the Board vide Order No. 3660 dated July 19, 1984, and in accordance with the provisions of the West Bengal State Electricity Board Employees" Service Regulations. The guidelines which are yet to be decided are the quota to be kept reserved for feeder service personnel for promotion to the equivalent post of Divisional Engineer in terms of the decisions of the Hon"ble High Court and the Hon"ble Supreme Court laid down in the cases of [The High Court, Calcutta Vs. Amal Kumar Roy](#), at page 1711.

26. On the point raised by Mr. Pravat Kumar Sengupta, learned Advocate for the petitioners, that if the guidelines are yet to be decided, how could the Selection Committee have made the impugned selection? To that the learned Advocate General has produced the Office Order No. 3660 dated July 19, 1984, before this Court, to show that guideline has already been framed, together with the Revision of Pay and Allowance Rules, 1983, and reference has been made to Schedule VII of the said Rules, wherein there is a chapter relating to promotion and efficiency. So, according to the learned Advocate General, guideline has been framed as per the said Rules and he has placed pages 38, 40 and 41 of the said 1983 Rules.

27. From page 42 Group-E, Class-I Technical and Non-Technical employees, both written test and interview has been provided for and, as such, he has submitted that there is no wrong in having the selection in terms of Regulation 14(4) of the Regulations, referred to hereinabove and the learned Advocate General further

submitted that in that view of the matter, it cannot be suggested by the writ petitioners that there would be no guideline and such contention on behalf of the petitioners should be left out of consideration by this Court as irrelevant.

28. At the hearing of the writ petition, I have gone through the original records of selections which were produced before me and it appears that each and every member of the concerned Selection Committee has put their signatures below the recommendation. As such, in my opinion, it cannot be suggested that the said Selection Committee and its individual members did not consider and apply their mind in respect of the selection or promotion of any individual candidate.

29. Further, in my view, in the present selections, which have been impugned in the instant writ petition, the Board has not deviated from the general accepted principles to decide the promotional cases and the method of promotion adopted by the Board through its Selection Committee/Committees and which cannot be called arbitrary and without any guideline.

30. In my view, interview of the Assistant Engineers which was held in accordance with the principles of promotion of the Board in its Order No. 3660 dated July 19, 1984. referred to hereinabove, has been made in accordance with the provisions of the West Bengal State Electricity Board Employees" Service Regulation, and further the decision reported in *Pravat Kumar Roy and Ors. v. West Bengal State Electricity Board* (supra), paragraph 9, has been followed to the letter in the matter of conferring promotion, wherein the Supreme Court has laid down the principle that the sole authority is given to certain person or body, which selects out a number of candidates for certain posts and the authority makes its selection after considering the relative fitness of the candidates, the said selection cannot be attacked as discriminatory. Further, applying the test as laid down by the Supreme Court in the case of *Mehmood Alam Tariq and Others Vs. State of Rajasthan and Others*, wherein the Supreme Court observed that while considering the question of validity of certain provisions of the recruitment rules made and promulgated, under proviso to Article 309 of the Constitution, in respect of the competitive examination to be conducted by the Public Service Commission for recruitment to certain branch of the Civil Service under the State of Rajasthan, have clearly laid down the law, as follows: ...where sound selection must combine academic ability with personality promise, some weight has to be given, though not much too great weight, to the interview test. There cannot be any rule of thumb regarding the precise weight to be given. It must vary from service to service according to the requirement of the service, the minimum qualifications prescribed, the age group from which the selection is to be made, the body to which the task of holding the interview test is proposed to be entrusted and host of other factors. It is a matter for determination by experts. It is a matter for research. It is not for courts to pronounce upon it, unless exaggerated weight has been given with proven or obvious oblique motives.

31. In paragraph 10 of the said decision, the Supreme Court has further observed, as follows:

Shri Rao's reference to and reliance upon the observations in Yadav's case is somewhat out of context. The context in which the observations were made was that the spread of marks for the viva voce was so enormous, compared with the spread of marks for the written examination, that the viva voce test "tended to become the determining factor". The reference was to the possibility of a candidate undeservedly being allotted high marks at the interview. That is a very different thing from the question whether a candidate should acquire atleast a certain minimum percentage of marks at the viva voce.

32. Thus, in my view, of the facts of the present case, as the interview was adopted by the Board in accordance with the Rules for promotion, which came into force with effect from July, 19, 1984, and according to the guideline in the Order No. 3660 dated July 19, 1984, which conforms to the principles laid down by the Supreme Court in the case of Mahmood Alam Tariq (supra), and as such, such selection in my opinion, cannot be called in question by the petitioners in constitutional writ jurisdiction.

33. In the result, all the points raised by the petitioners in support of the writ petition fail and the writ petition is dismissed and the Rule is discharged. All interim orders are vacated. There will be no order as to costs.

34. On the prayer made by Mr. Pravat Kumar Sengupta for stay of operation of this judgment, I am of the view that since no interim order was initially granted by this Court at the time of admission of the writ petition on August 22, 1986, but at later stage for not filing the affidavit within time, this Court having granted some interim orders on May 19, 1987, restraining the respondents from holding any further interview, in my opinion, fitness of things demand that some stay of operation of this judgment should be passed for a limited period upto January 16, 1989. Subject to this, further interview may take place, but the results of the said interview shall not be given effect to until appropriate orders are passed by the Division Bench.

35. I, however, make it clear that the interview that had already taken place and promotion orders have been given will not be affected by this order of stay of the judgment.