

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM; NAGALAND; MEGHALAYA;
MANIPUR; TRIPURA; MIZOAM AND ARUNACHAL PRADESH)

(ITANAGAR BENCH)

WP(C) NO. 331 (AP) of 2010

Mr. Mohan Lal Kumar

- Petitioner

- Versus -

**The Chairman & Managing Director,
NEEPCO, & Others**

- Respondents

**BEFORE
HON'BLE MR JUSTICE I. A. ANSARI**

Advocates present:

For the petitioner : Mr. K Jini,
Mr. N. Nyorak,
Mr. D. Kamduk,
Mr. T. T. Tara,
Mr. T. Gadi,
Mr. D. Loyi,

For the respondent Nos. 1 to 4 : Mr. Tony Pertin,
Mr. A. K. Singh,

Date of hearing : 09.08.2012

Date of judgment : 29.08.2012

JUDGMENT & ORDER

The petitioner herein, Mohan Lal Kumhar, was, initially, appointed, on 09-12-1990, as a Sub-Divisional Officer, North Eastern Electric Power Corporation Limited, which is a Government of India enterprise and is popularly known as NEEPCO, with its head office at Shillong, in the State of Meghalaya. The petitioner was promoted,

on 11-09-1995, as Executive Engineer, which post came to be re-designated as Assistant Manager (EM). The petitioner was, then, promoted, in the year 2002, as Deputy Manager (EM), with effect from the year 1999. On 30-07-2006, the petitioner was promoted as Manager (EM). Petitioner's promotional order, dated 30-07-2003, aforementioned specified that if the official concerned failed to join within 30 (thirty) days from the date of issuance of the order, then, the incumbent would lose his seniority and would be placed at the lower position in the *inter se* seniority list of Manager. The NEEPCO published, on 30-06-2006, the *inter se* final seniority list of Manager (EM), wherein the petitioner's name appeared at Sl. No. 3; whereas the names of the private respondent Nos. 5 to 17 herein were mentioned, at Sl. Nos. 4 to 17 treating, thus, the petitioner as senior to private respondent Nos. 5 to 17. The petitioner was, then, promoted, on 10-08-2006, to the post of Senior Manager (EM) along with his juniors. The promotion of the petitioner, so made, by order, dated 10-08-2006, to the post of Senior Manager (EM), was, however, subject to certain terms and conditions. Clause 2 of these terms and conditions read as under:

"2. The officer on promotion shall be on probation for a period of 1 (one) year and depending on performance the probationary period may be extended. The period of probation shall not be deemed to have been completed unless informed in writing. The extended period of probation shall not be counted towards eligibility period for promotion to next higher grade. The order regarding the clearance of probationary period shall be issued within 1 (one) month from completion of probationary period based on recommendations of the

controlling officer."
added)

(Emphasis

2. By order issued on 02-01-2008, the period of probation of the petitioner in the post of Senior Manager (EM), was extended for a further period of 3 (three) months, with effect from 09-08-2007, i.e., the date on which completion of the probationary period of the petitioner was, otherwise, contemplated by the promotional order, dated 10-08-2006. However, on completion of the extended three months of probation, the probationary period of the petitioner was cleared by an order, made in this regard, on 07-04-2008.

3. Thereafter, the provisional seniority list of Senior Manager (EM) was published on 07-04-2010, wherein the petitioner's name appeared at Sl. No. 16, i.e. below the private respondent Nos. 5 to 17. Feeling aggrieved by the fact that he was being treated as junior to the private respondent Nos. 5 to 17, the petitioner made representations to his employer, i.e., NEEPCO. As the petitioner's representations, made to his employer, did not evoke any favourable response, the petitioner has filed this writ petition, under Article 226 of the Constitution of India, seeking, *inter alia*, issuance of appropriate writ(s) setting aside and quashing the final *inter se* seniority list of Senior Manager (EM), NEEPCO, published on 07-04-2010 and for further consequential order(s).

4. The respondents/authorities concerned have resisted the writ petition by filing their affidavit, wherein they have contended to the

effect, *inter alia*, that the petitioner's promotion to the post of Senior Manager (EM) was made by order, dated 10-08-2006, with a clear stipulation that in the event the period of probation of one year, in the post of Senior Manager (EM), was not completed successfully and was required to be extended, then, the period of probation, which would obviously include the extended period of probation, would not be counted towards eligibility period of promotion to the next higher post. In the light of this condition, subject to which the petitioner's promotion had been made by order, dated 10-08-2006, to the post of Senior Manager (EM), the petitioner's probationary period having been extended for three months, with effect from 09-08-2007, it logically follows that the petitioner's period of probation, which got extended, made him ineligible to be treated as senior to those, who had been promoted, along with the petitioner, to the post of Senior Manager (EM) and who had completed their probationary periods within the said stipulated period. In such circumstances, the respondents/authorities concerned have done nothing illegal in treating the petitioner junior to private respondent Nos. 5 to 17, who completed their period of probation within the stipulated period; whereas the petitioner could not complete his probation within the stipulated period and the extended period could not have been counted towards his eligibility for further promotion. The writ petition is, therefore, according to the respondents/authorities is wholly without merit and needs to be accordingly dismissed.

5. I have heard Mr. K Jini, learned counsel for the petitioner, and

Mr. Tony Pertin, learned counsel for NEEPCO.

6. Presenting the case, on behalf of the petitioner, Mr. Jini, learned counsel, submits that the petitioner, having completed his probationary period, though within the extended period of three months, ought to have been considered, on successful completion of his extended probationary period, as senior to the private respondents herein and denying the petitioner his seniority was wholly illegal, unjust and improper. This apart, points out Mr. Jini, learned counsel, that the letter, dated 10-08-2006, which the NEEPCO relies upon, is merely a policy decision and it could not have superseded the recruitment rules and when the petitioner, on completion of extended period of probation, became eligible for promotion, he ought to have been considered and treated as senior to the private respondents.

7. Controverting the submissions made on behalf of the petitioner, Mr. T Pertin, learned counsel, appearing for NEEPCO, submits that the recruitment rules of NEEPCO are merely policy decisions and, hence, the recruitment rules, in the present case, having not been made under any statute or under Article 309 of the Constitution of India, cannot be said to supersede the policy decision, which was conveyed to the petitioner by the NEEPCO's letter, dated 10-08-2006, making it clear to the petitioner that his extended period of probation would not be considered towards the eligibility of his promotion. As the petitioner's junior had, according to Mr. Pertin, completed their period of probation before the

petitioner, the petitioner could not have been treated as senior to the private respondents, particularly, when the policy decision, dated 10-08-2006, aforementioned was never challenged by the petitioner and is not under challenge in the present writ petition.

8. While considering the rival submissions made before this Court, it needs to be noted that the recruitment rules, contained in the manual of the NEEPCO, are not framed under any statute nor are these rules framed under Article 309. The recruitment rules of the NEEPCO are based on the policy decision of the NEEPCO. The policy decision, therefore, conveyed to the petitioner by NEEPCO's letter, dated 10-08-2006, aforementioned, has the same force as those policy decisions, which have been styled as recruitment rules. This apart, as rightly pointed out by Mr. Pertin, learned counsel, the policy decision, contained in the letter, dated 10-08-2006, is not under challenge in the present writ petition. The said policy decision cannot, therefore, be ignored.

9. Consequently, when the above policy decision is taken into account, it clearly follows that the petitioner stood informed that if the period of probation was required to be extended, then, the extended period of probation would not be counted towards eligibility for promotion to the next higher grade. Extended logically, it would mean that the petitioner's requisite qualifying period of service, to the next promotional post, commenced on the completion of his extended period of probation. However, in the meanwhile, since the petitioner's juniors had already completed

their respective periods of probation, their respective periods of eligibility, for next promotional post, had already commenced.

10. In the circumstances indicated above, the petitioner could not have remained, and could not have been treated to be, senior to the private respondents in the promotional post of Senior Manager (EM).

11. Situated thus, it becomes abundantly clear that the NEEPCO committed no illegality in publishing the impugned seniority list showing the present petitioner junior to the private respondent Nos. 5 to 17.

12. Because of what have been discussed and pointed out above, this Court finds no merit in the present writ petition. This writ petition, therefore, fails and the same shall accordingly stand dismissed.

13. No order as to costs.

JUDGE

Paul/rk