

KERALA STATE ELECTRICITY BOARD
PROCEEDINGS OF
THE CHIEF ENGINEER (HRM), K.S.E.BOARD,
PATTOM, THIRUVANANTHAPURAM.

Sub: Judgement dated 31.01.2011 of the Honourable High Court of Kerala in WP(C) No.6150/2010 filed by Sri. Padmanabhan.C.A, Assistant Executive Engineer (Civil) – Compliance – Orders issued.

No.Gr.(C)/WP(C) No.6150/2010/11 Dated, Thiruvananthapuram, 25.4.2011

Read: 1. Judgement dated 31.01.2011 of the Honourable High Court of Kerala in WP(C) No.6150/2010.

ORDER

The post of Assistant Engineer (Civil) is filled up by 4 different sources, viz, by transfer appointment from inservice employees having B.Tech Degree, by direct appointment of candidates having B.Tech Degree through PSC, by promotion of Diploma holding Sub Engineers and by promotion of Certificate holding Sub Engineers. As per rule, the appointment/promotion is done in the ratio 1:4:3:2

The seniority of Assistant Engineer (Civil) is to be prepared in accordance with the provisions contained in the Kerala Engineering Service Rules. The statutory provision in the Kerala Engineering Service Rules stipulates that separate seniority lists will be maintained for degree, diploma and certificate quota in the cadre of Assistant Engineer (Civil) in order to effect further promotion to the cadre of Assistant Executive Engineer (Civil).

In the past there had been occasion, a combined seniority list was prepared by applying the ratio 1:4:3:2 irrespective of the date of advice/date of promotion order. This led to a series of litigation. In pursuance of the direction of the Hon. High Court dated 6.7.2006 in WP (C) No.17621/2004, separate seniority lists of Assistant Engineer (Civil) in 30% (diploma), 40% (degree) and 10% (degree) quota were prepared and published vide proceedings No.EB/Gr(C)/AE/SL (quota)/06-07 dated 12.1.2007. The seniority list of Assistant Engineer under 20% quota was published vide proceedings No.Gr.C/AE/20%SL/10-11 dated 28.3.2011. Since there existed a dispute in the seniority list of 10% quota, combined list of 10% and 40% was not prepared. The petitioner was one among the persons who challenged the seniority in the 10% quota and the seniority list of Assistant Engineer (Civil) published as on 30.11.1999 (OP No.15051/2000). The dispute regarding the seniority of 10% quota was finally settled in pursuance of the judgement dated 29.7.2008 in WP (C) No. 8326/08.

Sri.K.N.Sivadasan, Assistant Engineer (Civil) approached the Hon. Court with a prayer to direct the KSE Board to prepare and publish a combined seniority list for degree

quota. The Hon. Court in its judgement dated 18th August 2009 in WP (C) 15834/09 directed to prepare a combined seniority list of two streams of 10% and 40% graduates by applying the rules governing fixation of seniority. In pursuance of the direction of the Hon. High Court, the two streams of graduate Assistant Engineer (Civil) were combined by applying the 3rd proviso to Rule 27 (a) of KS & SSR vide Proceedings No. Gr.(C)/AE (SL)/WP.15834/09 dated 11.2.2010 as was done in the case of Electrical Branch of the KSE Board.

The petitioner Sri.C.A.Padmanabhan filed the WP No. 6150/2010 challenging the Ext P1 seniority list (combined seniority list of 10% and 40% graduate Assistant Engineer (Civil)) published vide Proceedings No. Gr.(C)/AE (SL)/WP.15834/09 dated 11.2.2010. According to the petitioner, the Ext P1 seniority list was published without being heard the grievances of the affected persons and also without even publishing a provisional seniority list. The Hon. Court in the judgement dated 31.1.2011 in WP (C) No.6150/2010 directed to treat Ext P1 as a provisional seniority list and the Ext P2 as objection to Ext P1 seniority list. The Honourable Court has further directed the 2nd respondent, the Chief Engineer (HRM), KSE Board to finalise the seniority list after hearing the petitioner and others who may be affected if the 2nd respondent (Chief Engineer (HRM)) is inclined to accept the contention of the petitioner in respect of his seniority.

In obedience to the direction of the Hon. High Court, the petitioner was afforded a personal hearing on 18.3.2011. The petitioner's contention at the time of hearing and the Ext enclosed in the Writ Petition as Ext P2 (objection of Ext P1 seniority list) are one and the same, that is,

- 1 The Ext P1 seniority list does not reflect a correct vacancy position that occurred from 1999 to 2010 and the manner in which these vacancies were filled up.
- 2 The 21 places earmarked for 10% quota candidates which were unlawfully given to the PSC recruits should have been given back with retrospective effect in order to maintain the ratio 1: 4 between 10% and 40% quota.
- 3 The inservice candidates are to get alternate placement in the said list in order to maintain the ratio 1:4 between the categories.

Regarding the 1st contention that the present seniority list does not reflect the vacancy position that occurred from 1999 to 2010, it is noted that the seniority list was prepared based on the basis of the statutory rules stipulated in the KS & SSR (Rule 27 of KS& SSR). The rule does not stipulate to prepare a seniority list on the basis of vacancy position. Therefore, the contention of the petitioner is not maintainable under any rule.

Regarding the 2nd contention that 21 vacancy earmarked for 10% quota candidates were unlawfully given to the PSC recruits, it is noted that the seniority can be prepared on the basis of statutory rule / special rules. Seniority cannot be prepared on the assumption of 21 vacancies in the past. Seniority can be prepared only on the basis of the effective date of advice in the case of PSC recruits and date of order in the case of appointees under transfer appointment.

Regarding the 3rd contention, it is noted that the vacancies of Assistant Engineer (Civil) under 40% quota is filled up by direct recruitment through Kerala Public Service Commission. The seniority of Assistant Engineer (Civil) recruited through PSC is determined with respect to the date of advice of the PSC as stipulated in the Rule 27 (C) of KS & SSR. The selection and appointment under 10% quota were done by the Board itself. Their seniority is reckoned with respect to the date of order of appointment. If the date of advice of 40% quota and date of order of 10% quota are different, the alternate ratio of 1:4 cannot be applied in the combined seniority list of degree quota. Therefore, this contention is also non maintainable. The contentions of the petitioner were examined in detail with the rule position and it was revealed that the contentions are not in conformity with the prevailing rules fixing seniority. Moreover, the petitioner has not produced any documents to substantiate his contentions. Therefore, it is decided to finalise the seniority list (Ext P1) and to publish in the official website of the KSE Board. The finalised seniority list is appended herewith as annexure to this order

The above order is issued in compliance to the judgement of the Hon. Court in WP No.6150/2010.

Sd/-
CHIEF ENGINEER (HRM)

To.

Sri.C.A.Padmanabhan
Assistant Executive Engineer.
Civil Circle Meencut, Chithirapuram,
Idukki District

(Annexure seniority list may be obtained from the official website of the KSE Board)

Copy to:

1. The Secretary, K.S.E.Board.
2. The Legal Liaison Officer, O/o the Standing Counsel for K.S.E.Board, Power House, Kochi-18.

(Annexure seniority list may be obtained from the official website of the KSE Board)

3. Stock file.