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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 27th April 2009

No. 3769—li/1(B)-34/2004-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 4th March 2009 in Industrial Dispute Case No. 60 of 2004 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of GRIDCO Limited, Bhubaneswar and their workman Shri P. N. Behera represented through O.S.E.B. Employees' Federation, Bhubaneswar was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 60 OF 2004

Dated the 4th March 2009

Present :

Shri M. R. Tripathy,
Presiding Officer, Labour Court,
Bhubaneswar.

Between :

The Management of
GRIDCO Limited, Bhubaneswar. . . First Party—Management

And

Their Workman . . Second Party—Workman
Shri P. N. Behera represented through
O.S.E.B. Employees' Federation,
Bhubaneswar.

Appearances :

Shri B. K. Tripathy	.. For First Party—Management No. 1
Shri S. K. Jena	.. For First Party—Management No. 2
Shri B. N. Behera	.. Second Party—Workman himself.

AWARD

The Government of Orissa in exercise of powers conferred by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, have referred the dispute between the parties to this Court vide Order No. 7585—li/1(B)-34/2004-L.E., dated the 28th August 2004 of the Labour & Employment Department, Orissa, Bhubaneswar.

2. The schedule of reference is as follows :

“Whether the fixation of *inter-se*-seniority of Shri K. B. Panicker, Stenographer, Grade I, over Shri P. N. Behera Stenographer Grade-I by the management of GRID Corporation of Orissa Limited is legal and/or justified ? If not, to what relief Shri P. N. Behera is entitled ?”

3. The case of the workman may be briefly stated as follows :

The workman Shri Pramananda Behera joined as Tracer (Draftsman-C) in the office of the Chief Engineer, Transmission Project of the O.S.E.B. at Bhubaneswar on the 3rd September 1980 on *ad hoc* basis for a period of six months vide Order No. 1334, dated the 29th August 1980. Subsequently he was allowed to continue as such until further order vide order passed on the 6th March 1981 by the Chief Engineer, Transmission Project, O.S.E.B., Bhubaneswar. On being found suitable, he was appointed as Stenographer, Grade-III vide Order No. 4673, dated the 11th September 1985 of the Chief Engineer, Transmission Project, O.S.E.B., Bhubaneswar and he joined as such on the 13th September 1985. Subsequently he was promoted to the post of Stenographer, Grade-II vide Order No. 6200, dated the 6th December 1989 and thereafter to the post of Stenographer, Grade-I vide Order No. 2744, dated the 2nd April 1998. He joined as Stenographer, Grade-I on the same day, i.e. the 2nd April 1998.

4. According to him in pursuance of the decision of the Board in its 242nd meeting held on the 24th October 1979 sanction was given for different posts with headquarters at Bhubaneswar in connection with the Designs and Construction of 400 K. V. lines from Jeypore to West Bengal Border with effect from the 16th November 1979 to the 29th February 1980. At that time a Circle named and styled as Transmission Project Circle with headquarters at Bhubaneswar and two Divisions named and styled as Transmission Project Division Nos. I and II were also created. The Chief Engineer, Transmission Project appointed the employees for his own office and the office of the Superintending Engineer, Transmission Project Circle. Subsequently the office of the Superintending Engineer, Transmission Project Circle, Bhubaneswar was abolished vide Order No. 3914, dated the 1st November 1982 and the posts of the said office were created in the establishment of the Chief Engineer, Transmission Project, Bhubaneswar.

One Shri K. B. Panicker, Stenographer, Grade-I was appointed by the Chief Engineer, Transmission Project and he was posted to work in the office of the Superintending Engineer, Transmission Project Circle, Bhubaneswar. In view of the abolition of the posts in the office of the Superintending Engineer, Transmission Project Circle, Bhubaneswar and creation of new posts in the office of the Chief Engineer, Transmission Project, Bhubaneswar, Shri K. B. Panicker was posted in the same post, i.e. Stenographer, Grade-I in the office of the Chief Engineer, Transmission Project. The Board in its 303rd meeting held on the 4th November 1987 decided to reorganise the Transmission Project Organisation. In view of the said decision it was decided to transfer all the posts created in the office of the Chief Engineer, Transmission Project vide Order No. 25789, dated the 5th November 1982 to the office of the Superintending Engineer, E.H.T. Construction Circle, Sambalpur. Subsequently on the 31st July 1990, the Board decided to shift the headquarters of E.H.T. Construction Circle from Sambalpur to Angul. Thereafter Shri Panicker was transferred as Stenographer Grade-I to the office of the Superintending Engineer, E.H.T. Construction Circle, Angul. Subsequently the said order was modified on the 6th November 1990 and Shri Panicker was directed to work in A.O.(TP) until further orders and the earlier transfer order was cancelled.

5. According to the workman in view of the Ministerial Services (Methods of Recruitment, Seniority and Promotion in the office of the Chief Engineer) Regulations, he was eligible to get promotion to the post of Stenographer, Grade-I as on the 6th December 1992. But as because the post of Stenographer, Grade-I in the office of the Chief Engineer, Transmission Project was blocked by Shri Panicker in the above manner, he could not get his promotion in due time and had to wait till the 2nd April 1998. Moreover not only he joined in the office of the Chief Engineer, Transmission Project initially but also he was appointed as Stenographer, Grades-III, II and I by the Chief Engineer, Transmission Project. As such, he belongs to the staff cadre of the office of the Chief Engineer, Transmission Project whereas Shri Panicker was initially appointed in the staff cadre in the Circle and subsequently he was also transferred to the staff cadre at Circle level and therefore, he is senior to Shri Panicker. He raised an industrial dispute before the labour machinery and the labour machinery took an attempt for conciliation also. As the conciliation failed, the matter was referred to this Court for adjudication.

The workman in his statement of claim has prayed to fix his seniority in the Stenographer, Grade-I above Shri Panicker by way of promotion from the 6th December 1992 and to grant all financial benefits as well as service benefits in his favour with effect from the 6th December 1992.

6. The Chief Engineer, Transmission Project in his written statement has submitted that by virtue of the Orissa Electricity Reform (Transfer of Transmission and Related Activities) Scheme, 2005, the office of the Chief Engineer Transmission Project was vested in Orissa Power Transmission Corporation Limited Shri K. B. Panicker was working as Stenographer, Grade-II on the 11th October 1976. He became Stenographer, Grade-I with effect from the 1st January 1977 in the T.T.P.S. Expansion Project of the erstwhile O.S.E.B. Consequent upon creation of the office of Chief Engineer, Transmission Project and Superintending Engineer, Transmission Project Circle, Bhubaneswar in the year 1979, the Chief Engineer, Transmission Project in exercise of powers delegated by the Board invited applications to fill up the posts

in the newly created above said two offices. He appointed all the Class-III and Class-IV employees other than S.A.E./J.E., Head Assistant, S.A. and A.S. Cadre Employees. Accordingly in the year 1980 Shri Panicker and two others were appointed in the post of Grade-I Stenographer. According to the merit list the other two persons joined in the office of the Chief Engineer, Transmission Project and Shri Panicker joined in the office of the Superintending Engineer, Transmission Project Circle on the 11th August 1980. Subsequently on abolition of the office of the Superintending Engineer, Transmission Project Circle, Bhubaneswar and creation of identical posts in the office of the Chief Engineer, Transmission Project, Shri Panicker was transferred and posted as Grade-I Stenographer in the office of the Chief Engineer, Transmission Project and joined in his post on the 18th November 1980.

The workman Shri Behera was initially appointed as Tracer on the 3rd September 1980. Subsequently he was appointed as Stenographer, Grade-III on the 13th September 1985 and promoted as Stenographer, Grade-II on the 6th December 1989. Thereafter he was promoted as Stenographer, Grade-I on the 2nd April 1998.

Shri Panicker became Stenographer Grade-I in the year 1977 whereas the workman became Stenographer, Grade-I on the 2nd April 1998. Thus the dispute raised by the workman after 23 years that too under the above circumstance is baseless. It is further submitted that the workman while working as Draftsman C, the case of the workman was considered for appointment to the post of Grade-III Stenographer in the year 1985 through a selection. As there was no post of Grade-II Stenographer, the workman was promoted to the post of Grade-II Stenographer against the post of Grade-I Stenographer in the year 1988. Therefore there is no merit in the claim made by the workman to fix his seniority above Shri Panicker.

7. On the 20th December 2006 M/s. Orissa Power Transmission Corporation Limited was added as a party but prior to that on the 14th December 2005 the above said organisation had filed the written statement wherein same facts are noted.

8. On the 6th July 2007 Shri K. B. Panicker was also added as a party and he filed his written statement on the 9th April 2007.

In his written statement he has stated that after leaving 7 years of Government service as Stenographer, he joined in T.T.P.S. Expansion Project which was controlled by the O.S.E.B. on the 11th October 1976 as Stenographer, Grade-II. He was promoted to the post of Stenographer, Grade-I on the 1st January 1977. He was attached to the Project Manager, T.T.P.S. which was a Chief Engineer Cadre post. During November, 1979 the Transmission Project Organisation under O.S.E.B. was created and started functioning at Bhubaneswar. The then Chief Engineer, Transmission Project issued letters to all the field units inviting applications from interested persons for absorption to different posts in his office. In response to the said advertisement, he submitted his application and was selected. His name was at Sl. No. 3 of merit list. The other two persons who were senior to him according to the merit list namely, Shri P. Jerone and Shri I. Thomas were attached to the Chief Engineer, Transmission Project and Superintending Engineer, Design respectively and he was attached to the Superintending Engineer, Transmission Project Circle, Bhubaneswar. He joined in the above post on the 11th August 1980. At that time the workman was nowhere in the cadre. Subsequently

the workman who was an outsider was appointed as Tracer in the office of the Chief Engineer, Transmission Project. After few days the office of the Superintending Engineer, Transmission Project Circle was abolished vide Order No. 3914, dated the 11th November 1982. The workman who was working as Tracer was appointed as Stenographer, Grade-III on the 12th September 1985. The first seniority list of Stenographer, Grade-I was issued by the Chief Engineer, Transmission Project vide letter No. 3418, dated the 6th July 1988 and the same was prepared according to the merit list in the recruitment. The workman was not in the said seniority list as he was not born in the cadre of Stenographer, Grade-I at that time. A second seniority list was prepared vide letter No. 214, dated the 11th January 1991 wherein also the workman's name was not mentioned because he was working as Stenographer, Grade-II at that time. The workman was promoted to the post of Stenographer, Grade-I only on the 2nd April 1998. When the E.H.T. Construction Circle, Angul was created, the Board decided to transfer the workman as Stenographer, Grade-II who was surplus by then, but somehow he managed to stay by becoming an Executive Member of the Union. As on the 1st January 2007 he (Shri Panicker) had completed 30 years of service as Stenographer, Grade-I whereas the workman had completed only 8 years of service as Grade-I Stenographer. Thus there is no merit in the claim made by the workman.

9. The following issues were settled

ISSUES

- (i) "Whether the fixation of *inter-se*-seniority of Shri K. B. Panicker, Stenographer Grade-I over Shri P. N. Behera, Stenographer, Grade-I by the management of GRID Corporation of Orissa Limited is legal and/or justified ?
- (ii) If not, to what relief Shri P. N. Behera is entitled ?"

10. In support of his case the workman examined himself as W. W. 1. The management examined two witnesses. M. W. 1 is the A.G.M. of the office of the Chief Engineer, Transmission Project and M.W. 2 is the Deputy Manager, H.R.D. Section of the management. No witness was examined from the side of Shri K. B. Panicker. After participating in the hearing for few days, he remained absent.

FINDINGS

11. *Issue Nos. (i) and (ii)*—Both the issues are taken up together for the sake of convenience.

The workman during the time of his cross-examination admitted that he joined in the post of Draftsman-C on the 3rd September 1980 in the office of the Chief Engineer, Transmission Project, Bhubaneswar. He was appointed in the post of Stenographer, Grade-III on the 13th September 1985 and promoted to the post of Stenographer, Grade-II with effect from the 6th December 1989. Subsequently he was promoted to the post of Stenographer, Grade-I on the 2nd April 1998. He has further admitted that Shri Panicker first joined as Stenographer, Grade-II in the office of the T.T.P.S. which is an organisation of O.S.E.B. on the 11th October 1976. He was promoted to the post of Stenographer Grade-I with effect from the 1st January 1977 and was posted in the T.T.P.S., Talcher. The Board of Directors of O.S.E.B. took a decision to create an office of Chief Engineer, Transmission Project and one office of Superintending Engineer, Transmission Project Circle in the year 1979. Shri Panicker

who was already a Stenographer, Grade-I joined as such in the office of the Superintending Engineer, Transmission Project Circle on the 11th August 1980 by the order of the Chief Engineer, Transmission Project, who is the appointing authority. He has further admitted that in the year 1982 Shri Panicker came to the office of the Chief Engineer, Transmission Project as Stenographer, Grade-I and at that time he (the workman) was working as Draftsman in the office of the Chief Engineer, Transmission Project. He also admitted the fact that Shri Panicker was continuing in the office of the Chief Engineer, Transmission Project since the year 1982.

12. M. W. 1 in his deposition has stated that Shri Panicker joined as Stenographer, Grade-II on the 11th October 1976 in the T.T.P.S. Subsequently he was posted in the office of the Chief Engineer, Transmission Project, Bhubaneswar on the 8th August 1980 as Stenographer, Grade-I after facing proper interview and selection process. He was appointed as Stenographer, Grade-I in the office of the Superintending Engineer, Transmission Project Circle on the 11th August 1980. The said Transmission Project Circle was abolished in the year 1982 and therefore Shri Panicker was again posted as Stenographer, Grade-I in the office of the Chief Engineer, Transmission Project at Bhubaneswar with effect from the 11th August 1982. During cross-examination he has admitted that the cadre of Stenographer in the corporate office is different from the Cadre of Stenographer in the Superintending Engineer Office, Executive Engineer Office, etc. A Stenographer can be transferred from Corporate office to the office of the Chief Engineer, Superintending Engineer and Executive Engineer, but in that case he will lose his seniority.

M. W. 2 in his testimony has said almost the same thing regarding the date of appointment of Shri Panicker and the workman in different Grade. He has also admitted in his cross-examination that there are three Distinct Cadres, i.e. Corporate Office Cadre, Chief Engineer Office Cadre and the Superintending Engineer Office Cadre. According to him, Shri Panicker was appointed by the Chief Engineer but posted in the office of the Superintending Engineer. Therefore, Shri Panicker belongs to Chief Engineer Office Cadre.

13. The workman has filed a large number of documents marked as Exts. 1 to 26. Exts. 22 and 23 are the Regulations regarding the Ministerial Service (Methods of Recruitment, Seniority and Promotion) in the office of the Chief Engineer and the Ministerial Service (Methods of Recruitment, Seniority, Promotion and Transfer) in the Circles respectively. There is no significant difference between the above two Regulations. Ext. 22 was made to regulate the methods of recruitment, seniority and promotion of the ministerial employees, i.e. Assistants, Stenographers, Typists, Despatchers, Diarists, etc. of the office of the Chief Engineer and Ext. 23 was made to regulate the methods of recruitment, seniority and promotion of the ministerial employees, i.e. Clerks, Stenographers and transfer of the above employees in the office of the Superintending Engineer, i.e. Circle. As per Ext. 22 the Chief Engineer is the appointing authority of the above staff of his office and as per Ext. 23 the concerned Superintending Engineer is the competent authority to conduct the test for the above posts. A perusal of the aforesaid two Regulations make it clear that the cadre of staff of Chief Engineer is different from the cadre of staff of the office of the Superintending Engineer. These rules were given effect to from the 15th March 1983. The workman has not filed any document to prove that prior to the 15th March 1983 the staff of the office of the Chief Engineer were treated as different cadre from the staff of the office of the Superintending Engineer. In both Exts. 22 and 23 it is provided in Clause-4 that all rules and orders corresponding to these Regulations and in force immediately before the commencement of these Regulations are repealed. Provided that any order issued or appointment made, action taken or things done under the rules and orders as repealed shall be deemed to have been validly made, taken or done and the same shall not be questioned.

14. Ext. 26 is the copy of letter No. 17 (32), dated the 6th February 1980 of the Chief Engineer, Transmission Project addressed to the Superintending Engineer, Electrical Circle, Bhubaneswar. As per the said letter some posts were lying vacant in the office of the Chief Engineer, Transmission Project and the office of the Superintending Engineer, Transmission Project Circle both located at Bhubaneswar. Some applications were already received for the said posts. The applications were not in the tabular form and so it was requested to forward the applications of the field staff in the tabular form. It was intimated that the final selection will be made on the basis of the recommendation received from the various offices and the selected candidates will be appointed in the new cadre in which services will be counted from the date of their joining. Now the question is what is that new cadre ?

Since Exts. 22 and 23 were not in existence at that time and the workman has not filed the Regulation relating to different cadre existing prior to the 15th March 1983, so it is difficult to know in which cadre actually Shri Panicker joined. This is because the office of the Chief Engineer, Transmission Project and the office of the Superintending Engineer, Transmission Project were created at a time and the same authority, i.e. Chief Engineer, Transmission Project conducted the interview for the appointment of the staffs of both the offices. As I have indicated earlier there is no material to know as to what were the rules and regulations relating to different cadres at that time. Be that what it may admittedly Shri Panicker was appointed by the Chief Engineer, Transmission Project and was posted in the office of the Superintending Engineer, Transmission Project. After he worked there for a period of about two years the office of the Superintending Engineer, Transmission Project was abolished and all the posts of his office were created in the office of the Chief Engineer, Transmission Project. Accordingly Shri Panicker was transferred and adjusted in the Grade-I Stenographer post in the office of the Chief Engineer, Transmission Project. While he was working there in the above post Exts. 22 and 23 were framed. At that time the workman was not working as a Stenographer. He became a Stenographer, Grade-III only in the year 1985. Thereafter he became Stenographer, Grade-II in the year 1989. But all along the said period Shri Panicker was working as Stenographer, Grade-I in the office of the Chief Engineer, Transmission Project. So while Shri Panicker was working as Stenographer, Grade-I in the same office the workman was appointed as Stenographer, Grade-III and subsequently promoted as Grade-II Stenographer. While the matter stood thus, the Board decided to create an office of the Superintending Engineer, E.H.T. Construction Circle at Sambalpur and subsequently decided to shift its headquarters to Angul. The Board further directed that the posts created in the office of the Chief Engineer, Transmission Project after abolition of the office of the Superintending Engineer, Transmission Project Circle, Bhubaneswar vide Order No. 25789, dated the 5th November 1982, will be transferred to the newly created office of the Superintending Engineer, E.H.T. Construction Circle, Sambalpur. This order was passed in the month of July, 1990 but much prior to that the Board had framed Exts. 22 and 23 relating to the service conditions of the employees of the office of the Chief Engineer and the office of the Superintending Engineer. It is in the evidence of M.W. 1 that in case of transfer of an employee from the Corporate office to the Office of the Chief Engineer, Superintending Engineer, Executive Engineer, etc., the employee will lose his seniority. If that is so it is not understood as to how after framing separate two cadres, the Board decided to transfer some of the employees who were already absorbed in the office of the Chief Engineer after abolition of the office of the Superintending Engineer, Transmission Project to the newly created office of the Superintending Engineer, E.H.T. Construction Circle, Sambalpur or Angul. It is true that

vide Ext. 13 Shri Panicker was transferred to the office of the Superintending Engineer, E.H.T. Construction Circle, Angul from the office of the Chief Engineer, Transmission Project, O.S.E.B., Bhubaneswar on the 3rd September 1990 but for reasons not known the said transfer order was again cancelled on the 6th November 1990 vide Ext. 14. Be that what it may, fact remains that after joining in the office of the Chief Engineer, Transmission Project in the year 1982 Shri Panicker continued to work as Stenographer, Grade-I in the same office till the workman was examined in the Court on the 5th September 2007. There is material in the case record that in the year 1988 the Chief Engineer had published seniority list of Stenographer, Grade-I of his office in which Shri Panicker was placed at 3rd position. The said list was challenged by Shri Idicula Thomas, Sl. No. 2 of the list in the Hon'ble Court vide O.J.C. No. 2396/89 and Ext. A is the copy of the Judgement of the aforesaid case. Let us say that the workman and Shri Panicker were not party to the said case but fact remains that not only in the year 1988 but also in the year 1991 another seniority list of the Stenographer Grade-I of the office of the Chief Engineer, Transmission Project was published in which the name of the workman was not mentioned. The workman could have challenged the same before the appropriate authority within time but he did not do so and remained silent till he was promoted to the post of Stenographer, Grade-I in normal course. Much after the publication of the seniority list he raised the present dispute.

15. Shri Panicker became a Stenographer, Grade-I as far as in the year 1977. He succeeded in the interview conducted by the Chief Engineer, Transmission Project in the year 1980 and while he was working in the office of the Superintending Engineer, Transmission Project, the said office was abolished and therefore he was adjusted in the office of the Chief Engineer, Transmission Project. When the office of the Superintending Engineer, Transmission Project was abolished there was no specific rule or regulation regulating the service conditions of the employees belonging to different cadre. Though he was transferred to the office of the Superintending Engineer, E.H.T. Construction Circle, Sambalpur in the year 1990 the said order was cancelled subsequently and till the year 2007 he was working as Stenographer, Grade-I in the office of the Chief Engineer, Transmission Project. The workman entered into service much after Shri Panicker. Also while Shri Panicker was a Grade-I Stenographer in the office of the Chief Engineer, Transmission Project, the workman was appointed as Grade-III Stenographer and subsequently promoted to the post of Grade-II Stenographer and Grade-I Stenographer.

16. The workman in this case has prayed to direct the management to fix his seniority above Shri Panicker by way of promotion with effect from the 6th December 1992. In view of Rule 11(3) of Ext. 22 no doubt he was eligible to be promoted to the post of Grade-I Stenographer with effect from the 6th December 1992 but actual promotion and eligible to get promotion are two different things. One may be eligible to get promotion but he may not be promoted unless found suitable. In fact in rule 12 it is stated that promotion to the higher posts or Grades shall be based on merit and suitability in all respects with due regard to seniority. As I have said earlier there is no sufficient reason to hold the workman senior to Shri Panicker. Even if for the sake of argument it is assumed that the workman belongs to the staff of Chief Engineer Office Cadre and Shri Panicker belongs to the staff of the Superintending Engineer Office (Circle) Cadre and in that way the workman is senior to Shri Panicker, still it is not possible to declare in this case that the workman shall be deemed to have been promoted to the post of Stenographer, Grade-I with effect from the 6th December 1992, i.e. the date of which he became eligible to get promotion and to allow all financial and service benefits in

his favour with effect from the said date. In this case the reference was made to decide whether the fixation of *inter-se*-seniority of Shri Panicker in the post of Stenographer, Grade-I over the workman by the management is legal and/or justified ? In my opinion Shri Panicker was always senior to the workman and therefore no error was committed by the management in placing him over the workman in the *inter-se*-seniority list. The workman is not entitled to any relief in this case. Accordingly both the issues are answered.

17. Hence ordered :

The fixation of *inter-se*-seniority of Shri K. B. Panicker, Stenographer Grade-I over Shri P. N. Behera, Stenographer, Grade-I by the management of GRID Corporation of Orissa Limited is legal and justified. The workman Shri Behera is not entitled to any relief.

The reference is answered accordingly.

Dictated and corrected by me.

M. R. TRIPATHY
04-03-2009
Presiding Officer,
Labour Court,
Bhubaneswar.

M. R. TRIPATHY
04-03-2009
Presiding Officer,
Labour Court,
Bhubaneswar.

By order of the Governor
K. C. BASKE
Under-Secretary to Government