

HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION, SHIMLA

In the matter of the Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions of Service of Staff) (Second Amendment) Regulations, 2020

CORAM

**Sh.S.K.B.S
Chairman**

**Sh. Bhanu Pratap Singh
Member**

ORDER

The Himachal Pradesh Electricity Regulatory Commission (hereinafter referred as “the Commission”) notified the Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions of Service of Staff) Regulations, 2013, (hereinafter referred as “ the said Regulations”), published in the Rajpatra, Himachal Pradesh on 22nd April, 2013, which lays down the Conditions of Service of the Officers and other Employees of the Commission and empowers the Commission to make appropriate provisions for promotion to the existing employees appointed on regular basis in the Commission within overall sanctioned strength and the provisions for promotion have been made for most of the category of employees in the Commission.

2. As there are no promotional avenues available to the Joint Directors/ Deputy Directors appointed on regular basis in the Commission, therefore, it necessitates the Commission, to specify the terms and conditions, as per the provisions of sub-regulation (1) of Regulations 5 of HPERC, Staff Regulations, 2013 to fill up the post of the Director (Technical Analysis) by promotion from amongst the incumbents of the post of the Joint Directors /Deputy Directors in the Commission. The Dept. of MPP & Power, Govt., of HP has already conveyed the approval to fill up the post of Director (TA) through promotion from amongst eligible incumbent of the Commission, vide letter No. MPP –A(7)-1/2000-III dated 4th October, 2016 and

further the State Govt., has also accorded approval for the relaxation by including B.E. (Mechanical) as essential qualification in addition to the B.E. (Electrical), vide letter No. MPP-B(15)-8/2018-Loose dated 16.09.2019.

3. As required vide sub-section (3) of Section 181 of the Electricity Act, 2003 and rule 3 of the Electricity (Procedures for Previous Publication) Rules, 2005, the draft Amendment Regulations were published in the Rajpatra, Himachal Pradesh, on 29th February, 2020 for the information of all the persons likely to be affected thereby; and notice was given that the said draft Regulations shall be taken into consideration, after expiry of thirty days (30) from the date of publication of that notification, together with any objections or suggestions which may within the aforesaid period be received in respect thereto.
4. In view of the pandemic and the complete lockdown declared in the State by the State Government as well as the Central Government, the last date for submission of objections or suggestions was extended from 30th March to 30th May, 2020.
5. Before the expiry of the above specified date, Sh. Ajay Chadha, Joint Director (Tech.), HPERC Shimla, has raised objections in respect of the proposed Draft Amendment Regulations and before finalization of the said Regulations, the same are required to be considered.
6. Sh. Ajay Chadha (hereinafter referred as “the objector”) submitted that
 - a) He joined the Commission in 2007 as Deputy Director on deputation basis, after advertisement of various posts by the Commission.
 - b) He got his absorption in the Commission in December, 2010 as Deputy Director and no other officer of the HPSEBL have been absorbed in the Commission.

- c) The officers of the HPSEBL are getting five promotion avenues, whereas in the Commission there are only two promotion avenues and, moreover, the officers of the HPSEBL are getting one rank above the equivalency post.
- d) The Commission forwarded the proposal to the State Government in 2011 for approval of terms and conditions of service of the employees and officers of the Commission. However, despite the proposal, the Commission has not considered the proposal in the HPERC Staff Regulations notified in 2013. He also pointed out that notified Regulations are subject to need based amendments/changes during its course of implementation.
- e) He also pointed out that the Commission has observed that the Staff Regulations 2013 are exactly applicable to the officers/officials appointed after 2013.
- f) In 2015, on his request to provide promotion avenues to left out categories draft proposal was initiated to include the promotion for the post of Director/ED to the left out categories.
- g) It was also pointed out that the Commission has promoted an officer of the Commission to the post of Director (Tariff Engineering) in 2015 having around 15 years overall experience and about 10 years experience in the Commission including secondment period. Further in the year 2019, a Deputy Director has also been promoted to the post of Joint Director against the post of Director (TA) having about 2 years experience and also having different discipline as compared to the secondment provisions.
- h) In the HPSEBL for the promotion of Superintending Engineer(E), the qualification criteria is degree in Electrical Engineering/Electrical and Electronics/Computer Science Engineering/Information Technology/Electronics and Communication Engineering or equivalent with 5 years regular service as XEN including adhoc service rendered if any in the grade. In the year 2007, Degree in Engineering,

without referring any particular engineering discipline along with professional Degree, were the qualification criteria for the post of the Deputy Director as per advertisement and also as per the HPERC principal Staff Regulations, 2013.

- i) In 2016, although the norms for promotion were to be notified by the Commission as powers to notify are vested in the Commission, the matter was referred to the State Government on 25.5.2016.
- j) In the year 2016, the State Government accorded its approval to fill the post of Director (TA) through promotion and Commission has laid down the norms of promotion to the post of Director (TA) vide notification dated 13th October, 2017 published in the Rajpatra dated 18th October, 2017 as per the State pattern. These norms have attained the finality and are part of regulations. It was also pointed out that there are number of notifications which have been issued without prior publication. Prior publication process does not mean that these notifications are not valid. No such prior publication takes place in the State Sector or in State PSU. Further, as far as the word 'rule' appearing in notification, the powers to make the rules lies with State Government and it does not mean that 'rule' cannot be used as 'rule' or 'promotion rule' in other contexts.
- k) Since these norms had taken finality and to give a shape of amendment to these norms, the matter was again referred to the State Government in 2018. The State Government raised queries in 2018 and response to the raised queries were submitted from time to time.
- l) In 2019, the Commission again requested the State Government to accord approval and the State Government accorded its approval on 16.9.2019.
- m) He further submitted that as per Schedule II Part-I of the HPERC Staff Regulations, 2013 notified after his 6 years joining, the eligibility criteria for new incumbent for the post of the Deputy Director is 8 years as Assistant Engineer ,

Class I or equivalent post with Degree in Engineering or other professional degree. This means that the maximum service period including secondment should not be more than (20-8) 12 years for the post of Director to be filled up by promotion for new incumbent. Further as per DoPT guidelines/instruction the State Government's maximum, 10 years service is required for up gradation from Deputy Director to Director. Such periods has been further aligned and notified by considering the norms provided in the HPERC Staff Regulations, 2013 for the post of Director (Tariff Engineering)

- n) He also pointed out that a particular discipline as eligibility for promotion to the post of Director was never a part of discussion in the Commission and the Commission never sought any approval in this regard. Rather, the State Government has shown its concern not to change the educational qualification from 'Degree in Mechanical Engineering' to the 'Degree in Engineering' or 'any professional degree' is/are made a qualification criteria for the post of the Deputy Director in the commission.
- o) It was also pointed out that after notification of the Staff Regulations, 2013, no officer of the rank of the Superintending Engineer of the HPSEBL has joined on the post of the Director in the HPERC despite equivalency of such posts with the post of Director in HPERC. The Superintending Engineer of HPSEBL are appointed on secondment basis by placing on one rank higher post i.e. Executive Director in the Commission.
- p) He further pointed out that blocking of his promotion has created distortion in the organization set up of HPERC as junior in service in the HPSEBL are getting promotion as Superintending Engineer and further accommodated in the Commission on higher rank posts.

- q) He also referred the case of officers in other organization who were with him during secondment in HPERC and promoted to DGM in HPPCL and similar situation in the CERC/SERCs where similar situated officers as undersigned are promoted on the posts equivalent to the post of the Executive Director in HPERC for better career.
- r) The Commission is giving relaxation while appointing the officers on secondment, promoting cadre officers /officials and engaging individual consultants under respective regulations. He also mentioned that his promotion does not debar the Commission to appoint officers adopting transparent process from other organizations. Presently out of 8 professionals, 6 have been occupied by the officers of the HPSEBL. To avoid stagnation and to give career advancement the officers/officials are promoted in the Commission even in absence of any laid down promotion criteria by considering individual specific case.
- s) He has also pointed out that proposed provisions are not in conformity with the terms and conditions for the promotion to the post of Director (TA) notified on 18.10.2017 in the Rajpatra Himachal Pradesh after the approval of the State Government and further submissions made to the State Government for limited purpose. i.e to give shape of amendment to the already notified norms, stand consistently taken by the Commission in the matter before the Government and also DoPT guidelines/instructions.
- t) It was mentioned that present proposal is discriminatory and violates the provisions of Articles 14 and 16 of the Constitution of India particularly considering that similar situated officer has already been promoted as the Director (Tariff Engineering) in 2015 considering 8 years service as Joint Director and having 15 years overall experience (including past service) on the equivalent post pay scale of AE and above with about 10 years service in the Commission. The discriminatory provisions as mentioned are:

- (i) In the proposal on one hand 20 years service in regulatory affairs has been proposed while on other hand 14 years regular service after Dy. Director has been proposed which is contradictory itself.
- (ii) In the 1st amendment of HPERC Staff Regulations 2013 adhoc period i.e., secondment period is considered for eligibility of promotion. Whereas in this subject cited proposal regular service of 14 years has been proposed. In 2015 Commission has approved to count his service length of secondment period as Dy. Director in the Commission.
- (iii) As per instruction and guidelines of DoPT maximum 10 years service is required for promotion/up gradation from the scale of the Dy Director to the Director and 5 years period is required from equivalent scale of Jt Director /XEN. In HPSEBL provision of 5 years service in grade pay of feeding category i.e XEN. The provision of 14 years experience proposed from level of Dy Director in amendment is neither as per DoPT guidelines/instructions nor as per notification dated 18.10.2017. The proposed 14 years service period should not be more than 10 years including adhoc service as per DoPT guidelines/instructions. Initially 10 years from Dy Director to Director (TA) was proposed which was relaxed to 8 years vide notification dated 18.10.2017 with the riders that this service of 8 years shall be in the pay scale and grade equivalent to Joint Director/XEN whereas DoPT norms provide for 5 years service eligibility in the pay scale of Joint Director. These riders were incorporated in the notification by Commission taking into account the criteria of appointment advertised in 2007, provisions for the promotion to the post of Director (Tariff Engineering) provided in the Staff Regulations, 2013.
- (iv) The provisions of Schedule II Part I of HPERC Staff Regulations, 2013 have not been referred in the terms and conditions of the promotion of Director

(Tariff Engineering) and also in the First Amendment of the Staff Regulations, 2013. The proposed terms and conditions to the post of Director (TA) is against the practice adopted by the Commission, hence the reference of same in promotion provisions are superfluous and also a discriminatory provision.

- (v) It is a settled principle that past service shall be considered for the ascertaining the eligibility for promotion. The same aspect has already been taken care while laying down the terms and conditions to the promotion of the Director (TA) and draft amendment submitted to the State Government on 5.2.2018. As per State Cabinet decision further conveyed by the administrative department all past benefits (liabilities) of his past service were allowed to be paid by HPERC. The proposed provisions of 20 years regular service in the Commission (or in the regulatory affairs of power sector) is contradictory and discriminatory itself considering that the Commission has already promoted the Director (Tariff Engineering) having about 10 years experience in the Commission. In HPSEBL for the promotion to the post of Superintending Engineer, 5 years service as XEN (equivalent to Joint Director) including adhoc service in the grade is the eligible criteria. The HPSEBL has not imposed any criteria of overall service in the terms and conditions of the promotion to the post of Superintending Engineer. The availability of vacancy with these conditions is the criteria generally adopted.
- (vi) He further referred that his pay scale of Rs 37400-67000 from 1.1.2010 after getting time scale i.e 14 years service in engineering cadre. He has mentioned that to get promotion after serving 14/20 years as per the subject cited proposal does not have valid justification keeping in view DoPT guidelines of 5 years required in the next below post scale and grade pay (HPSEBL has

adopted the same norms). Norms laid down by the Commission has a little stringent provision i.e 8 years service in the Commission in equivalent pay scale of Joint Director which is a next below scale of post of the Director. Maximum 10 years service is required from Dy. Director pay scale and grade as per said guidelines.

- u) He has mentioned that he made a request to provide promotion avenues to Engineering cadre in the Commission which was acknowledged by the Commission and terms and conditions of promotion to the post of Director (TA) were notified on 18.10.2017 after approval of the State Government. The issuance of subject cited proposal after four and half years is debatable. The similar stand was taken by the Commission while notifying the 1st Amendment of the HPERC Staff Regulations in 2020 and if similar stand was taken the norms of promotion of the Director (TA) could have been notified in 2015. The stress, humiliation and mental agony that he faced during these years and facing presently could have been avoided. Even if the Commission wanted to give a shape of amendment to the already notified norms the same could have been notified without any alteration in 1st Amendment.
- v) He further mentioned that it is our moral duty to maintain the credibility of this premier institution of the State. There is no reasons to deviate from the already laid down norms for the promotion to the post of the Director (TA) and stand consistently taken by the Commission before the State Government to give a shape of amendment to the said norms which have already attained finality. Any alteration in the laid down norms without any reference after two and half years of its notification may lead to litigation.
- w) Since the norms for the promotion to the post of the Director (TA) have attained finality as elaborated above, the only issue pending before the Commission is to finalize the norms for promotion to the post of Executive Director (TA), therefore

it has been prayed that subject cited proposal in the present form may be dropped and if find it is necessary to give a shape of amendment to the aforesaid notification in that case already notified norms as provided in the said notification without any alteration with the provisions of promotion for the post of Executive Director (TA) for the effective regulatory monitoring.

- x) The promotion avenues to the equivalent post of ED (TA) are available to the Engineers in the HPSEBL, other SERCs and in State Department. Better promotion avenue in the Utility does not have a disadvantageous position to the Commission cadre officer.
- y) The Commission may appoint officers, if required, from any organization on secondment at any level, even if the post of the Director/Executive Director(TA) has been filled up by promotion from its own cadre officers.
- z) It has also been prayed that before taking final decision he may be personally heard.

7. In continuation to the above objections, the objector has also submitted that -

- (i) The Employees Association of HPSEBL has lobbied in the Commission to block his promotion avenues.
- (ii) It was also mentioned that the two DPC's were held which could not be concluded.
- (iii) It was also requested that for fair justice without prejudice, no officer of HPSEBL may be involved in the process relating to the finalization/dropping the said proposal and also DPC, if any, held to decide his promotion case being a matter of conflict.

8. As per the request, the objector has been heard in person. He only reiterated the contents of his representation/objections as set out in the preceding para 6 of this Order.

Commission's View:

9.1 The Commission is mandated to perform the regulatory, legislative, adjudicatory, administrative and advisory functions under the Electricity Act, 2003 and, therefore, it requires the services of technical experts having professional and practical expertise/experience in electrical systems, specialised expertise in power control and regulations, commercial and power markets, finance and accounts under the Company Law framework, regulatory, court and legislative matters. The Commission has to have an efficient and cost effective establishment focusing purely on its core functions and, therefore, a small organization like the HPERC cannot afford to have a huge in house establishment having all such expertise. Moreover, technological, commercial and market development in the power sector is advancing with rapid pace and hence such expertise can best be drawn from pool of talents available with various organisations of the Central and State Governments from time to time on tenure basis i.e. on secondment. Such an arrangement will also facilitate the Commission in focusing its priorities on its core functions rather than doing the additional work of establishment matter like promotions, pension related matters that the regular establishment entail and demand. Accordingly, the aims and objectives of these regulations are to maintain a lean establishment that is cost effective, efficient and dynamic with full capacity to meet the emerging needs to carry out the provisions of the Electricity Act,2003 relating to generation, transmission, distribution, trading and use of the electricity and taking measures conducive to the development of the Electricity Industry. Therefore, the Commission shall have its staff i.e. Secretary, Officers and other Employees, on secondment basis from Central/State Government Departments, Undertakings, Boards, Local Bodies etc.

Commission's functions are largely different from the normal functions of the Government Departments/Undertakings.

9.2 Functions to be discharged by the Commission require multi-disciplinary experts within the overall strength of a small group of officers at three levels i.e. Dy. Director, Director and Executive Director. The Commission acknowledged that there are competing claims to the organisation design and its objective i.e while on the one hand regular incumbents would like opportunities of career progression as an important objective of the organisation, whereas the functional mandate of the Commission would require its core objective to have the best of the multi-disciplinary experts from which-ever source they are available. Therefore, at the senior expert levels, the Commission and the State Govt. intend officers to be drawn on secondment basis. At the initial stage of its constitution, the Commission absorbed all the staff drawn from various sources, whosoever opted for absorption, most of whom are from ministerial/secretarial category. However, at expert level, only two officers have been absorbed at the level of the Dy. Director. The intention of the Commission and the State Govt. is to provide certain reasonable avenues of promotion to the regular incumbents and while doing so, it should be ensured that on the one hand, filling up of the post by promotion does not adversely affect the effective working of the Commission and also minimum eligibility criterion is at least at par with the similar non-technical category in the State Govt. departments and technical categories in the HPSEBL.

9.3 Regulations 5 and 6 of the HPERC Staff Regulaions,2013 reads as under:-

5. Mode of appointment/recruitment of Officers and employees:-

(1) The officers and other employees of the Commission shall ordinarily be appointed on secondment or on re-employment basis as specified in Schedule-II:

Provided that the Commission may identify certain posts and specify such posts to be filled up by promotion, along with terms and conditions of promotion, from amongst its officers/ employees appointed on regular basis and while specifying terms and conditions for such promotions, the essential qualifications, experience etc. shall not be less than those prescribed for similar nontechnical categories of posts in the State Govt. Departments and technical categories of posts in the Himachal Pradesh State Electricity Board Ltd.

Provided further that in exceptional situations, where the Commission requires the posts to be filled up by way of absorption or by direct recruitment, the Commission may fill up such posts in such manner with the approval of the State Government.

- (2) Appointment on secondment or on absorption shall be from amongst the officers and employees of the Central and State Govt. Departments, Boards, Corporations, Autonomous and Local Bodies and from surplus pool maintained by the State Govt.*
- (3) The employees who are appointed on contract basis in the parent organisations shall be eligible for appointment on contract basis in the Commission*
- (4) Notwithstanding any provision contained in the Schedule II, if suitable officers or employees with requisite expertise, skills and experience are not available to fill any post on secondment basis, or if the services of a retired person having such expertise/skill/experience is required by the Commission in public interest, the Commission may fill up such post by way of re-employment from amongst the retired persons of the State Govt., Boards or Corporations or Autonomous bodies or the Commission having such*

requisite expertise, skills and experience for a period not exceeding three years at a time or up to the age of 65 years, whichever is earlier and emoluments of such re-employed persons will be those as are applicable for reemployment of retired State Govt. officers and employees in the State Govt. Departments, including FR/SR.

6. Qualifications, experience and eligibility conditions.-

(1) The educational qualifications, eligibility, experience and other conditions for appointment to the posts of the Commission shall be such as are laid down by the Commission from time to time keeping in view its specific requirements and as specified in Schedule-II:

Provided that in case of appointment on secondment and by way of absorption, the Commission may relax the educational qualifications and experience, if suitable candidate fulfilling the eligibility conditions is not available or in view of the requirement of the Commission.

(2) In addition to essential qualifications and experience specified in Schedule-II, the computer literacy, knowledge of customs and dialects of the State, experience of regulatory affairs and working in hilly areas shall be the desirable qualification for all categories of posts.

(3) The post to be filled up by promotion from regular officers/ employees of the Commission and eligibility condition for such promotions shall be as are specified in Part-II of the Schedule-II.

9.4 The provisions specifying experience and qualifications as per Schedule II, Part-I and Part-II for the posts of the Director (TA) and the Director (Tariff Engineering) are as under:-

(i) Director (Technical Analysis or in brief Director (Technical) secondment post
From amongst the Superintending Engineers or persons holding equivalent/analogous posts having degree in Electrical Engineering and having 20 years of service/ experience on Assistant Engineer Class-I and above levels in electricity supply and transmission or distribution failing which from amongst Executive Engineers or equivalent posts having a minimum service of 3 years as such, in addition to the other eligibility conditions specified above.

(ii) Joint Director(Tariff Engineering)/ Director (Tariff Engineering) promotional post
The post of Director (Tariff Engineering) may be utilized temporarily in the scale/ grade of 12000- 15100, analogous/equivalent to Executive Engineer/Joint Director, the level next higher to Deputy Director, and may be filled by promotion from amongst Deputy Directors having at least 6 years of service as Deputy Director on regular appointment basis in the Commission and such post on having filled will be designated as Joint Director (Tariff Engineering). The post of Director (Tariff Engineering) may be restored to its sanctioned pay band and grade pay, to be filled up by promotion from Joint Director (Tariff Engineering) having 8 years service as such.

9.5 Article 309 of the Constitution of India provides that the Acts of the appropriate Legislature may regulate the recruitment and conditions of the service of the persons appointed to the public posts in connection with the affairs of the Union or any State. Till the appropriate Legislature legislates on the subject the President in case of Union and the Governor in case of the State may frame the service rules. In the State Govt., the Departments, in the absence of the enactment made by the State Legislature, the Govt. provides for terms and conditions of its officers/employees through rules, which are normally called Recruitment and

Promotions Rules, under Article 309 of the Constitution of India. However, after the enactment of the Electricity Act, 2003, the State Commission, after approval of the State Govt., specified, by framing regulations under Section 91(2) read with Section 181(2) (zk) of the Electricity Act,2003, such terms and conditions of service of its officers and employees. Section 181(3) of the ibid Act also requires previous publication of the regulations to be framed by the Commission under the Act. That process involves the invitation of objections and suggestions from the affected persons and consideration of those objections/suggestions so received before the finalization of the draft regulations. Therefore, the creation of posts, salary structure, allowances payable and terms and conditions of general nature require prior approval of the State Govt. and the Commission is empowered to formulate regulations, inter alia, to give effect to such specific and general terms and conditions of service by framing appropriate regulations.

9.6 The Commission was constituted on 30th day of December, 2000 and various posts were created by the State Govt. from time to time. The Commission prepared and notified the draft regulations specifying terms and conditions of services of its officers and employees in Rajpatra on 16.09.2004. However, in the absence of approval of the State Govt. as envisaged under section 91 of the Act, the draft regulations could not be finalized. The Commission had been taking up the matter with the Department of MPP & Power in the State Govt. for approval of the terms and conditions of the services of its officers and employees from time to time. Ultimately the Addl. Chief Secretary (MPP & Power) conveyed approval of the State Govt. on the final proposal dated 12.07.2012 of the Commission vide letter No. MPP-A(3)-1/2003-loose dated 04.09.2012, where under-

(a) The sanctions of posts by State Govt. of the Secretary, other officers and employees from time to time, 46 in total, have been reiterated under this approval.

- (b) The sanctioned posts of the Secretary, other officers and employees of the Commission shall be filled up by the Commission on secondment basis or on reemployment basis.
- (c) The Commission was authorised by the State Government to make appropriate provisions for promotions for the regular employees with the condition that while making such provision qualifications, experience etc. shall not be less than those prescribed for similar non-technical categories of the posts in the State Govt. departments and technical categories of posts in the HPSEBL.
- (d) While normal mode of appointment/recruitment will be on secondment or on reemployment basis or by promotion, in exceptional situations where the posts is required to be filled up either by way of absorption of officers/employees of the departments/boards/ corporations or by direct recruitment, the Commission may do so with the approval of the State Govt.
- (e) The Commission was authorised to decide educational qualifications, experience and other conditions for appointment to the posts of the Commission, keeping in view its specific requirements, with further delegation to the Commission to relax educational qualifications and experience, if no candidate fulfils the eligibility conditions to fill up the posts on secondment basis.
- (f) The State Govt. authorised the Commission to fill up the posts on secondment basis by an incumbent at a level different from such sanctioned posts, if suitable candidates is not available to fill up that vacant post, subject to the condition that it is within the overall sanctioned strength of the posts in the respective categories, so as to facilitate functioning of the Commission.

- (g) The State Govt. authorised the Commission to outsource certain services those are required to be performed by outsourcing.
- (h) The State Govt. authorised the Commission to fill up the posts as deemed approval once approval of posts has already been accorded.

9.7 As a sequel to the State Govt. approval, the Commission finalized the staff regulations based on such approvals of terms and conditions, delegations made to the Commission by the State Govt. and also the general principles of rule of law for recruitment and promotions.

10. With the factual and legal matrix, as set out in the preceding paras of this order, we now proceed to consider the objections raised and suggestions made by the objector in relation to the draft Amendment in the HPERC Staff Regulations.

10.1 Sh. Ajay Chadha has expressed his concern for promotion avenues on the grounds that in other Organisations i.e. to say specifically in the HPSEBL, the officers/ employees are getting five promotion avenues in the engineering cadre but in the Commission there are only one or two promotion avenues. As such he requested for promotion as the Director and the Executive Director out of the Joint Directors/Deputy Directors appointed on regular basis in the engineering cadre of the Commission. Admittedly each organisation is set up to achieve some specific objectives and they employ need based officers/employees having adequate qualifications and working experience in discharge of its assigned functions. The variations in the functions lead to their variations in staff requirements and promotion opportunities for their officers/employees are specified accordingly. In some of the organisations there may be more opportunities and in some there may be few or none. This Commission has to manage its multi disciplinary functions requiring professional and

practical experience in operation of electrical systems with the small group of officers/ employees, the strength of which has been fixed by the State Government. The Deputy Directors have been appointed on need base. There is no separate engineering cadre and the Deputy Directors in the Commission required to be manned by multi disciplinary experts. The Commission therefore cannot discriminate among officers of the same cadre of Deputy Directors. Senior level officers require to be manned by the best of the multi disciplinary experts from whichever source they are available. Hence, the parity in the number of promotion avenues in the other organisations cannot be maintained in the Commission.

- 10.2 Shri Ajay Chadda further submits that while fixing the eligibility of the Joint Director/ Deputy Directors for promotion as the Director, the Commission should have followed the criteria for promotion to the equivalent post of the Superintending Engineer in the HPSEBL wherein the incumbents of the post of the Executive Engineers having five years service (including Ad-hoc service) are eligible. In this regard we find that the submission made by Sh. Ajay Chadda has no merit for the reason that the Regulation 5 of the Staff Regulations 2013 empowers this Commission to make appropriate provisions for promotion of the regular employees of Technical categories with the condition that while making such provision for qualifications, experience shall not be less than those prescribed for similar technical categories of the posts in the HPSEBL. Moreover, while finalizing the Staff Regulations 2013 this Commission has clearly pointed out that regarding length of service for promotion to the post of the Joint Director, which is equivalent in the scale of the post of Executive Engineer, it takes about 15 years for an Assistant Engineer to become Executive Engineer and about 25 years for becoming Superintending Engineer (equivalent to the Director) even though the eligibility service under rules are less. While finalizing the

principle regulations i.e., the Staff Regulations, 2013, in relation to the post of the Director (TA), this Commission taking lenient view and in line with the instructions contained in Para 3.9 of the “Guidelines on framing/ amendment/ relaxation of the recruitment rules” issued on 31-12-2010 by the Government of India, the Department of Personnel, specified 20 years of service experience as the Assistant Engineer Class-I and above level, in electricity supply, transmission or distribution. For the effective discharge of the duties of Director (TA), the services of technical experts having sufficient professional and practical expertise/experience in electrical systems, specialized expertise in power control and regulatory affairs are required, however, on the repeated requests made by Sh. Ajay Chadda the Commission has taken up the matter with the State Government from time to time for approval of terms and conditions to change the mode of recruitment to the post of the Director(TA) from secondment to promotion and the Government has accorded its approval only to relax the essential academic qualifications of B.E. (Electrical) by inclusion of B.E. (Mechanical) subject to the completion of all codal formalities and fulfillment of other service criteria laid for the post of Director(TA). After taking stock of existing provisions for appointment on secondment or re-employment or by absorption to the post of Director (TA) and promotion of Joint Director/ Deputy Director to the post of Director (Tariff Engineering), the provisions for 20 years of experience dealing with the matters relating to the supply and transmission/ distribution or in the regulatory affairs of the Power Sector and 14years of service rendered as the Deputy Director has been provided in the draft regulations. Thus there is no departure from the approval accorded by the State Government and the provisions made under Regulation 5 of the Staff Regulations, 2013.

10.3 The third objection raised is that the draft Amendment Regulations is contrary to the norms laid down by the Commission in its notification dated 13th October, 2017 published in Rajpatra Himachal Pradesh on 18th October, 2017. Perusal of official records of this Commission reveals that the aforesaid notification was erroneously issued and now stands withdrawn. After the enactment of the Electricity Act, 2003 no recourse can be taken to the Proviso to Article 309 of the Constitution of India and the service conditions can only be framed by regulations under Section 91 (1) read with Section 181 (2) (j) (k) of the Electricity Act, 2003, subject to the condition of previous publication. As such no reliance can be made on the said notification which was issued not in consonance with the Statutory provisions of the Electricity Act, 2003.

10.4 The fourth objection raised to the extent that the objector has been discriminated by the promotion of Smt. Rinku Gautam as the Director (Tariff). From the official records of this Commission it is clear that the promotion of Smt. Rinku Guatam as the Director (Tariff) has been made in accordance with the service regulations. Moreover, the case of Sh. Ajay Chadda is distinguishable on the fact that on appointment of Smt. Rinku Guatam as Deputy Director after taking note of her qualification and experience as the Assistant Director in her parent organization i.e., the Tariff Authority of Major Ports of India, Mumbai, she was allowed to draw higher pay scale and was drawing higher pay scale as compared to the pay scale of the Deputy Director. She was considered for appointment as Joint Director, which is the feeder category to the post of the Director and on completion of her service of 10 years as Joint Director she has been promoted as Director. To the contrary Sh. Ajay Chadda was absorbed as Dy. Director(Generation) on 23.12.2010 with certain terms and conditions which interlia provide that services rendered in his parent organization i.e

Agro Industries Package India could not be counted for seniority in the Commission being not connected with Electricity Generation, Transmission and Distribution and further he, with an open mind and due consideration of his career opportunities both in his parent organization as well as in this Commission opted for his absorption in the Commission and gave an undertaking that he will not claim the benefit of the past service. As such he is now estopped to claim the benefit of his past service rendered in the parent organization. However, the mechanism of the Assured Career Progression Scheme to mitigate the stagnation in service has already been invoked to provide due financial incentives by the Commission. Sh Ajay Chadda was promoted to the post of Joint Director (Tariff Engineering) on adhoc basis on 21.9.2015.

- 10.5 The Fifth objection raised is that whereas the draft Amendment Regulations proposes qualifying service of 14 years experience gained in regulatory affairs as Deputy Director for promotion as Director (TA) is not in consonance with the instructions and guidelines of the DoPT which provide for maximum period of 10 years. As such he suggests that the period of 14 years in the proposed amendment be refixed as 10 years. The Commission has considered the objection raised in light of the guidelines given in Para 3.12.2 of the “Guidelines on framing / amendment/ relaxation of recruitment rules “which clearly stipulates that the qualifying service for promotion from one grade to other is necessary so that there is no premature promotion or undue jump in pay and also to ensure the officer has sufficient opportunity to demonstrate its competence/ potential for holding the higher post. The period of qualifying service varies from post to post depending on the scale of pay and the experience, for manning the higher post. The Commission finds that the qualifying service of 10 years as mentioned in that para is minimum and not maximum as stated by the

Sh. Ajay Chadda. Further keeping in view the fact that the senior level post of the Director (TA) in the Commission is the specialized technical post to be manned by the person having capacity to carry out the multi-disciplinary functions, the period of 14 years has been proposed and the same is in line with the existing corresponding provisions already specified for the post of the Director (Tariff). In view of the above we feel the proposed provision is reasonable and seeks to maintain efficiency in the Administration.

10.6 The Sixth objection raised is that in the present case the service rendered during the adhoc period as Dy. Director is not countable as experience in the regulatory affairs. Whereas, the provisions contained in the Staff Regulations (First Amendment), 2020, the experience gained during the adhoc period has been taken into consideration in the case of the promotion of Law Officer as the Deputy Director (Law). We feel that the objection raised has some merits and needs to be accepted.

10.7 Rest of the objections raised by the objector are not relevant in the present context.

We, in view of above discussions, conclude that the provisions proposed in the Draft Amendment Regulations are consistent with the principle of the maintenance of efficiency in the administration and as such deserve to be finalized subject to the modification that the adhoc service rendered as Dy. Director, which is a feeder post, shall be counted.

It is so ordered.

-Sd-
(Bhanu Pratap Singh)
Member

-Sd-
(S.K.B.S.Negi)
Chairman

Place: Shimla

Dated:- 27 /06/2020