
Neeraj Prakash Narain and Others Vs Coal India Ltd. and Others

Writ Petition (S) No. 5158 of 2003

Court: Jharkhand High Court

Date of Decision: March 12, 2004

Acts Referred:

Constitution of India, 1950 – Article 226

Citation: (2004) 2 JCR 7

Hon'ble Judges: M.Y. Eqbal, J

Bench: Single Bench

Advocate: Ritu Kumar, Ravi Kumar Singh and Niki Sinha, for the Appellant; S.P. Rai, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

M.Y. Eqbal, J.

In this writ application the petitioners have prayed for issuance of appropriate writ directing the respondents to absorb

them in the Material Management discipline from the date of their completion of one year of probation in the Material Management discipline in

view of the provision in Common Coal Cadre and the circular issued by Coal India Ltd.

2. The facts of the case lie in a narrow compass.

3. Petitioners' case is that they were promoted in the year 1994 and 1996 in E-5 Grade in the Executive Cadre. On 13.4.1998 the General

Manager, Coal India Ltd. issued an internal circular inviting applications from different employees of different discipline for transfer/movement to

Material Management discipline called as horizontal movement. Petitioners being fully qualified applied for horizontal transfer to Material

Management discipline in pursuance to the aforesaid circular and their cases were duly recommended by the appropriate authorities. It is

contended that the interview for horizontal transfer, in the Material Management discipline was held on 6.11.1998 and 29 employees belonging to

Central Coalfields Limited were called for the said interview and after interview held on different dates list of selected candidates were prepared.

The name of petitioner No. 1 appeared at serial No. 3 petitioner No. 2 at serial No. 1, petitioner No. 3 at serial No. 6. Petitioners were posted in

the Material Management discipline on probation initially for a period of one year and their absorption in the said discipline was subject to their

satisfactory performance during the period of probation. Petitioners' case is that they have been working in the Material Management discipline till

date to the satisfaction of all concerned but still they have not been absorbed in Material Management discipline by issuing formal order of

absorption.

4. Respondents filed their counter-affidavit admitting that petitioners and 39 other Executives of different discipline were selected for horizontal

transfer. However, during the process of selection three Executives filed writ petition before the different High Courts against the above horizontal

transfer. One of the Executive Mr. Manoj Kumar Upadhyay filed writ petition before the Madhya Pradesh High Court, Jabalpur in which that

Court by order dated 18.9.1998 directed that respondents may proceed with the interview process but shall not issue any appointment order until

further orders of the Court. Subsequently, the Madhya Pradesh High Court modified the order to the extent that any appointment made during the

pendency of the writ petition shall be subject to the final decision of the case. Another Executive filed writ application before the Calcutta High

Court, which was ultimately dismissed on 6.9.2002 for non-prosecution. Another Executive Mr. P.K. Sahoo filed writ petition before the Orissa

High Court in which order was passed on 31.7.2000 directing the officers who were transferred/promoted to E-3 and E-4 rank shall not be

confirmed without the leave of the Court. The respondents have admitted in their counter affidavit that the Executives who were horizontally

transferred to Material Management discipline will be on probation for a period of one year and their absorption will be subject to satisfactory

performance during the period of probation. It is stated that due to various orders passed by Madhya Pradesh and Calcutta High Court, petitioner

could not be absorbed in the discipline.

5. Mrs. Ritu Kumar, learned counsel appearing for the petitioners submitted that so far writ petition No. 3212 of 1998 pending in Madhya

Pradesh High Court at Jabalpur is concerned petitioners have learnt that the matter has been admitted for final hearing and there is no interim order

restraining the respondents to take final decision for absorption of the Executives who have been horizontally transferred. Learned counsel

submitted that the writ petition filed in the Calcutta High Court has been dismissed on 6.9.2002. Learned counsel further submitted that so far writ

petition pending in Orissa High Court the same is confined to E-3 and E-4 Grades Executives and there is no order for the officers of E-5 Grade.

Learned counsel submitted that in the interim order passed by the Orissa High Court the only direction is that the officers who have been

transferred/promoted to E-3 and E-4 rank shall not be confirmed without the leave of the Court.

6. Mr. A.K. Mehta, learned counsel for the respondents very fairly submitted that it is only because of the orders passed by different High Courts

petitioners have not been finally absorbed in the Material Management discipline. Learned counsel submitted that the respondents are not

concerned with the order passed by the Orissa High Court. It is only because of the order passed by Madhya Pradesh High Court respondents

are not issuing final order of absorption.

7. As noticed above, it has not been disputed by the respondents that these petitioners along with others were selected for horizontal transfer in the

Material Management discipline and pursuant to that they joined the said discipline. The posting was on probation initially for the period of one

year and therefore final absorption in the said discipline was subject to their satisfactory performance during the period of probation. A copy of the

office order of horizontal transfer has been annexed as Annexure 6 to the writ application. In the said office order it was mentioned that horizontal

transfer was subject to final outcome of the writ petition No. 3212 of 1998 pending Madhya Pradesh High Court at Jabalpur. The writ petition

No. 17883 (W) of 1998 pending in the Calcutta High Court and the writ petition No. 12888 of 1999 pending in the Orissa High Court.

8. Mr. A.K. Mehta, learned counsel for the respondents has fairly conceded that the writ petition which was filed in Calcutta High Court has

already been dismissed on 6.9.2002. Learned counsel further submitted that so far the writ petition pending in Orissa High Court is concerned it

will not affect the petitioners because the writ petition relates to the promotion of the Executives from E-3 to E-4 Grade. Learned counsel further

submitted that only impediment is the order passed by Madhya Pradesh High Court. In para 11 of the counter affidavit it is stated by the

respondents that although by order dated 18.9.1998, Madhya Pradesh High Court directed the respondents to proceed with the interview but

shall not issue appointment order. That order was however, modified by order dated 16.8.1999 to the extent that any appointment made during

the pendency of the writ petition shall be subject to the final decision of the writ petition. It is, therefore, clear from the counter affidavit filed by the

respondents that Madhya Pradesh High Court has not passed any order directing the respondents not to issue final order of absorption of those

Executives of E-5 Grade who have been horizontally, transferred to Material Management discipline. In my considered opinion therefore there is

no legal impediment in the way of the respondents to issue final order of absorption of the petitioners in the Material Management discipline. In any

view of the matter even If there is such order passed by Madhya Pradesh High Court the order of final absorption that shall be issued by the

respondents will be subject to the result of the writ petition.

9. For the aforesaid reasons, this writ application is allowed and the respondents are directed to issue order of absorption of the petitioners in

Material Management discipline. Needless to say that in terms of order dated 10.11.1999 (Annexure-6) petitioners would be entitled to be

considered for promotion in accordance with the Rules. Respondents" shall issue final order of absorption within four weeks from the date of

receipt of copy of this order.