

(2008) 09 JH CK 0005**Jharkhand High Court****Case No:** None

Arbind Kumar Murmu

APPELLANT

Vs

Bharat Coking Coal Limited and
Others

RESPONDENT

Date of Decision: Sept. 3, 2008**Citation:** (2008) 4 JCR 537**Hon'ble Judges:** Dabbiru Ganeshrao Patnaik, J**Bench:** Single Bench**Final Decision:** Dismissed**Judgement**

@JUDGMENTTAG-ORDER

D.G.R. Patnaik, J.

In this application, the petitioner has prayed for issuance of a direction to the respondents to promote/regularize his service on the post of Senior Draughtsman in the light of the decision taken by the Joint Bipartite Committee of the Coal Industries JBCCI-IV dated 15.7.1992 and also on the basis of the recommendations made by the petitioner's immediate controlling officer namely the Senior Drawing Officer as well as of the Superintending Engineer (Architecture) and for a further direction to allow consequential benefits to him since the date of his entitlement for the same.

2. The petitioner's case is that he was initially appointed under the respondents in Area No. IX/Bastakola Area as a Miner Loader.

A direction was issued by respondent No. 4 namely Director (Personnel) to all the Area General Managers to send details of all workmen belonging to SC/ST categories, who have passed matriculation or above. The petitioner not only being a Matriculate but also having passed ITI Examination in the trade of Draughtsman (Civil), besides having completed training and possessing National Trade Certificate from the Ministry of Labour, Government of India, submitted his application which was duly

forwarded by the General Manager of the Bastakola Area. The petitioner was selected for the post of Draughtsman (civil) Helper Training which was communicated to him by the Dy. CPM dated 27.11.1991.

At a Joint Bipartite Committee meeting of the Coal Industry NCWA-IV held on 15th July, 1992 a Resolution was adopted under which the cadre scheme of Drawing Personnel, Tracer to Chief Draughtsman was laid down and the respondents were also directed to implement the scheme in their respective collieries.

The grievance of the petitioner is that despite successfully completing his training and being entitled to the lowest post of Tracer (Trade E) under the Scheme in 1993 itself, he was not provided a cadre post as per the cadre scheme. On the contrary, his services was regularized as Helper Draughtsman from Helper Trainee Draughtsman since 9.1.1994, although there is no such post of Helper Draughtsman in the cadre scheme of Drawing Personnel.

The petitioner submitted his representation to the concerned respondent through his immediate controlling officer Le. senior Drawing Officer, who, vide his note dated 9.11.1996 had recommended for the regularization of the service of the petitioner or his placement in technical Grade C by way of regularization/up-gradation.

Pursuant to the recommendation, the petitioner was called for an interview for the post of Tracer the petitioner, however objected on the ground that he was entitled for the post of Junior Draughtsman.

Further grievance of the petitioner is that though he is being compelled to perform his duties against the cadre post i.e. senior Draughtsman Technical Grade-B, but he is not being paid the corresponding salary applicable to the said post. Contending that the respondents action is totally illegal, arbitrary and mala fide, the petitioner's claim is that he deserves special consideration in view of the fact that he belongs to ST category.

3. Counter affidavit has been filed on behalf of the respondents denying and disputing the grounds of the petitioner. The stand taken by respondent is that the petitioner has sought for his promotion to the post of senior Draughtsman Technical Grade-B directly, although he is not entitled to any such benefit. It is explained that for being promoted to the Technical Grade-B post, the petitioner has first to enter into the Cadre at the level Grade-E. Technical from where he could be promoted to the next higher Grade-D, followed by Grade-C and ultimately Grade-B. The petitioner having not yet entered into Technical Grade-E, cannot therefore claim to be promoted to the post of Technical Grade-B. Reference in this context has been made to annexure-A which is Cadre scheme of Drawing personnel.

Explaining the details of the petitioner's service career, it is stated by the respondents that the petitioner had applied for his appointment on 21.8.1990. He

had appeared before the Interview Board on 12.9.1990 and selected on the recommendation of the Selection Committee where-after he was to undergo training as Helper Trainee Draughtsman (Civil) by office order dated 27.11.1991. Later, by office order dated 21.1.1995, the Apprentice Draughtsmen were regularized as Helper Draughtsmen with effect from 9.1.1994.

4. A Departmental Promotion Committee (DPC) with a Chairman and three members was constituted to consider the case of the petitioner and one H.S. Dey form their selection to the post of Tracer in technical Grade-E. The petitioner appeared before the DPC. However, although the other candidate namely H.S. Dey appeared for interview, but the petitioner though appeared but refused to be considered for the post of Tracer in Technical Grade-E. Consequently, the other candidates H.S. Dey was recommended by the DPC for the aforesaid post on 22.4.1997.

The petitioner subsequently filed his representation on 6.5.1997 demanding regularization in Technical Grade-B which on due consideration was rejected and the decision was communicated to him by letter dated 12.5.1997.

It is further explained that the post of helper Draughtsman is an ex cadre post whereas the entry point in the cadre scheme of Drawing Personnel is technical Grade-E Tracer for which 5 years experience in survey discipline is required as eligibility for the entry Cadre.

5. The respondents have further stated that the recommendation made by the petitioner's controlling officer is ir-relevant in view of the fact that the recommendation can be made only by the Departmental Promotion Committee.

6. From the admitted facts, the petitioner was inducted in service initially as a Miner Loader and thereafter he was posted as Helper Trainee Draughtsman. In September, 1995, he was posted as a Helper Draughtsman. Pursuant to the representation and recommendation made by his senior in office, the petitioner was called for interview for his selection as a Tracer in April, 1997, but the petitioner refused to appear at the interview despite the fact that the post of Tracer is the entry post in Technical Grade-E under the cadre scheme of Drawing Personnel as laid down in the resolution of the JBCCI (Annexure-3).

7. Apparently, had the petitioner appeared at the interview for the aforesaid post, he could also have been invited by the recommendation of the Departmental Promotion Committee for his appointment at the entry post of Grade-E in the cadre scheme and in due course, he could have secured his promotion to the higher grade.

It appears that even though he was posted on regularization, in the Ex cadre post of Helper Draughtsman, he was given a chance to be posted in the entry level of the cadre scheme of Drawing Personnel which he refused.

8. The respondents have rightly stated that unless the petitioner makes his entry into the cadre scheme at the lowest grade and thereafter qualifies for promotion to higher grade, he cannot claim his direct posting on the second highest grade merely on the ground that he has considerable length of experience as a Draughtsman. The cadre scheme of Drawing Personnel as prescribed is the post of tracer with minimum five years experience in survey discipline as a basic requirement. By refusing to face the interview which was held by the Departmental Promotion Committee for selecting the eligible candidates for the post of Tracer, the petitioner is deemed to have opted out of the cadre scheme and to remain in the ex cadre post.

9. I do not find any merit in this application. Accordingly, this application is dismissed.

10. However, considering the petitioner's claim that he possesses the requisite qualification and experience in the survey discipline and has gained substantial length of experience as required under the cadre scheme of Drawing Personnel, the respondents may in their discretion within a reasonable time, conduct an interview of the petitioner through the Department Promotion Committee for placement of the petitioner within the cadre scheme of Drawing Personnel at any appropriate grade to which he may be found fit and proper.