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(2003) 02 JH CK 0016

Jharkhand High Court

Case No: Writ Petition (S) No. 4587 of 2001

Chandreshwar Prasad Singh		APPELLANT
	Vs	
Bharat Coking Coal Limited and Others		RESPONDENT

Date of Decision: Feb. 21, 2003

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2003) 2 JCR 200

Hon'ble Judges: Tapen Sen, J

Bench: Single Bench

Advocate: H.K. Jha, for the Appellant; A.K. Mehta, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Tapen Sen, J.
Heard Mr. H.K. Jha, learned counsel for the petitioner and Mr. A.K. Mehta, learned counsel for the respondents.

2. The petitioner prays for issuance of a writ of mandamus commanding the respondents to consider his name for promotion from E-2 grade (Senior Sub-ordinate Mining Engineer/under Manager) to the E-3 grade (Senior under Manager) and accordingly to promote him with effect from 1998 together with all consequential benefits. The petitioner has further prayed for a direction upon the respondents to correct his pay scale which according to him, has been wrongly fixed.

3. The petitioner joined on the post of Overman on 18.7.1966. After having been taken over, the petitioner continued under the services of the respondent No. 1. According to the petitioner, he had already passed matriculation in the year 1956 and had also passed Intermediate Science in the year 1958 and he had obtained a diploma in Mining & Mine

Surveying from the State Board of Technical Education, Bihar in the year 1961. The petitioner further states that he was also issued with an overman''s certificate in the year 1965. In support of the aforementioned contention, the petitioner has relied upon Annexure-1 series.

4. In the year 1978 Departmental Promotion-cum-selection Committee recommended the name of the petitioner and consequently he was promoted to the executive cadre i.e. E-1 grade from the post of Overman (non-executive cadre) and accordingly he assumed charge of Subordinate Mining Engineer on 9.9.1978. According to the petitioner, M/s. Coal India Limited Is sued a circular by which the staffing pattern was revised and promotional avenues were opened for mining Supervisory personnel. The, petitioner has relied upon Annexure-3 in support of the aforesaid contention relating to the policy of Coal India Limited. According to the learned counsel for the petitioner, Clause 1(B) of the aforementioned policy clearly shows that promotional avenue was decided to be opened for all Overman who was a recognized diploma holder and such promotional avenues were to be given to them right upto the executive E-5 grade.

5. The petitioner in the mean time was also conferred with an upgraded status to the E-2 grade vide order as contained at Annexure-4 whereafter he assumed the charge in the said E-2 grade on 7.5.1993.

6. There was some anomaly in relation to payment of the correct pay scale and also in relation to entitlement of the petitioner to one increment which led him to raise a grievance through a representation before the respondent No. 3 vide Annexure 6. In reply thereto, the petitioner was informed by Annexure-7 that he had been placed from E-1 to E-2 grade although the fact was that it was a mere upgradation. In other words what the respondents wanted to convey vide Annexure-7 was that the petitioner''s entry into E-2 grade was by placement through upgradation and not through promotion and therefore whatever pay scale was given to him was correct. Being aggrieved, the petitioner again filed a representation as stated at paragraph 14 of the Writ Application. The learned counsel for the petitioner on the other hand states and submits is that it was not a case of placement but it was a case of regular promotion and in support thereof he places reliance on Annexure-5 which according to the respondents is an order of placement whereas according to the petitioner, it was an order of promotion.

7. Learned counsel for the petitioner submits that the 3rd column states clearly that it is prior to promotion and further states that Annexure-5 is an office order by which pay scales were fixed after promotion. However, Mr. A.K. Mehta submits that the first line of the office order reads as follows.

"consequent upon placement of the following....."

Upon reading the aforesaid document Annexure-5, it is clear that even if the words (prior to promotion) has been used in the 3rd column, it cannot be said to mean that it was

actually a case of promotion inasmuch as the very first line begins with the words "consequent upon placement". If this document is read with Annexure-3, it will be evident vide Clause VII (page 23) that the existing subordinate Mining Engineers in E-1 grade who were matriculate or above were to be placed to E-2 grade automatically as a one time arrangement. Mr. A.K. Mehta produced the original of Annexure 3 for perusal of this Court and Clause VII reads as follows :

"The existing subordinate Mining Engineer in E-1 who are matriculate and above, will be placed in E-2 automatically as one time arrangement and will continue in E-1 grade as personal on them."

8. Thus the aforementioned Clause VII clearly stipulates that placement to E-2 grade would be automatic but they would continue to hold their substantive grade in the E-1 capacity. However, what Mr, H.K. Jha, learned counsel for the petitioner submits is that notwithstanding the said Clause VII, the petitioner does have a right to be considered to the next grade in view of Clause 1(B) of the Letter i.e. Annexure-3. He submits that in terms of Clause 1(B) (i) the petitioner has all the requisite qualifications inasmuch as he is a full fledged Diploma holder.

9. Countering the aforementioned submissions, however, Mr. A.K. Mehta, learned counsel for the respondents has submitted that Clause 4.10.2(d) of the Common Coal Cadre makes promotion beyond the E-1 grade permissible and worthy of consideration only if the Overman/Senior Overman possess the requisite statutory qualifications as laid down in the cadre scheme for Mining Discipline which according to him, in the instant case, is a second class Mines Manager''s certificate or competency or examination certificate. Clause 4.10.2 has been quoted at paragraph 5 of the Counter Affidavit. The requisite statutory qualifications as laid down in the cadre scheme for Mining discipline also requires a second Mines Manager Certificate of competency. Admitted case of the petitioner himself is that he only has a diploma in Mining and Mine Surveying which appears not to be in conformity with Clause 4.10.2(d) of the Common Coal Cadre.

10. However, what cannot be lost sight of and what cannot be ignored is that the petitioner was placed in the E-1 grade on 9.9.1978. A reading Clause 1(B) and VII of Annexure-3, it appears that both are repulsive to each other inasmuch as while Clause VII speaks of a mere placement to the E-2 and makes the existing subordinate mining Engineers to continue to be in the E-1 grade, Clause 1(B)(i) of the said letter opens up a vista for promotion even to a recognized diploma holders right upto E-5 grade. It is true that the Common Coal Cadre makes a second class Mines Manager''s certificate of competency a prerequisite eligibility criteria for purposes of promotion beyond E-1 grade but at the same time the Coal India Limited by Annexure-3, opens up vistas for promotion by their said letter dated 5/8.2.1993. It is true that a mere letter cannot be said to over ride the provisions of the Common Coal Cadre, but on harmonious construction and reading Annexure-3 along with the provisions of Common Coal Cadre, the Diploma holders should not be ignored. Accordingly, the writ Application is disposed off with a direction

upon the Chairman-cum-Managing Director of M/s. Bharat Coking Coal Limited to look into the matter and do the needful in accordance with law. It goes without saying that while dealing with the matter the said authority shall consider the harmonious construction referred to above.

With the aforesaid observations and directions this Writ Application stands disposed off.