

(2009) 08 JH CK 0037

Jharkhand High Court

Case No: None

Workmen of  
Nudkhurkee Colliery  
of Block II Area of  
Bharat Coking Coal  
Limited

APPELLANT

Vs

Employers in relation  
of the Management of  
Nudkhurkee Colliery  
of Block II Area of  
Bharat Coking Coal  
Limited

RESPONDENT

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Date of Decision: Aug. 19, 2009

Acts Referred:

- Industrial Disputes Act, 1947 - Section 10

Hon'ble Judges: Dabbiru Ganeshrao Patnaik, J

Bench: Single Bench

Final Decision: Dismissed

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### Judgement

D.G.R. Patnaik, J.

The present writ petition has been filed by the petitioner praying for quashing the order dated 17.6.2004 (Annexure 1) passed by the Central Government Industrial Tribunal No. 2, Dhanbad in Reference Case No. 225 of 1008 whereby, the Reference has been answered against the workmen. Further prayer has been made for issuance of a direction to the respondents to give wage protection to the concerned workmen and also to give them arrears thereof as well as future monetary benefits.

2. The Reference made by the Central Government under the provisions of Section 10 of the Industrial Disputes Act, 1947 on the basis of the dispute raised by the union representing the workmen, was as follows:

Whether denial of the Management of protect the wages of S/shri Jagdhari Das, Ramanand Chowhan, Omilal Shaw, Salchand Bhar, Birju Bhar, Usman Ansari and Pawaru Chowhan is justified? If not, to what relief the concerned workmen are entitled?

3. As per the written statement filed on behalf of the workmen, the stand taken by them was that the concerned workmen, were initially engaged as miner/loader in Group IV A as piece rated employees. Later, on the demand of the Union on behalf of the workmen, the Management by its office order dated 24.1.1991 confirmed the workmen as Tyndal in the year 1991, as time rated employees under the control of the Management of Nadkhurkee colliery. The grievance of the workmen was that upon their absorption as time rated employees, no wage protection was given to them, although the workmen were entitled to wage protection.

The demand for wage protection was advanced by the workmen on the following two grounds:

(i) while employed as piece rated employees, they used to earn wages at the rate of Rs. 88.38 per day whereas upon their absorption as time rate employees, their wages was fixed at a lesser rate i.e. Rs. 70.30 P per day;

(ii) one co-worker namely Surajdeo Dusash was also absorbed as time rated employee along with the concerned workmen by the same office order, but whereas the benefit of pay protection was given to him and he was given higher wages, the concerned workmen were denied similar benefit and the workmen have thus been discriminated.

4. The Management had submitted its written statement denying and disputing the entire claim of the workmen.

Stand taken by the Management was that the concerned workmen were employed as piece rated miners/loaders in the underground mines of Nudkhurkee colliery which was eventually closed down in 1991 on account of various mining problems. The underground colliery workers were thereafter transferred to various other collieries. However, the concerned workmen whose dispute was referred to in the present Reference Case, refused to comply with the order of their transfer and insisted for their deployment on surface in Block II Area of the Colliery. Further case of the Management was that the piece rated workers were entitled to wages as per the decision of the NCWA in different groups with minimum guarantee wages/fall back wages, subject to the condition that they may earn higher amount by doing more work on the job allotted to them. Such piece rated workers were divided in several groups for which several amounts have been fixed as minimum guarantee and fall back wages. Depending upon the nature of job performed by each piece rated worker, he gets the amount computed as per the work allotted; Thus, piece rated worker has no fixed rate of wages and he can claim only the minimum guarantee wages or fall back wages on different groups on which he has been

permanently absorbed.

Further case of the Management is that for the concerned workmen, upon their absorption as time rated employees, they were regularized as Tyndal Category IV and the minimum wages fixed for such category was accordingly fixed for them. It was further sought to be clarified that as piece rated employees, the concerned workmen were entitled to get Special Piece Rated Allowance, but since the NCWA V did not provide for merger of the Special Piece Rated Allowance with Minimum wages stipulated for the time rated employees, the concerned workmen could not claim entitlement to Special Piece Rated Allowance after their absorption as time rated employees.

5. Before the Tribunal, both the workmen and the Management had adduced evidences both oral and documentary. On considering the evidences, the Tribunal observed that though the workmen had claimed that they used to draw wages @ Rs. 88.38P per day while discharging their duties as piece rated workers, But they did not produce wage slips or any document to confirm this stand. The Tribunal further observed that in absence of proof that the workmen used to draw higher rate of wages than what was fixed for them after their absorption as time rate employees, the claim of the workmen that they should be given wage protection @ 18.08 per day is not tenable. Upon such finding, the Tribunal had held that there was no scope to give relief to the concerned workmen in respect of their claim for wage protection.

6. Assailing the impugned award of the Tribunal, learned Counsel for the workmen/petitioner argues that the Tribunal has erred in failing to appreciate the evidences adduced on behalf of the workmen. Elaborating his argument, learned Counsel would submit that the concerned workmen used to draw wages @Rs. 88.38 per day which was inclusive of all allowances and the Tribunal has ignored this aspect of the oral evidence of the witnesses. Learned Counsel further contends that the documentary evidence was adduced by way of pay slip issued to one of the concerned workman in the year 1996 and the corresponding wage slip issued to co worker Surajdeo Dusadh in the same year. Whereas in the wage slip of the concerned workmen Jagatdhari Das, the rate has been fixed at Rs. 70.30, the rate fixed for the aforesaid co worker was at the rate of Rs. 91/- per day. The Tribunal has erred in failing to consider this evidence or even to discuss the evidence adduced by the workmen and therefore the finding of the Tribunal is perverse and is against the weight of evidence on record.

7. Sri A.K. Mehta, learned Counsel for the Management while supporting the findings recorded by the Tribunal in the impugned order, would reiterate the same grounds as advanced before the Tribunal. Sri Mehta would explain that the onus was upon the sponsoring Union to prove that the workmen concerned used to draw wages @ Rs. 88.38 per day and in absence of proof, the workmen could not possibly claim any wage protection upon their absorption as time rated employees.

Sri Mehta, further contends that the claim of the workmen concerned for higher wages on the ground of parity with a co-worker is not only misconceived but is also beyond the scope of Reference and therefore, the Tribunal could not be called upon to discuss any evidence on the ground of parity of wages. Sri Mehta would add further that even otherwise, the Management, in its written statement, had explained that the said co worker namely Surajdeo Dusadh was initially absorbed as Tyndal Category II and thereafter as Tipper Khalasi in category II time rated job. Later, when he was regularised as Tyndal in the year 1993 and placed in category IV, the wages which he used to draw as Tipper khalasi in category II, was protected. The concerned workmen therefore cannot equate themselves with the co-worker Surajdeo Dusadh.

8. I have heard the learned Counsel for the parties and have gone through the impugned Award.

9. From the terms of reference the Tribunal was called upon to answer as to whether the denial of the Management to protect wages of the concerned workmen is justified or not?

Since the workmen concerned have demanded pay protection, the onus was on them to prove and establish that as piece rated workers, they used to draw higher rate of wages than what was fixed for them after they were absorbed as time rated workers.

10. From the impugned Award, it appears that the workmen have though made an oral claim, but they did not adduce any wage slip or document to confirm that they used to draw fixed wages of Rs. 88.38 per day. As explained by the learned Counsel for the Management and not disputed by the learned Counsel for the workmen, the amount of earning of piece rate workers would depend upon his own capacity to discharge the amount of work. As minimum fall back wages has been prescribed by the NCWA for piece rated employees and special allowance was also stipulated, minimum fall back wages plus special allowance was the minimum which the piece rated employee could earn per day. It is apparent therefore that he could earn more depending upon his capacity to work and execute greater amount of job. There could not possibly be any fixed wages for piece rated employee and if at all, the minimum he could draw, as observed above, was the minimum fall back wages plus special allowance.

11. Undisputedly, as per the NCWA V, the concerned workmen could not claim merger of the special allowance which they used to draw as piece rated workers, after their absorption as time rated employees. In absence of any document to confirm that they used to draw fixed wages at higher rate than what was fixed for them. upon their absorption as time rated employees, the Tribunal has rightly recorded its finding that the concerned workmen have not been able to establish that they are entitled to any wage protection as a matter of right.

12. As regards claim of the workmen of equal treatment with the co-employee, namely Surajdeo Dusadh, such claim, as rightly pointed out by the learned Counsel for the Management, is beyond the scope of Reference as because, the claim on the higher pay equal to what was given to co-worker Surajdeo Dusadh, is apparently on the ground of parity of wages and not on the ground of wage protection. The Tribunal was therefore not required to record its findings on the claim for parity of wages. The contention of the learned Counsel for the workmen that the terms of Reference has to be considered in a broader perspective to include the ground of parity of wages, appears to be misconceived.

13. Having gone through the award and the findings recorded therein, I am satisfied that the Tribunal has discussed the evidence adduced and has assigned reasons for the findings recorded therein. I do not find any perversity or impropriety in the findings recorded in the impugned award.

For the reasons discussed above, I do not find any merit in this writ petition. Accordingly, this writ petition is dismissed.