

(2003) 10 JH CK 0012

Jharkhand High Court

Case No: C.W.J.C. No. 2141 of 1993 (R)

Employers in relation to the
Management of Collieries of Tata
Iron and Steel Co. Ltd.

APPELLANT

Vs

Central Government, Industrial
Tribunal No. 2 and Others

RESPONDENT

Date of Decision: Oct. 12, 2003

Acts Referred:

- Constitution of India, 1950 - Article 226
- Industrial Disputes Act, 1947 - Section 10

Citation: (2004) 1 JCR 110

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

Bench: Single Bench

Advocate: G.M. Mishra, B.P. Verma and V. Mishra, for the Appellant; None, for the Respondent

Judgement

M.Y. Eqbal, J.

Heard Mr. G.M. Mishra. learned counsel for the petitioner. No one appears on behalf of the respondents inspite of service of notice.

2. In this writ application the petitioner has prayed for quashing the Award passed by the Central Government Industrial Tribunal No. 2, Dhanbad, whereby he has held that the workmen employed in a supervisory capacity in the petitioner's collieries namely Mining Sirdars and Overmen must be promoted in accordance with the instruction issued by the Committee known as the Joint Bipartite Committee for the Coal Industry and not in accordance with petitioner's own promotion policy.

3. The Government of India, Ministry of Labour in exercise of power conferred u/s 10 of the Industrial Disputes Act, 1947 referred the following disputes to the tribunal for adjudication vide their order dated 10.9.1986 :

"Whether the action of the Management of the Collieries of M/s. Tata Iron and Steel Co. Ltd. in not considering (1) Overmen having Diploma with 3 years of service of Overmen without Diploma having 5 years of service for promotion as Senior Overmen and (2) Mining Sirdars with 10 years of service for promotion as Safety Assistant/Production Assistant/Stowing Incharge etc. is justified ? If not, no relief are the concerned workmen entitled ?"

4. The concerned workmen in the reference case are the Mining Sirdars and Overmen of the Collieries of M/s. TISCO Ltd. who are also members of Tisco Mining Supervisor Progressive Front, a registered trade union. The case of the Union was that the Central Government constituted a committee for the purpose of collective bargaining between the employers in the Coal Industry and their workmen to look into the matters relating to wages service conditions, benefits and other facilities etc. The Committee was called Joint Bipartite Committee for the Coal Industry, The Said Committee brought about three agreement which were called NCWA-I, II and III. NCWA-III came into force from 1.1.1985 which was enforced till 30.12.1986. Another NCWA-IV came into existence and made effective with effect from 1.1.1987.

5. The case of the concerned Union is that the Committee so constituted framed the promotion policy which was circulated to all Coal Companies including petitioner -TISCO and the same were binding on them. The Management violated the said promotion policy and indulged in unfair labour practice. It is contended that the Management did not implement the said promotion rules rather selection have been made just to accommodate their few favourites.

6. The case of the Management was that the sponsoring union has not been recognized by the Management and therefore having no locus standi to raise industrial dispute on common issue involving general principles of promotion applicable to different categories of employees. It is contended that the promotion policy in respect of Mining Supervisor was not signed by the representative of the Management. Modified promotion policy framed by the Management have been signed by the representative of the recognized union.

7. The Tribunal after hearing the parties held that so far promotion of Mining Sirdars is concern, there is no need for any interview. The Tribunal further held that the claim of the supervisor personnel is genuine and bonafide.

8. Mr. G.M. Mishra, learned counsel appearing for the petitioner assailed the impugned award as being illegal, perverse and without jurisdiction. Learned counsel submitted that the direction to promote the Mining Sirdars and Overmen from retrospective effect from 22.6.1980 is arbitrary and without jurisdiction. Learned counsel submitted that award given by the Tribunal goes beyond the terms of reference is as much as the criteria for promotion was not in existence in 1980. Learned counsel drawn my attention to the supplementary affidavit filed by the Management on 26.10.02 which contains the list of all those Mining Sirdars and

Overmen promoted on different dates ranging from the date prior to the implementation of the terms of reference. Learned counsel submitted that even the General Secretary who has espoused the cause of two categories of employees namely the Mining Sirdars and Overmen has accepted the promotion as senior Mining Sirdars effective from 21.1.1998.

9. As noticed above the concerned union respondent No. 2 has been noticed twice by this Court but no one appeared on their behalf on the dates of hearing. No reply to the supplementary affidavit dated 26.10.02 has been filed by the respondent. In the supplementary affidavit filed by the Management it is stated that in terms of promotion policy of the Management all those Mining Sirdars and Overmen have been promoted on different dates. Even the General Secretary Sri Harikesh Choubey who has espoused the cause of the concerned workmen and filed counter affidavit accepted the promotion as senior Mining Sirdars w.e.f. 21.1.1998.

10. It was the specific case of the Management that the bipartite settlements were not signed and accepted by the Management and it was cleared by the Management that it can implement promotion cadre scheme to suit the local conditions. This was confirmed by a communication vide letter dated 18th August, 1980. From perusal of the award it appears that the Tribunal has taken notice of the dissenting note given by the petitioner Management to the Member Secretary JBCCI expressing certain difficulties in the implementation of Cadre scheme in toto. The Management agreed to implement the same with a modification to suit the local condition and that to in consultation with the union.

11. Taking into consideration the entire facts of the case and the subsequent supplementary affidavit filed by the petitioner Management I am of the opinion that the award needs modification to the extent that the Management shall implement the promotion policy with modification to suit the local condition and in consultation with the concerned recognized union.

12. This writ application is therefore, disposed of and the impugned award passed by the Tribunal is modified to the extent indicated hereinabove.