

(2002) 09 JH CK 0056
Jharkhand High Court
Case No: CWJC No. 2859 of 1994 (R)

Steel Authority of India Ltd.

APPELLANT

Vs

Baldeo Singh and Others

RESPONDENT

Date of Decision: Sept. 19, 2002

Acts Referred:

- Constitution of India, 1950 - Article 226

Hon'ble Judges: Tapen Sen, J

Bench: Single Bench

Advocate: K.K. Jha "Kamal", for the Appellant; S.N. Das, for the Respondent

Final Decision: Allowed

Judgement

Tapen Sen, J.

Heard Mr. K.K. Jha "Kamal", learned counsel for the petitioner and Mr. S.N. Das, learned counsel representing respondent No. 1.

2. The Writ Petition is directed against the award dated 29.4.1994 passed by the Presiding Officer, Labour Court, Bokaro Steel City (hereinafter referred to for the sake of brevity as the said Labour Court) in Reference Case No. 25/1998 whereby and whereunder the said Labour Court was pleased to direct the petitioner/Management to make respondent No. 1 (Baldeo Singh) senior to one J.P. Singh and pay the former the difference of wages and other consequential benefits within three months from the date of pronouncement of the award.

3. Mr. K.K. Jha "Kamal", learned counsel for the petitioner has at the very outset submitted that the award of the learned Labour Court is not only perverse but it is also totally unreasonable and is bereft of sound, legal principles. In order to illustrate his submission, Mr. K.K. Jha "Kamal" has very briefly but succinctly given a very short narration of the sequence of events which ultimately culminated in the passing the award. According to him and as would appear from paragraph 2 of the impugned award, the admitted case of the parties before the learned Labour Court

was that Baldeo Singh (respondent No. 1) joined in Bokaro Steel Plant in the Construction Department as a fitter on 8.4.1974. From the same paragraph, it also appears that J.P. Singh joined in the same capacity on 11.10.1973. The contention of Mr. K.K. Jha "Kamal" therefore is that the very starting point/entry of Baldeo Singh and J.P. Singh being 8.4.1974 and 11.10.1973 is itself a pointer to substantiate his submission to the effect that in fact J.P. Singh ranked senior to Baldeo Singh. That apart, from the same paragraph of the impugned award it is also apparent that Baldeo Singh (respondent No. 1) was appointed subsequently in the Operation Department as Operator-cum-Fitter Grade-III by office order dated 18.2.1977 and he was accordingly relieved with effect from 10.3.1977 whereafter he joined on 11.3.1977. On the other hand, J.P. Singh was appointed on a similar capacity and in the same Hot Strip Mill earlier than Baldeo Singh, namely, by office order dated 6/8.10.1976 and he was released for joining the Operation Department by order dated 31.12.1976.

4. Mr. K.K. Jha "Kamal"s contention therefore once again is that the undisputed and admitted case of the parties as has been recorded by the learned Labour Court in the manner indicated above establishes that J.P. Singh was definitely senior to Baldeo Singh (respondent No. 1).

5. Mr. K.K. Jha "Kamal", learned counsel for the, petitioner then submitted and stated that the only reason why the learned Labour Court proceeded to treat Baldeo Singh (respondent No. 1) as senior to J.P. Singh was because J.P. Singh was detained in the Cold Rolling Mill till the trial run of the Tandem Mill on loan basis and subsequently he was released on 4.4.1977. Mr. K.K. Jha "Kamal", learned counsel for the petitioner drawing the attention of this Court to Annexure 1, has stated that Annexure 1 which was marked Exhibit M-13 before the learned Labour Court, is another clear pointer to the fact that J.P. Singh had been detained till 4.4.1977 in the own interests of the Petitioner/Management and merely because he was released on 4.4.1977 (i.e. after the release of the respondent No. 1, Baldeo Singh) his seniority could not have been taken away nor could the Labour Court have come to a conclusion that by being so detained by the management he consequently lost his seniority.

6. There is much substance in what Mr. K.K. Jha "Kamal" has argued and this Court is inclined to agree with the submissions and points raised by him. In fact, paragraph 4 of the impugned award itself goes to show that the Labour Court totally misdirected itself inasmuch as it proceeded to frame the following question :--

"Whether the action of the management to allow seniority of Shri J.P. Singh-Operator-cum-Fitter Grade-I counted from the date of appointment in the Operation Department although he joined the said Department beyond 8 weeks from the date of issue of the order is proper and justified?"

7. The reference of 8 weeks was highlighted by Mr. S.N. Das, learned counsel appearing on behalf of the respondent No. 1 who stated that Annexure "A" appended to the Counter Affidavit (which was Exhibit M-3) made it mandatory upon people like the J.P. Singh and the respondent No. 1 to positively join the Operation Department within 8 weeks failing which their seniority would be counted from the date of joining in the Operation Department. The aforementioned Annexure "A" is an intra departmental circular and the relevant portion thereof would be worth quoting :--

"Their seniority in the Operation Department, will be counted from the date of issue of this order; provided, they join the Operation Department within 8 (eight) weeks from the date of issue of this order. On the event of their failure to join the Operation Department within 8 weeks from the date of issue of the order, their seniority will be counted from the date of actual joining in the Operation Department. However, the services rendered by them in the same grade in the Construction Department will be taken into account towards qualifying period for promotion in Operation Department. The promotion in Operation Department from lower scale to higher scale shall be subject to vacancies & requirement and shall not be time bound."

8. From the facts narrated above it is apparent that Baldeo Singh and J.P. Singh were initially appointed on dates which definitely showed J.P. Singh to be senior but merely because by Annexure 1 to the writ application J.P. Singh had been detained for a certain purpose in the own interests of the management, it cannot be said that he was himself responsible in not joining within the period of 8 (eight) weeks referred to above. The delay was actually "thrust" upon him by the management themselves as would appear from Annexure- 1 as a result whereof he joined later. This eventuality cannot frustrate nor destruct his seniority.

9. Another important aspect as to why Annexure "A" cannot be accepted to be proper is because from the facts stated above, it is absolutely clear that J.P. Singh had no role to play for the delay that was caused in relation to his joining the Operation Department. The circular, namely, Annexure "A" could have been made applicable had there been a voluntary act on the act of a person in deliberately delaying his joining the Operation department. In the absence of any such act attributed to J.P. Singh his seniority could not have been snatched away. It is, therefore, manifest ♦ that the impugned award, in so far as it proceeds to draw adverse inference upon the Petitioner, is held to be totally unwarranted and absolutely uncalled for. It is also equally important to take note of the fact that the Labour Court in the instant case appears to have not even heard J.P. Singh while passing the impugned award. This is also an additional point which ensures to the benefit of the Petitioner and the argument of Mr. S.N. Das, learned counsel for the respondent No. 1 to the effect that J.P. Singh was being sufficiently represented by the Management is not acceptable to this Court and is accordingly rejected.

10. In that view of the matter there was no justification on the part of the Labour Court to direct the Petitioner/Management to make Baldeo Singh senior to J.P, Singh together with the other consequential benefits.

11. For the reasons given above, this application must succeed. Accordingly, the impugned award dated 29.4.1994 passed by the Presiding Officer, Labour Court, Bokaro Steel City in Reference Case No. 25/ 1998 is hereby set aside.

However, there shall be no order as to costs.