

**(2003) 01 CAL CK 0021**

**Calcutta High Court**

**Case No:** M.A.T. No. 222 of 2000, C.A.N. 1341 of 2000 and C.O. No. 18626 (W) of 1995

Coal India Ltd.

APPELLANT

Vs

Paritosh Kumar Chakraborty

RESPONDENT

**Date of Decision:** Jan. 24, 2003

**Citation:** (2003) 1 ILR (Cal) 536

**Hon'ble Judges:** Ashok Kumar Mathur, C.J; Jayanta Kumar Biswas, J

**Bench:** Division Bench

**Advocate:** Alok Banerjee, P.K. Das and Mangal Santra, for the Appellant; Arabinda Chatterjee and Kakali Dutta, for the Respondent

**Final Decision:** Allowed

### **Judgement**

Ashok Kumar Mathur, C.J.

This is an appeal directed against the Order passed by a learned Single Judge of this Court dated December 22, 1999 whereby the learned Single Judge has allowed the writ petition and directed that the writ Petitioner be given a seniority in Grade E-3 with effect from the date the same was given to Mr. Nair within two months from the date of communication of that order. He further directed that as a result of this the Petitioner is entitled to re-fixation of his seniority in accordance with law in higher grade upto Grade E-5. Further it was made clear that the fixation of seniority will be notional and the Petitioner will not be entitled to any arrear of salary. Aggrieved against this Order the present appeal has been filed by the Management.

2. The Petitioner was initially appointed on September 23, 1983 as a Public Relation Officer in Bharat Coking Coal Limited. The Petitioner's service was terminated on March 29, 1995 by the General Manager (P), Coal India Limited and this was challenged by the Petitioner by a Writ Petition which was dismissed by the trial Court. However on appeal the appellate Court allowed the Writ Petition of the Petitioner by the Order dated March 18, 1998 and act aside the Order of the learned Single Judge. In pursuance of the judgment of this Court the Petitioner was reinstated on April 15, 1998 and he was posted as a Public Relation Officer. In

addition to that he was assigned the duty of Hindi Officer. The Petitioner thereafter was transferred to South Eastern Coalfields Limited as Public Relation Officer in E-2 Grade. Thereafter on November 22, 1989 he was promoted to the post of Senior Public Relation Officer in E-3 Grade with effect from March 31, 1989. One Sri A.K. Nair, Public Relation Officer in Western Coalfields Limited was promoted to E-3 Grade with effect from October 15, 1987. He was also appointed like the Petitioner in the Grade E-2. The Petitioner made a representation for his seniority in Grade E-3 in view of the fact that Sri A.K. Nair was promoted in E-3 Grade with effect from October 15, 1987 therefore similar treatment should be given to him. This representation was rejected by the Coal India Limited on the ground that there was no vacancy in the Public Relation Discipline of Bharat Coking Coal Limited in 1987, therefore the Petitioner's case could not be considered for appointment. Thereafter the Petitioner again made a representation on May 14, 1992 to the Chairman-cum-Managing Director, Bharat Coking Coal Limited on the same reasoning and contended that he should be promoted upto E-5 Grade. This representation of the Petitioner was allowed by the South Eastern Coalfields Limited and his date of entry in Grade E-3 was deemed from March 31, 1989 without any financial benefit, that is the date when he joined South Eastern Coalfields Limited. He again made a representation on January 3, 1995 to the Chairman-cum-Managing Director of Bharat Coking Coal Limited for granting him a notional seniority in E-3 Grade with effect from October 15, 1987, the date from which the seniority was given to said Sri A.K. Nair. This representation was forwarded by the Chairman-cum-Managing Director of Bharat Coking Coal Limited to the Chairman, Coal India Limited with a favourable remark. But the Coal India Limited informed the Petitioner that there was no vacancy available in Bharat Coking Coal Limited in E-3 Grade at the relevant point of time and because of non availability of the vacancies in the Bharat Coking Coal Limited he was transferred to the existing Grade E-2 in South Eastern Coalfields Limited and it was also pointed out that before centralisation of the executive cadre in E-1 to E-5 Grade with effect from April 1, 1993 the career growth of the executive posted in the subsidiary companies was being governed by the respective subsidiary companies depending upon the availability of vacancy, therefore Petitioner's prayer could not be accepted because of absence of vacancy at the relevant point of time in Bharat Coking Coal Limited. Therefore he filed the present writ petition seeking promotion in E-3 Grade with effect from October 15, 1987. The learned Single Judge allowed the writ petition as aforesaid.

3. We have heard Learned Counsel for the parties and perused the record. The first and foremost question is, whether on the basis of the so-called promotion given to Sri A.K. Nair in another subsidiary Company like Western Coalfields Limited can the Petitioner seek a writ of mandamus that he should be promoted on a similar line.

4. It is admitted fact that all these subsidiary Companies like Western Coalfields Limited, Bharat Coking Coal Limited, South Eastern Coalfields Limited and alike are

separate independent units and their promotion seniority depend on their availability of vacancies in that subsidiary companies. This was the position prior to April 1, 1993. Though after April 1, 1993 the position has been changed and one centralised executive cadre has been made for Grade E-1 to E-5 for all these subsidiary companies, but so far as we are concerned matter relates to prior to April 1, 1993 when all these subsidiary companies were independent units, promotion of the officers in these companies were governed according to availability of the vacancies in each company the main plank of the Petitioner was that a person who was similarly situated like him that Mr. Nair who was promoted in Western Coalfields Limited in E-3 Grade with effect from October 15, 1987 therefore similar promotion should be given to him. This argument of the Petitioner was answered by the Coal India Limited and Coal India Limited very categorically in their communication dated March 27, 1995 stated their position:

Shri Chakraborty was transferred to SECL in his existing grade i.e. E-2 grade Before centralisation of executive cadre in E-1 to E-5 grade w.e.f. 1.4.93, the career growth of the executives posted in the subsidiary companies was being governed by the respective subsidiary companies depending upon the availability of vacancies. Accordingly Sri Chakraborty was promoted from E-2 to E-3 and E-3 to E-4 grade by SECL.

Based on the above consideration the case of Shri Chakraborty for grant of notional seniority in E-3 grade w.e.f. 15.10.1987 i.o. the date from which Sri A.K. Nair was promoted to E-3 grade in WCL does not merit for consideration and, therefore, cannot be agreed to.

5. Therefore, this reply of the Coal India Limited correctly brings out the legal position that prior to 1993 all the subsidiary companies of the Coal India Limited were independent units and all these executive posts in the subsidiary companies were being governed by the respective subsidiary companies depending upon the availability of vacancies. It is only after 1993 the position has changed, but so far as the Petitioner is concerned he wants to have notional promotion for the purpose of seniority with effect from October 15, 1987 which cannot be conceded to in his favour for the simple reason that the incumbent belongs to Bharat Coking Coal Limited and there was no vacancy available there but he was transferred to South Eastern Coalfields Limited for his own benefit and he has been promoted from the date he joined South Eastern Coalfields Limited i.e. in 1989 where the vacancy was available.

6. The contention of the Appellant is that he is not responsible for non availability of post in South Eastern Coalfields Limited or Bharat Coal Coking Limited and he is entitled to the same because after his reinstatement as a result of the decision of this Court it was the obligation on the part of the management to have provided him a post in Bharat Coal Coking Limited itself either by reverting someone or creating supernumerary post. It is true that at the time when the Petitioner was

reinstated as a result of the judgment of this Court if he had filed a petition at the relevant time and insisted that he must be given Grade E-3 in the Bharat Coking Coal Limited or South Eastern Coalfields Limited perhaps it would have been possible to give such mandamus. But once he accepted the post in the South Eastern Coalfields Limited from 1989 as the same was available there and thereafter promoted to Grade E-4 and onwards now he cannot turn back and say at this distance of time that he should have been posted in Grade E-3 with effect from October 15, 1987. More so the reference of Nair's promotion in the Western Coalfields Limited has no relevance. As already mentioned, prior to 1993 all were separate subsidiary companies and the promotion of the executives of those companies depended on the availability of the vacancy and their seniority in that subsidiary companies. It is only after he having received promotion in 1989 in Grade E-4 he woke up to seek a remedy of retrospective promotion or a notional seniority by filing the present writ petition, that cannot be countenanced. At the initial stage after the judgment of the Division Bench, he should have approached the Court in time and should have made his grievance that he is entitled to be promoted in Grade E-3 with effect from October 15, 1987 in Bharat Coking Coal Limited or in South Eastern Coalfields Limited. But the same cannot be claimed at this distance of time and more so on the basis of promotion given to Mr. Nair in Western Coalfields Limited. Once the Petitioner had joined in South Eastern Coalfields Ltd. and has already availed the promotion in 1989 then it is not open for the Petitioner to seek a mandamus after a distance of time when rights of other parties have accrued by 1995 and that cannot be undone more so the ground on which he is seeking promotion. Therefore the view taken by the management appears to be justified.

7. Learned Counsel for the Respondent has invited our attention to a decision in the case of R.B. Desai and Another Vs. S.K. Khanolker and Others. This case does not help the Petitioner in any manner. It was held in the aforesaid case that when person from different sources enter a common cadre their seniority has to be counted from the date of their continuous initiation in the cadre to which they were appointed. This case hardly has any relevance so far as the Petitioner is concerned. So far as the appointment of the Petitioner in Grade E-3 is concerned, that was given to him in South Eastern Coalfields Limited as and when vacancy was available i.e. in 1989. Therefore this case hardly provide any assistance to the Petitioner.

8. In the case of Chhotu Ram v. State of Haryana, (2000) 10 SCC 399 . Their Lordships held that when retrospective promotion is likely to affect inter se seniority of others, then a show cause notice be given to other affected parties before finalising the seniority. This also has no relevance so far as the Petitioner is concerned.

9. In the case of Scientific Advisor to Raksha Mantri and Anr. v. V.M. Joseph(3) it was held that the service rendered on equivalent post in another organisation before unilateral transfer at own request such service can be counted for promotion but it cannot be counted for seniority. This also has no bearing on the controversy

involved in the present case.

10. Hence as a result of the above discussion we are of the opinion that the view taken by the learned Single Judge cannot be sustained and the same is set aside. The Writ Petition is dismissed. The appeal is allowed. However, there will be no order as to costs.

Jayanta Kumar Biswas, J.

11. I agree.