

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 4036 of 2007**

Sadhram S/o. Foddo, R/o. Old Miners Quarters, Post Office West Chirimiri Colliery, Pin. 497773 Chirimiri, Distt. Korea C.G

---- Petitioner**Versus**

1. South Eastern Coalfields Ltd. Through: The Chairman cum Managing Director, Seepat Road, Bilaspur (CG)
2. Sub - Area Manager West Chirimiri Colliery, South Eastern Coalfields Ltd. Chirimiri Area.
3. Senior Personal Officer West Chirimiri Colliery, South Eastern Coalfields Ltd. Chirimiri Area.
4. The Sub-Area Manager, NCPH Colliery, Chirimiri Area, Chirimiri Distt.-Korea (CG)
5. The Senior Personnel Officer, NCPH Colliery, Chirimiri Area, Chirimiri Distt.-Korea (CG)

---- Respondents

For Petitioner	:	Shri N. Naha Roy, Advocate
For Respondent / SECL	:	Shri Vinod Deshmukh, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****30/04/2018**

This petition has been filed by the petitioner for direction to respondents to pay difference of pay in the pay scale of category-IV and category-I for the period from 14/08/1995 to 12/04/2005 along with interest @ of 18 % per annum. The petitioner has also prayed for direction for payment of SPRA (Special Piece Rate Allowance) for the said period of ten years i.e. 14/08/1995 to 12/04/2005 at prevalent rates from time to time along with interest.

2. Factual basis for raising claim in the petition is that while the petitioner was working on a substantive post of Tub Loader in undermine duty with SECL, he met with an accident, due to which, he sustained injuries and became temporarily incapable to discharge the onerous duty of Tub-Loader. An order came to be passed on 14/07/1995 assigning him surface duty in the Security Department for a period of four weeks. According to the petitioner, later on, the medical board declared him fit for undermine duty but the petitioner was not sent for undermine duty and in this manner, the petitioner was deprived of higher wages which he would have received as Tub Loader in undermine duty during 10 years mentioned herein above. It is also submitted that the petitioner having applied, was again made to work as Tub-Loader since 16/04/2005 which duty he performed thereafter, but, he was not paid SPRA upto February, 2007. After March 2007 also, the petitioner was paid SPRA on a lower rate of Rs.14.10 whereas other similarly situated Tub Loaders were being paid SPRA @ Rs.92.28 as reflected from the pay slips (Annexures P/10 and P/11). Therefore, it is submitted that the respondents be directed to pay him wages and allowances as paid to the other Tub-Loaders.

3. Learned counsel for respondent / SECL would submit that after the petitioner was brought to surface duty in the Security Department, the petitioner enjoyed surface duty conveniently, without raising any grievance and in the year 2000, he expressed his desire that he may be absorbed in the Security Department itself. It was only on 18/12/2004 that the petitioner applied that he may again be sent for Tub Loading Work, whereafter, an order was passed on 16/04/2005 and the petitioner was then assigned onerous duty as Tub Loader. Therefore, the petitioner cannot claim wages of Tub Loader while continuing to work in surface. As far as payment of SPRA is concerned, it is submitted that the petitioner, from time to time, has been paid proper SPRA and he is not entitled to any further payment. It is further submitted that

infact, during surface duty period from 1995 to 2005, the petitioner was working in the security department not as a Security Guard but Category -I Majdoor.

4. It is not in dispute that while working as Tub Loader in undermine duty, the petitioner had suffered an accident due to which, he was temporarily restrained to work as Tub Loader. An order was passed on 14/07/1995 by which, the petitioner was assigned with four weeks surface duty, obviously because he was not fit. It is stated by the petitioner and not denied by the respondents that the medical report, later on, declared the petitioner fit for heavy duty. Thereafter, neither the respondent passed any order nor the petitioner insisted that he should again be given duty of Tub Loader. It is to be noticed that the Tub Loaders are paid wages of category – IV whereas the surface duty, which the petitioner was performing, he was actually being paid wages of category -I.

5. It appears that the petitioner was convenient in continuing with the surface duty even after he was declared medically fit and he was not interested in working as Tub Loader which is reflected from his own application dated 25/08/2000, by which, he requested the authorities to absorb him as Security Guard. It was as late as on 18/12/2004 that the petitioner requested that he may again be assigned with the work of Tub Loader under the mines. This conduct of the petitioner clearly dis-entitle him to the wages to which a Tub Loader is entitled to.

6. Undermine duties are much more onerous duty, carrying high risk and the respondents, therefore, have provided a different rate of wages than the wages provided for surface duty. It appears that when the petitioner had become medically fit, he never showed any interest to again join the undermine duty as Tub Loader but continued to work as Security Guard and in the year 2000 also, he prayed for his

absorption as Security Guard. It is not a case that despite petitioner's insistence, he was not allowed to join as Tub Loader which he was earlier holding prior to his accident. This conduct of the petitioner dis-entitles him to claim wages of Tub Loader in respect of the period he remained posted in surface duty. However, in response to the averment made by the petitioner in para 5.13 of his petition, respondent's reply, to say the least, is quite evasive. It is a categoric assertion of the petitioner in the pleadings that the petitioner was not paid SPRA till February, 2007. No material is placed on record that after the petitioner was shifted under order dated 14/07/1995, he was continuously paid SPRA. Further, a categoric assertion that even after March 2007, the petitioner was paid SPRA @ Rs.14.10 as against Rs.92.28 paid to other Tub Loaders, has also not been traversed by any material. It would, therefore, be clear that the petitioner is entitled to allowance of SPRA between the period from the date he started working as Tub Loader under order dated 16/04/2005 @ Rs.92.28 in view of the undisputed fact that other Tub Loaders are getting SPRA at this rate as is evident from Annexure P/10 and P/11. The petitioner would be entitled to simple rate of interest on the said amount from the date he started working as Tub Loader under order dated 16/04/2005.

7. The petition is accordingly partly allowed to the manner and to the extent indicated as above. No order as to costs.

Sd/-
(Manindra Mohan Shrivastava)
Judge