

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 6638 of 2010**

Vinod Kumar Tiwari S/o Late Shri S.K.Tiwari, aged about 43 years, Resident of Q. No. B-3, Shakti Nagar Colony, SECL Gevra, Post Gevra, District Korba, Chhattisgarh.

---- **Petitioner****Versus**

1. SECL, Through its CMD, Seepat Road, Bilaspur, Chhattisgarh.
2. General Manager, Central Excavation Workshop, SECL Korba, Chhattisgarh.

---- **Respondents**

For Petitioner	: Shri Anand Mohan Tiwari, Advocate.
For Respondents/SECL	: Shri Vinod Deshmukh, Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice**Order on Board****08/03/2019**

1. Heard learned counsel for the Petitioner and the Respondents.
2. For administrative reason, by notification contained in Annexure P/1 dated 03.05.1994/07.06.1994, an order of transfer was issued by the Coal India Limited (for short 'the CIL'), Calcutta Office. This order includes the name of the present Petitioner alongwith four other employees. The order of transfer indicates that their transfer to South Eastern Coalfields Limited, Bilaspur (for short 'the SECL') is in their existing capacity and grades.
3. Petitioner was a workman appointed by the North Eastern Coalfields (for short, 'the NEC') with a particular pay-scale of Rs.1405-69-1975-76-2565/-. However, when he came and joined his post and position under the SECL, Gevra Area, the Department of Personnel of SECL issued an office order dated 13.12.1994, Annexure P/2 to the writ application indicating that the pay-scale of the Petitioner would be reduced to Rs.1222-60-1702-66-2230/-.

4. Obviously, the Petitioner had reason to be aggrieved because his basic pay and salary came to be reduced after his joining in the SECL, Gevra Area without indicating any reason or without any notice or opportunity given to him.
5. The submission of the learned counsel for the Petitioner is that once having been appointed on a substantive basis on a particular post with a particular pay-scale, that advantage cannot be lost out on a decision to transfer him without his consent to another Coalfield on the so-called ground of administrative exigency. In fact, the notification contained in Annexure P/1 does not even indicate as to why such transfer had to be effected. The transfer order did indicate that it was on existing capacity and grade. Any decision taken by the Respondent-SECL after joining of the Petitioner under them, reducing the pay-scale or the post and position which he was holding is a decision which has civil consequences for him. For all practical purposes, it can also be treated to be a case of demotion which cannot be done without any opportunity of hearing, without any rationale or reason indicated therein.
6. No doubt, Annexure P/2 which is under challenge talks about some notification dated 06.12.1994 issued by the Personnel Department of the SECL, Gevra Area, but such notification by itself cannot be used against the Petitioner unless there are justifiable reasons available to the authorities to reduce his basic pay.
7. In the counter affidavit or return filed on behalf of the SECL, they take a preliminary objection that the Petitioner should raise an industrial dispute and the writ is not maintainable, which is negated by this Court, keeping in mind the period since the writ application has been pending for consideration. There is no necessity therefore to relegate the Petitioner to the Industrial Court on the issue.

8. Coming down to the explanation as to why the authorities have decided to reduce the pay-scale of the Petitioner, the reason given is that the wage structure of employees are framed by the CIL and in the said wage structure, the employees of NEC, Assam are given higher salary or wages vis-a-vis other subsidiary companies of the CIL. The decision therefore to reduce the basic pay of the Petitioner was to bring it in conformity with the similarly situated persons working in the SECL, especially Gevra Area.
9. This Court is not satisfied with the reason which has been offered by the SECL as the justification for reduction of the pay-scale of the Petitioner. The transfer of the Petitioner from NCE, Assam was a decision taken by the CIL unilaterally. He has carried his post and position by virtue of the order of transfer which does not indicate that his pay-scale or salary will get reduced by virtue of such transfer. The office order contained in Annexure P/1 is silent. Even otherwise, a person does not lose his perks and privileges specially salary on an order of transfer because any reduction in his pay-scale would amount to reduction in his stature, even though he may be substantively holding the post. Since the decision of transfer was taken by the CIL unilaterally, therefore, no decision contrary to the interest of the Petitioner could be taken by reducing his pay-scale to bring it in conformity with what was available to similarly placed employees in Gevra Area. It was his pay and it should be treated as his personal pay as he was not an appointee of SECL.
10. There is evidence to show that in a similar situation, the Respondent-SECL itself has given pay protection to some other employees. Why discrimination is being practiced in this case is not satisfactorily explained.
11. There was no necessity to bring the Petitioner's pay-scale at par with the other employees because this salary or pay will be available to the Petitioner on the basis of his selection and appointment on the post which

he held. Transfer cannot work to his detriment, therefore, this Court holds that the order contained in Annexure P/2 dated 13.12.1994 is an irrational order and therefore it is set aside.

12. The writ application is allowed. The Respondent-SECL is directed to make sure that they pay the difference between the pay-scale on which he was initially appointed i.e. 1405-69-1975-76-2565/- and corresponding revisions thereafter from time to time. A decision in this regard must be taken by the Respondent authorities within a period of eight weeks from the date of production of a copy of this order.

Sd/-
(Ajay Kumar Tripathi)
CHIEF JUSTICE