

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 3793 of 2010**

Shaikh Khuda Bakhsh S/o late Shaikh Kallan, aged about 52 years, working as Clerk Grade II, SECL, Kusmunda Area, Sect. G.V.T.C. Group Vocational Training Centre, Distt. Korba (CG)

---- Petitioner**Versus**

1. South Eastern Coalfield Limited, through its Chairman-cum-Managing Director, SECL, Head Quarter, Bilaspur (CG)
2. General Manager, South Eastern Coalfield Limited, Office of General Manager, SECL Kusmunda Area, Distt. Korba (CG)
3. Dy General Manager, Office of Sub Area Manager, Kusmunda Project, South Eastern Coalfield Limited, Distt. Korba (CG)

---- Respondents

For Petitioner	:	Mr. S. P. Kale, Advocate
For Respondents	:	Mr. Sudhir Kumar Bajpai, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****11.07.2019**

1. The present writ petition has been filed seeking for a direction to the respondents to grant the petitioner pay protection that the petitioner was drawing prior to his being sent to the clerical cadre in the year 1999 and the difference of arrears of wages from 20.04.1999 till the petitioner attained the age of superannuation on 31st of July, 2017.
2. The facts of the case in brief are that the petitioner was appointed as

General Mazoor Grade-I under the respondents way back on 19.12.1982. The petitioner working on the said post got promoted as General Mazoor Category-II on 20.06.1984 and thereafter, as EP Fitter Grade-E on 26.11.1986. He was promoted on the post of EP Fitter Grade-III on 19.04.1989. After working on the said post, the petitioner was again promoted as EP Fitter Grade-II on 21.06.1994. It is contended by the petitioner that he met with an accident while on duty in the year 1983 resulting in grievous injury. That on account of the injury the petitioner was unable to perform heavy work and therefore he had been requesting the Management for providing him light work. The petitioner is said to have made representations in between which stood rejected vide Annexure P-5 dated 31.10.1994. Meanwhile, the petitioner was provided light duty for a brief period and thereafter he was again sent back to his normal duty vide Annexure P-6 dated 15.04.1995. Thereafter, the petitioner again made continuous representations to the Department for again being provided light duty which was again declined by the Management vide Annexure P-7 dated 18.11.1995. Even thereafter the petitioner continued to make representations and one such representation was that of 15.11.1996. The concerned authority later on offered light duty to the petitioner by changing the petitioner's cadre as Clerk Grade-III vide Annexure P-8 dated 14.04.1999. While offering the said change of cadre, it was specifically brought to the notice of the petitioner that there would be loss of pay as he would be entitled for the salary and allowances only that of a Clerk Grade-III and for the loss of wages, the petitioner would not be permitted to raise any claim later on. This

was accepted by the petitioner though under protest and the petitioner joined his duty on 20.04.1999. Working on the said post again the petitioner got promoted to the post of Clerk Grade-II. Subsequently, the petitioner has now filed the writ petition seeking for the pay protection and the arrears of the difference of wages.

3. Contention of the counsel for the petitioner is that on account of the accidental injury that the petitioner had suffered in the course of employment, the petitioner should have been provided a light nature of job by the Management itself and should have ensured protection of pay. According to the petitioner, even when he was offered the change of cadre in Clerical cadre vide Annexure P-8 dated 14.04.1999 and he had accepted the same under protest, the Management did not refuse joining to the petitioner on clerical cadre. The petitioner enjoyed the benefits enshrined under the provisions of NCWA Chapter 9 dealing with Social Security wherein Clause 9.2.3 clearly reflects that an employee who is disabled due to an accident arising out of and during the course of employment will get pay protection. Counsel for the petitioner further relied upon the provisions of the Persons with Disabilities Act, 1995 and referring to Section 47 submitted that the Management under no circumstance has a right to dispense the services of an employee or reduce the rank of an employee who acquires the disability during service period. As per the said Act, the respondents should have ensured protection of pay and salary of the petitioner even if there is a change in cadre. Counsel for the petitioner further relied upon the judgment of the Supreme Court in the case of Kunal Singh Vs. Union of India and

another reported in AIR 2003 SC 1623 in this regard.

4. Per contra, counsel appearing for the respondents opposing the petition submits that it is a case where the petitioner has never suffered any disability from an accident that arose out of and in the course of employment. He submits that it is a case where even after the petitioner is said to have allegedly met with a mining accident in 1983, the petitioner has been granted 4 promotions within a span of 11 years which by itself shows that the petitioner was not suffering from any disability and as such there was no decline in the performance of his duty during the said period. He submits that there is no document available with the Management neither has the petitioner produced any such record along with the petition to establish any mining accident or injury suffered by the petitioner in the year 1983 to bring him under the purview of a person with disability arising out of an accidental injury while on duty. He further submits that the petitioner has now filed the writ petition at a belated stage and for this reason also the petition deserves to be rejected.
5. Having heard the contentions put forth on either side and on perusal of the record what primarily is evident from the documents enclosed with the writ petition is that the medical document which the petitioner has submitted, the earliest document available on record is one of 1990-92. There is no document prior to the said period. Moreover, there is no document or certificate or record to establish a mining accident in which the petitioner was involved in the year 1983. Neither is there any document to show any disability caused to the petitioner because of an accident. True it is that there are medical

reports along with the writ petition to show that the petitioner was not well or was undergoing some treatment. This by itself cannot be presumed to be one arising out of an accidental injury as has been disputed by the learned counsel for the respondents. It is evident from the record that the petitioner during this span from 1983 to 1994 got 4 promotions on 20.06.1984, 26.11.1986, 19.04.1989 & 21.06.1994. This itself would show that the petitioner has been considered fit enough for higher responsibility of job that is the reason why the petitioner could get promotion in regular succession during the said period.

6. Another aspect which cannot be lost sight is that the request for light nature job was first rejected by the Management on 31.10.1994 Annexure P-5. The petitioner did not think it proper to challenge the same before any forum except for again approaching the authorities by moving representations repeatedly. The request was turned down on many occasions i.e. on 18.11.1995 P-7 and then again on 07.08.2001. The rejection of the request of the petitioner on 07.08.2001 is one that took place subsequent to the petitioner having accepted his joining on clerical cadre yet the petitioner did not challenge the said rejection promptly and continued to work on the clerical cadre and then filed the writ petition on 04.05.2010 for the first time.
7. What is also relevant at this juncture to take note is that when the petitioner was offered clerical cadre from that of the cadre of EP Fitter Grade-II he was made to understand that on his joining on the Clerical cadre he would be put to loss of wages and that he would not be

permitted to raise a claim in respect of the loss of wages at a later stage. The petitioner though has accepted the same under protest yet voluntarily without any coercion or pressure from the Management joined his duty in clerical cadre and worked continuously again for more than 11 years before filing of the writ petition. In between the petitioner was found suitable and he was again promoted to the post of Clerk Grade-II. That with all these developments that have transpired in between, this Court finds it difficult to accept the contention of the petitioner that he suffered with some accidental injury in 1983 resulting grievous injury causing disability with which he was unable to perform heavy duty that he was doing prior to the accident that took place in 1983.

8. So far as the provisions of NCWA is concerned, this Court is of the opinion that that would be applicable only when there is a finding of the employee becoming disabled working in the post that he was working at the time of accident. There is no such finding or document in this regard in the instant case. So far as the rule provision of the Persons with Disabilities Act of 1995 is concerned, the same is also one which could be invoked in the event of a particular person getting disabled from discharging his normal duty that he was performing at the time of accident. The department in the instant case has never intended to either dispense the services of the petitioner or reduce his rank on account of any accidental injury or non performance of the petitioner because of any disability. Thus, the provisions of the said Act also would not be applicable.

9. So far as the judgment of the Supreme Court in the case of Kunal

Singh (supra) is concerned, in paragraph-12 which the petitioner relied upon itself clearly reflects that it would be applicable only when an employee received disability during his service and is found unsuitable for the post he was holding. This again is not the fact in the present case. The Department has never found him unsuitable on the post he was working, on the contrary the petitioner has been granted repeated promotions. Thus, the said judgment also would not come to the rescue of the petitioner.

- 10.** Thus, the writ petition does not have any force and the same being devoid of merits deserves to be and is accordingly dismissed.

**Sd/-
P. Sam Koshy
Judge**