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HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 663 of 2020**

B. K. Jha (Petitioner In Person) S/o Late Shri Kumar Jha Aged About 59 Years Occupation Services, Posted As Chief Manager (E And M) Presently Posted At Central Workshop, Korba, SECL, R/o Qtr. No.2B/5, Officer Colony, Korba, Police Station Kotwali Korba, Civil And Revenue District Korba, Chhattisgarh.

---- Petitioner**Versus**

1. South Eastern Coal Fields Limited Through The Chairman-Cum Managing Director, South Eastern Coalfields Limited, Seepat Road Bilaspur, District Bilaspur, Chhattisgarh- 495006
2. General Manager (Personnel/EE) SECL, Head Quarter Bilaspur, District Bilaspur, Chhattisgarh- 495006
3. General Manager South Eastern Coalfield Limited, Korba Area, District Korba, Chhattisgarh- 495677
4. Area Personnel Manager South Eastern Coalfield Limited, Korba Area, District Korba, Chhattisgarh- 495677

---- Respondents

For Petitioner	:	Mr. B.K. Jha, Petitioner in person
For Respondents	:	Mr. Vinod Deshmukh, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****08/12/2020**

1. The petitioner appearing in person has questioned the veracity of the order dated 26/27.12.2019 whereby the respondents have rejected the representation of the petitioner in respect of certain monetary claims pending before the respondents.
2. Brief facts relevant for the disposal of the present writ petition is that the petitioner is working as a Senior Manager (E&M). The relevant period involved in the instant litigation is the period between 01.04.2016 to April, 2017.

3. That, vide order dated 19.04.2016, the petitioner was posted as the Sub Area Engineer, Rajgamar Area. While discharging the duties as a Sub Area Engineer, the petitioner was conferred with certain additional charges that of Colliery Engineer w.e.f. 22.04.2016 and in addition was also given the charge of Sub Area Electrical Safety Officer w.e.f. 04.07.2016. The dispute involved in the present case is in respect of certain monetary claims raised by the petitioner, which have not been granted by the respondents. The claim raised by the petitioner is that of :
 - (a) Underground allowance,
 - (b) Lieu leave.
 - (c) Transfer grant
 - (d) Benefits on being conferred with the additional charge of Colliery Engineer as also the additional charge of Sub Area Electrical Safety Officer.
4. The petitioner in the past had filed a writ petition for the same reliefs i.e. the WPS No. 4261/2019, which was disposed of on 18.06.2019 directing the petitioner to approach the respondents by way a representation and the respondents in turn to decide the representation within a period of 90 days. Since the respondents could not take a decision within the stipulated period, they had moved an MCC before the High Court, which was allowed vide order dated 06.11.2019 and a further 60 days time was granted. Subsequently, the impugned order dated 26/27.12.2019 was passed rejecting the claim of the petitioner.
5. As regards the underground allowance is concerned, the claim of the petitioner was rejected for the reason that the petitioner has not made the minimum number of visits required for becoming eligible

for underground allowance. The petitioner referred to the instructions/regulations in this regard. So far as the underground allowance is concerned, it has been dealt with in the circular dated 07.02.1991. Clause 4 deals with the granting of underground allowance, which for ready reference is reproduced hereinunder:

“4. The payment of underground allowance should be linked with actual number of visits to the underground mines and proper rate on that account should be maintained at each colliery/mines. The Accounts Department should also ensure that payment of Underground Allowances should be made against separate claims and not made part of salary bills.”

6. Plain reading of the aforesaid provisions clearly reflects that all the executives referred to the said circular and who are required to visit the underground mines periodically would be entitled for the underground allowance. Rejection to the petitioner's claim is invoking the Clause 4(a), which again for ready reference is reproduced hereinunder:

“4(a). The payment of underground allowance will be regulated as follows:

- (i) For Asstt. Colliery Manager/Colliery Manager and other statutory personnel except other specifically mentioned below the minimum number of visits to the underground mines will be 4 days in a week or 15 days in a month of which one at least should be made during the night shift in every fortnight.**
- (ii) For Agent/Demand Agent, the minimum number of visit will be 2 per week or 8 in a month.**
- (iii) Executives visiting underground mines Headquarter and from CMPDIL and also non-technical executives working in the Mines/Areas would be counted for payment of underground allowance at a rate of 5% provided they make a minimum of 5 visits per month.**

If the number of visits fell short for some reason or other the amount of underground allowance will be reduced proportionately from the admissible amount of 15% or 5% of the basic pay as the case may be. Dearness allowance or ad hoc relief shall not be counted for the above purpose. The reason for failure or reason for not visiting the underground mines upto the required number has to be justified with facts and reasons.

It is clarified that if the number of visits exceeds the above numbers there will be no corresponding increase in the amount of underground allowance.”

7. Plain reading of the aforesaid clause would clearly reflect that the category of officers and executives reflected in the said clause are those who are working at the Colliery level, whereas the petitioner herein was working at the Area level. Thus the rejection of the claim of the petitioner so far as underground allowance is concerned, the same is not tenable and the finding of the respondents to that effect being erroneous deserves to be and is accordingly set-aside and it is held that the petitioner would be entitled for underground allowance in terms of Clause 4. There also does not seem to be any dispute so far as the details that are furnished by the petitioner in Form C providing the details of the periodical underground visits that the petitioner has made. Moreover the said allowance has been paid to many other similarly placed officers in the other Areas of the Respondents and in the same area in the past.
8. The next claim of the petitioner was in respect of lieu leave. The foremost contention of the petitioner as regards this claim is concerned, it has been submitted that the lieu leave claimed by the petitioner has been paid to a large number of executives in the Department. Thus, the claim of the petitioner on the ground of parity also could not have been rejected by the respondents. It was further the contention of the petitioner that the clause of the circular referred by the respondents in denying the claim also is not applicable, in as much as the respondents have relied upon a wrong Clause for rejecting the claim of the petitioner.

9. According to the petitioner, it is Clause 7.13.13 which would be applicable for the purpose of lieu leave and not Clause 7.13.1.1, which has been relied by the respondents. The petitioner again submits that the clause which has been relied by the respondents would not be applicable upon the officers working at the Area Headquarters, who do not have a fixed schedule or a roster so far as working on weekly holidays are concerned as they are required to work on weekly holidays as and when the exigency of service requires for the same. According to the petitioner, there was no requirement of an approval from a further superior authority so as to avail the benefit of lieu leave and the said Clause has not been applied for while granting the benefit of lieu leave, further similar if not identically placed officers in the Department have been paid the said lieu leave but it is only the petitioner who has been denied of the same..
10. Accordingly, this Court is of the opinion that since lieu leave has been granted to other similarly placed persons under similar set of facts, there is no reason, why the petitioner should not be entitled for the same. As regards, the Clause relied upon by the respondents there can be no doubt at all for reaching to the conclusion that the said Clause does not apply upon the executives and notified officers working at the headquarter level and the petitioner therefore is held to be entitled for the benefit of lieu leave.
11. As regards the transfer grant is concerned, the only reason for rejecting the claim of the petitioner was that the distance between

the two places of posting i.e. from the Area Headquarter Korba to Rajgamar Colliery was less than 32 kms. According to the petitioner, the petitioner has not claimed for transfer allowance neither has he claimed for traveling allowance, all that the petitioner has claimed for is for grant of transfer grant which is a certain percentage of basic pay paid to an officer upon a person being transferred. Another reason for denying the transfer grant to the petitioner was that the order of transfer has been made at the petitioner's own request, therefore, he would not be entitled for transfer grant. According to the petitioner, there is no reference whatsoever in the order of transfer of transferring the petitioner from the Area Headquarter Korba to Rajgamar Colliery to have been made on the personal request of the petitioner.

12. According to the petitioner the order of transfer clearly reflects it to be one issued on the administrative exigency. According to the petitioner, he was paid with the transfer grant when he was sent from Rajgamar Colliery to Headquarter Korba. Similarly, it was the contention of the petitioner that the Department subsequently again has granted transfer grant to the petitioner upon his being transfer back from Korba to Rajgamar and therefore when the Department themselves in the past have granted the benefit to the petitioner, there is no reason, why the petitioner should be denied the same for the present. The petitioner has also enclosed the documents to show the receipt of transfer grant on the two earlier occasions in respect of the change of posting between the same place i.e. between Korba to Rajgamar and Rajgamar to Korba.

13. Given the said documents along with the rejoinder with the writ petition and the proof of the petitioner having received the benefit in the past as also subsequently there is no reason, why the claim of the petitioner should be rejected this time. In view of the same, the rejection of the transfer grant payable to the petitioner is also held to be bad and it is ordered that the respondents shall immediately take steps for releasing of the transfer grant to the petitioner.
14. As regards the benefit of the additional charges that the petitioner has discharged for a period of 9-10 months between April, 2016 to April, 2017 the petitioner has not been able to show any document, circular, scheme, instructions, etc. which provides for grant of allowance in the course of discharging the additional duties.
15. In the absence of any specific Rule, Guideline, Instruction or Circular entitling an officer for certain extra monetary benefits in the course of discharging the additional charges the claim of the petitioner in this regard would not be sustainable and the claim of the petitioner therefore stands rejected outrightly.
16. In view of the same, the writ petition stands allowed in part and disposed of to the extent mentioned in the preceding paragraphs.

Sd/-
(P. Sam Koshy)
Judge

Ved