

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 159 of 2017

Gora Chand Choudhury S/o Shri Santosh Kumar Choudhary, Aged About 58 Years Working As Clerk, Grade III, C.M.P.D.I.L., R/ I- V, Seepat Road, Bilaspur, District Bilaspur, Chhattisgarh, R/o 201, Bela Apartment, 1st Floor, Rajeev Vihar, Bilaspur, District Bilaspur, Chhattisgarh

---- Petitioner

Versus

1. Chairman Cum Managing Director Central Mining Planning And Designing Head Quarter Gondwana Place Kanke Road, Ranchi- 8, Jharkhand
2. General Manager (Personnel), Central Mining Planning And Design Institute, H.Q. Gondwana Place Kanke Road, Ranchi (Jharkhand)
3. Regional Director (RI -5), C.M.P.D.I.L., R/ I- V, Seepat Road, Bilaspur, District Bilaspur, Chhattisgarh

----Respondents

For petitioner- Shri F.S. Khare, Advocate.

For respondents-Shri Vaibhav Shukla and Smt. Astha Shukla, Advocates.

Hon'ble Shri Justice Goutam Bhaduri

Order

30/01/2020

Heard.

1. Initially the petitioner along with Ghanshyam Kanak had filed a writ petition bearing number W.P. No.14956/2016 before the High Court of Madhya Pradesh at Jabalpur wherein on 8/11/2016 on objection having been raised with respect to petitioner's claim regarding territorial jurisdiction his name was deleted and Ghanshyam Kanak only remained as petitioner. The case of the Ghanshyam Kanak was initially decided by the High Court of Madhya Pradesh on 26/09/2019 wherein it was ordered that benefit of promotion made in favour of the said Ghanshyam Kanak on 19/01/1990 would be applicable. Since the petitioner's name was deleted on the ground of territorial jurisdiction instant petition subsequently came into being.

2. The petitioner contends that he was initially appointed on the post of General Category-I, Majdoor in the year 1987. Thereafter the service of the petitioner was regularized in 1989. The petitioner was promoted on 19/01/1990 after the screening committee was constituted to grant promotion. Subsequent thereto the petitioner was promoted to the post of LDC on 3/08/1993 (Annexure P-3) and the petitioner was promoted on the post of LDC (SLU) alongwith other similarly situated employee on 26/08/1999 (Annexure P-4). However two of the persons namely Shiv Prakash Sharma and Rameshwar Lal who were left out for consideration of promotion filed a reference case through their Union before the Central Government Industrial Tribunal (C.G.I.T.), Jabalpur that they were senior to A.K. Mishra, G.S. Kanak. The C.G.I.T. on 17/07/2000 passed an award in favour of Shiv Prakash Sharma and Rameshwar Lal and allowed the reference filed by the workman Shiv Prakash Sharma and Rameshwar Lal and set aside the promotion order dated 19/01/1990 which also affects the petitioner. Said award of 17/07/2000 was challenged by the Management before the High Court of Madhya Pradesh at Jabalpur in W.P. No.6362/2000 which was dismissed on 13/11/2000. Said order passed by the High Court of M.P. at Jabalpur were further assailed by the management in SLP(C) No.2003/2001 which was dismissed by the Supreme Court on 12/02/2001.

3. Thereafter on the basis of the award dated 17/07/2000 (Annexure P-5) show cause notice was issued to the petitioner on 12/03/2001 (Annexure P-7) and eventually order was passed on 23/05/2001 (Annexure P-8). By such order the Management de-categorized post of Clerk Grade-III which was held by the petitioner as on 19/01/1990. Being aggrieved by the order of de-categorization dated 23/05/2001, the petitioner challenged the order of de-categorization before the High Court of Jharkhand at Ranchi wherein the High Court directed the petitioner to prefer a representation to the Management and directed to decide in

accordance with law. When the representation of the petitioner was not decided, the petitioner preferred a petition bearing number W.P. No.1530/2006 before this court which was decided on 6/03/2013 and eventually award dated 17/07/2000 was set aside by Annexure P-9. Thereafter the petitioner preferred a representation to the respondents to reinstate him on the post of LDC (SLU), Grade-I and to grant further promotion and arrears on the ground that award dated 17/07/2000 passed by the C.G.I.T. has been quashed by the High Court. Representation was decided by the respondent on 3/06/2013 on the ground that the High Court at Bilaspur had only remitted back the matter to the C.G.I.T. for decision afresh. Thereafter on the basis of the fact that the case was referred to the C.G.I.T pursuant to the order of the High Court dated 6/03/2013 and the petitioner was given liberty to file written statement in support of his contention. The petitioner thereafter filed his written statement, produced the documents and cross examined the witness and submitted their statement before the C.G.I.T. The C.G.I.T. by award dated 22nd June, 2015 granted relief to the workmen Shiv Prakash Sharma and Rameshwar Lal which is Annexure P-12 and passed the following order at para-24:-

“24. In the result, award is passed as under:-

(1) The action of the Regional Director, CMPDIL RI-VI, Singrauli in superceeding Shri Seo Prakash Sharma and Shri Rameshwarlal General Mazdoor Cat-I by promoting/recategorising persons junior to them as clerk Grade III w.e.f. 19-1-90 is not legal and proper.

(2) IInd party management is directed to give benefit of deemed promotion to workmen Shri S.P. Sharma and Rameshwarlal from 19-1-90, the date promotions as Clerk Grade III were given to the junior employees Shri A.K. Mishra, G.S. Kanak and G.C. Choudhary.

Pay of both workmen be fixed and difference of amount be paid from the date of reference i.e. 25-5-95 within 30 days from the date of notification of award. In case of default, amount shall carry 9% interest per annum from the date of award till its realization.”

4. Thereby the order of promotion of the petitioner which was made on 19/01/1990 remained intact as no judicial pronouncement was made. It is further submitted that the Management challenged the award dated 22/06/2015 passed by the C.G.I.T., Jabalpur before the High Court at Jabalpur in W.P. No.1180/2016 which was eventually dismissed on 29/04/2016. After dismissal of the petition filed by the Management, this petitioner along with Ghanshyam Kanak filed the writ petition before the High Court of Madhya Pradesh at Jabalpur bearing number W.P. No.14956/2016 wherein by order dated 8/11/2016 the petitioner's name was deleted on the ground of territorial jurisdiction and the case of the Ghanshyam Kanak was decided by the High Court of Madhya Pradesh at Jabalpur on 26/09/2019 in W.P. No.14956/2016 by the following order which is reproduced hereunder:-

“Shri Laxmi Narayan Sakle, learned counsel for the petitioner.

Shri Anoop Nair, learned counsel for the respondents.

Heard on the question of admission.

By the instant petition, the petitioner is basically seeking implementation of the order passed by Central Government Industrial Tribunal on 22.06.2015 (Annexure-P/12) whereby promotion was granted to the petitioner on 19.01.1990 (Annexure-P/2) though was approved but simultaneously the Tribunal had also granted promotion to the juniors of the present petitioner and also directed the respondents to grant them benefit w.e.f. 19.01.1990. The case has a chequered history.

The petitioner was initially appointed on the post of General Category-I, Mazdoor in the year 1987 and thereafter was granted promotion vide order dated 19.01.1990 (Annexure P-2). The order of promotion was challenged before the CGIT by the Union of the petitioner and CGIT set aside that order on 17.07.2000 (Annexure P-5). The said order was again challenged by the present petitioner by filing writ petition i.e. W.P. No.6362/2000 before the High Court but that petition was dismissed vide order dated 13.11.2000 (Annexure P-6) then an SLP No.2003/2001 was preferred, which was also dismissed on 12.02.2001 and a show cause notice was issued in pursuance to the order dated 17.07.2000 (Annexure-P/5) which was challenged by the petitioner before the High Court of Jharkhand and that petition was disposed of vide order

dated 01.05.2001 (Annexure-R/5 herein) directing the respondents to consider the claim of the petitioner and pursuant to which his representation was rejected by the present respondents, saying that the order passed by the CGIT on 17.07.2000 is final and therefore, nothing can be done. The petitioner had again preferred a writ petition i.e. W.P. No. 1530/2006 before the High Court of Chhattisgarh in the year 2006 against the order of CGIT dated 17.07.2000 (Annexure-P/5). The said petition was decided vide order dated 06.03.2013 and order dated 17.07.2000 (Annexure P-5) was set aside and the matter was remitted back to the CGIT to give an opportunity of hearing to the petitioner and thereafter CGIT in pursuance to the remand order, passed an order dated 22.06.2015 (Annexure-P/12). The order passed by the CGIT was again challenged by the present respondents by filing a writ petition i.e. W.P. No. 1180/2016 before this Court and the same was dismissed, meaning thereby, the order passed by the CGIT on 22.06.2015 (Annexure-P/12) had attained finality as there was no further challenge made by any of the party against the order passed in W.P. No. 1180/2016 dismissing the petition filed by the present respondents.

In view of the above and the relief claimed by the petitioner in the present petition it is clear that the petitioner is claiming the benefit of the promotion granted to him w.e.f. 19.01.1990 (Annexure P-2) and in my opinion as per the existing facts and circumstances of the case, he is entitled to get the said benefit in pursuance to the order passed by the CGIT on 22.06.2015. The operative part of that order reads as under:-

“24. In the result, award is passed as under:-

- (1) The action of the Regional Director, CMPDIL RI-VI, Singrauli in superceeding Shri Seo Prakash Sharma and Shri Rameshwarlal General Mazdoor Cat-I by promoting/recategorising persons junior to them as clerk Grade III w.e.f. 19-1-90 is not legal and proper.
- (2) Ind party management is directed to give benefit of deemed promotion to workmen shri S.P. Sharma and Rameshwarlal from 19-1-90, the date promotions as Clerk Grade III were given to the junior employees Shri A. K. Mishra, G.S. Kanak and G.C. Choudhary.

Pay of both workmen be fixed and difference of amount be paid from the date of reference i.e. 25-5-95 within 30 days from the date of notification of award. In case of default, amount shall carry 9% interest per annum from the date of award till its realization.”

(emphasis supplied)

In view of the above, it is clear that the petitioner's promotion w.e.f.

19.01.1990 (Annexure-P/2) has never been disturbed by any of the Authorities, on the contrary in pursuance to which the Juniors of the petitioner have also been found entitled and the Tribunal has granted them notional promotion.

Accordingly, the petitioner is entitled to get the benefit of promotion made in his favour on 19.01.1990 (Annexure-P/2). Thus, the petition is allowed and the respondents are directed to give the benefit of promotion to the petitioner in pursuance to the order dated 19.01.1990 with all consequential benefits thereof within a period three months from today.

Needless to emphasize that this order is applicable to petitioner no.2 only i.e. Ghanshyam Kanak because name of petitioner No.1 Gorachand Choudhary has already been deleted from the array of the petitioners by order dated 08.11.2016.

Certified copy as per rules.”

5. The effect of this order would be that the petitioner too seeks implementation of the original promotion order dated 19/01/1990. Since the petitioner's promotion on 19/01/1990 was not disturbed by any of the authority and the junior of the petitioner were also been found entitled to be promoted which is already held in W.P. No.14956/2016, this petitioner too shall be entitled to the benefit of promotion made on 19/01/1990. Since it has been stated that the petitioner has retired on 31/01/2018, the petitioner shall be entitled to the consequential benefit pursuant to the promotion dated 19/01/1990 and consequential benefit shall also include the arrears of pay.

6. Accordingly, the petition is allowed and the respondents are directed to give the benefit of promotion to the petitioner in pursuance to the order dated 19/01/1990 with all consequential benefits including the arrears of pay thereof within a period six months from today.

Sd/-

(Goutam Bhaduri)

JUDGE