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HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition (S) No. 5767 of 2010**

G.K. Sharma, Aged about 55 years, S/o Late M.R. Sharma, Quarter No. D-10, Pragati Nagar, P.O. Dipka, Distt. Korba, Chhattisgarh.

---Petitioner**Versus**

1. Coal India Limited, Through its Chairman cum Managing Director, 10, Netaji Subhas Road, Kolkata – 700 001 (W.B.)
2. South Eastern Coalfields Limited Through its Chairman-cum-Managing Director, Seepat Road, Bilaspur, Chhattisgarh.
3. Krishna Murari Shrivastava, General Manager Civil, Mahanadi Coalfields Limited, Sambalpur, Orrisa.

--- Respondents

For Petitioner :- Mr. Gary Mukopadhyay, Advocate
For Respondents No. 1 and 2 :- Mr. R.K. Gupta, Advocate
For Respondent No. 3 :- None

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****17/08/2021**

1. Petitioner herein seeks direction to be given to respondent No. 1 for consideration of his case for promotion from the date on which his junior

respondent No. 3 has been promoted on the post of General Manager (Civil) with effect from 21/07/2010, with all consequential benefits.

2. Respondent No. 1 company considered the case of executives in E7 grade for promotion to E8 grade i.e. from the post of Chief Managers (Civil) to General Manager (Civil) in which the case of petitioner as well as other candidates was considered by the Departmental Promotion Committee on several dates from 26/04/2010 till 10/07/2010 and on 10/07/2010, the Departmental Promotion Committee found the petitioner along with other candidates eligible for promotion to the post of General Manager (Civil) and accordingly recommended to respondent No. 1 company to promote the said candidates in accordance with the provisions of the Common Coal Cadre.

3. The recommendation of the Departmental Promotion Committee was considered by respondent No. 1 company and vide order dated 21/07/2010 (Annexure P/1) other executives including respondent No. 3 who is junior to the petitioner were promoted on the post of General Manager (Civil) but petitioner's case for promotion on the post of General Manager (Civil) was

withheld, which has been challenged by the petitioner by way of filing this writ petition on 04/10/2010 seeking direction to respondent No. 1 for promotion on the said post. Meanwhile, by order dated 02/01/2012, petitioner has been promoted with effect from 15/10/2011 and now this writ petition has also been amended only claiming that he is entitled to be promoted on the said post with effect from 21/07/2010 as his junior respondent No. 3 was promoted on the said date whereas petitioner was denied promotion by respondent No. 1, which is arbitrary, perverse and without authority of law as on the date of order of promotion i.e. 21/07/2010, no departmental proceeding/criminal proceeding was pending against the petitioner in terms of Circular dated 14/05/2002 (Annexure P/4) issued by respondent No. 1 company.

4. Respondents No. 1 and 2 have filed joint return stating inter alia that petitioner was not entitled for promotion on the date on which other executives/respondent No. 3 was promoted and in paragraph 2 of the return, it has been stated that there was a vigilance enquiry pending against the petitioner which is still

pending involving serious allegations of commission of irregularities and misconduct in the matter of payment of compensation against acquisition of land under the Coal Bearing Area (ASO) Act, 1957 and the copy of the charge sheet issued on 08/10/2010 (Annexure R1-2) has been filed. Similarly, the copy of Common Coal Cadre (Annexure R1-3) has been filed to demonstrate that petitioner was not qualified for promotion on 21/07/2010 in view of the provisions contained therein.

5. Rejoinder has been filed by the petitioner refuting the averment made in the return and stating that on the date of consideration and promotion, no departmental proceeding/criminal proceeding was pending against him in terms of Circular dated 14/05/2002 (Annexure P/4) issued by respondent No. 1 company, as such, he has wrongly been denied promotion on the post of General Manager (Civil) on 21/07/2010.

6. Mr. Gary Mukopadhyay, learned counsel for the petitioner, would submit that respondent No. 1 company is absolutely unjustified in not considering the case of the petitioner and promoting him with effect from 21/07/2010 though

he was eligible for promotion on that date and he was duly recommended for promotion by the Departmental Promotion Committee. The act of respondent No. 1 company in not promoting the petitioner rather promoting respondent No. 3 who is junior to petitioner is ex-facie arbitrary and reflects non-application of mind. He would also submit that on 08/10/2010 (Annexure R1-2) the charge sheet is said to have been issued against the petitioner which is much later than the date of consideration of petitioner and other executives for promotion on the post of General Manager (Civil) by the Departmental Promotion Committee i.e. 10/07/2010 and thereafter, the date on which other executives except for the petitioner have been promoted on the said post on 21/07/2010 (Annexure P/1). No charge sheet was issued against the petitioner in between this period and it has been issued on 08/10/2010 (Annexure R1-2) and no document has been filed by respondent No. 1 company to demonstrate that any such adverse vigilance report has been issued against the petitioner in terms of Circular dated 14/05/2002 (Annexure P/4). He would rely upon the decision rendered

by the Supreme Court in the matter of **Coal India Ltd. And Others v. Saroj Kumar Mishra**¹ to submit that both respondents No. 1 and 2 Coal India Ltd. and South Eastern Coalfields Ltd. are "State" within the meaning of Article 12 of the Constitution of India and their action must, therefore, satisfy the test of reasonableness and fairness and petitioner's promotion has wrongly been withheld in the name of vigilance enquiry report whereas there was no such adverse vigilance report issued against the petitioner between 10/07/2010 to 21/07/2010. The filing of charge sheet on 08/10/2010 (Annexure R1-2) after three months of the date of consideration and promotion cannot be taken as a ground to deny promotion to which the petitioner was otherwise entitled to and that has to be deprecated by this Court, as such, direction may be given to respondent No. 1 company to grant promotion to the petitioner on the post of General Manager (Civil) with effect from 21/07/2010 i.e. the date on which petitioner's junior respondent No. 3 was promoted.

¹ (2007) 9 SCC 625

7. Mr. R.K. Gupta, learned counsel for respondents No. 1 and 2, would submit that relying upon Paragraph 4.13(b) of the Common Coal Cadre (Annexure R1-3), before issuance of order of promotion on the basis of the recommendation of appropriate Departmental Promotion Committee, clearance from the vigilance department has to be obtained and since this charge sheet dated 08/10/2010 (Annexure R1-2) was brought to the notice of respondent No. 1 company, the order of promotion was not issued in favour of petitioner on 21/07/2010 as in that charge sheet, the petitioner was inflicted with penalty of censure and subsequently, his case was considered for promotion and he has been promoted on the post of General Manager (Civil) on 02/01/2012.
8. None appeared on behalf of respondent No. 3 though served.
9. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and went through the records with utmost circumspection.
10. It is not in dispute that respondent No. 1 company being the Appointing Authority considered the case of the executives for

promotion from the post of Chief Manager (Civil) to General Manager (Civil) by constituting Departmental Promotion Committee, who met on several dates and on 10/07/2010, made recommendation for promotion of petitioner and other executives on the said post finding them suitable which is available at page 12 of paper book wherein petitioner stands at Serial No. 6 and respondent No. 3 stands at Serial No. 7. When the matter was placed before respondent No. 1 company for promotion of the executives on the basis of recommendation made by the Departmental Promotion Committee, order dated 21/07/2010 was passed by respondent No. 1 company promoting all of the other executives including respondent No. 3 except the petitioner.

11. It is the case of the petitioner that his promotion could have been withheld by respondent No. 1 company in terms of Circular dated 14/05/2002 which has been passed in supersession of earlier Circular, in which revised guidelines have been issued by respondent No. 1 company for withholding vigilance clearance, which states as under :-

COAL INDIA LIMITED

'COAL BHAWAN'

10 N.S. Road, KOLKATA – 700 001

No. CIL/c-5A(vi)/CCC/50729/33 Dated May 14,2002

OFFICE MEMORANDUM

Sub : Vigilance clearance in matters of promotion, confirmation, etc. of officers

Ref : (a) O.M. No. CIL/C-5(A)/50972 (Vol.I)Pt/1334 dated 19/27th June, 1979

Ref : (b) O.M. No. CMD/ECL/HQ/62/42 dated 08th January, 1981 issued by CMD, ECL incorporated as Annexure IV(2)(d) of Common Coal Cadre

In terms of O.M. No. CIL/C-5(A)/50972(Vol.I)Pt/1334 dated 19/27th June, 1979 the circumstances under which the vigilance clearance shall be withheld has been specified. As per said O.M. and prevailing guidelines/practice as per vigilance manual as contained in Chapter XIII of Common Coal Cadre, the grant of vigilance clearance shall be withheld on the following grounds :

- 1) Officers under suspension
- 2) Officers in respect of whom prosecution for a criminal charge is pending or sanction for prosecution has been issued or a decision has been taken to accord sanction for prosecution.
- 3) In the case of a Preliminary Enquiry, either by the CBI or departmental agencies, the competent authority, on consideration of the results of the investigation, has formed the opinion that a chargesheet may be issued on specific imputations for departmental action, and
- 4) In case of a regular case, the competent authority has decided to accord sanction for prosecution of the officer in Court.

Until the competent authority arrives at such a conclusion, the officer may be treated at par with others in the matter of promotion etc.

The aforesaid instructions have now been modified as per the letter No. 3S/DSP/1 dated 08th March, 2002 from Dy. Secretary, Government of India, Central Vigilance Commission passed on the judgement of Hon'ble Supreme Court in UOI v. K.V. Jankiraman (AIR 1991 SC 2010). As per the revised guidelines/instructions the vigilance clearance shall be withheld only on the following grounds :

- (a) When an officer is under suspension
- (b) When an officer in respect of whom a chargesheet has been issued and disciplinary proceedings are pending; and
- (c) When an officer in respect of whom prosecution for a criminal charge is pending."

It is further clarified that pending investigation or inclusion in agreed list/list of officers of doubtful integrity will not bar the promotion of an officer and unqualified vigilance clearance is to be accorded to these officers.

It is also to be ensured that there is no delay in issuing the chargesheet after a decision has been taken to initiate penalty proceedings. Any delay resulting in promotion of the erring officer shall be construed as a deliberate attempt to derive undue and unintended advantage as per aforesaid judgement of Hon'ble Supreme Court.

These instructions are in supersession of Annexure IV(2)(d) of Common Coal Cadre.

This is for strict compliance.

Sd/-
(CR Khisty)
DIRECTOR (PERS & IR)

12. A careful perusal of the aforesaid conditions would show that in order to withhold vigilance

clearance an officer must be under suspension or an officer against whom charge sheet has been issued and disciplinary proceedings are pending or an officer in respect of whom prosecution for a criminal charge is pending. The Memorandum also clarifies that pending investigation or inclusion in the agreed list or the list of officers of doubtful integrity will not bar the promotion of an officer. It has further been held that there cannot be delay in issuing the charge sheet after a decision has been taken to initiate penalty proceedings. The aforesaid Circular is said to have been issued according to the decision rendered by the Supreme Court in the matter of Union of India v. K.V. Jankiraman².

13. Reverting to the facts of the case in light of the aforesaid guidelines issued by respondent No. 1 company, it is quite vivid that though on 10/07/2010, admittedly, no enquiry chargesheet/criminal case was pending against the petitioner and that is the reason why Departmental Promotion Committee recommended the case of the petitioner for promoting him on the post of General Manager (Civil). Not only this,

2 AIR 1991 SC 2010

from 10/07/2010 to 21/07/2010, admittedly, no adverse report has been brought on record to withhold the promotion. Neither any adverse vigilance report against the petitioner has been brought on record nor any ground has been demonstrated to withhold the vigilance clearance of the petitioner.

14. At this stage, Mr. R.K. Gupta, learned counsel for respondents No. 1 and 2, would rely upon paragraph 4.13(b) of the Common Coal Cadre (Annexure R1-3), which states as under :-

"4.13 Vigilance Clearance

(b) Before issuing promotion orders on the basis of the recommendation of appropriate Departmental Promotion Committee, clearance from the vigilance department of the concerned company should be obtained. In case an executive has served more than two companies during the period of last five years, clearance from the vigilance departments of all the companies where the employee had worked previously should be obtained before issue of promotion order."

On the basis of the aforesaid provision of Common Coal Cadre, it has been contended that since vigilance clearance was not available, therefore, petitioner was not promoted and reliance has been placed upon the charge sheet dated 08/10/2010 (Annexure R1-2) issued by Mahanadi Coalfields Ltd. against the petitioner.

15. The charge sheet has been issued against the petitioner on 08/10/2010 (Annexure R1-2) whereas on 10/07/2010 when the meeting of Departmental Promotion Committee was held or on 21/07/2010 when the order of promotion of all other executives except for the petitioner was passed, no other ground for withholding the vigilance clearance has been brought on record whereas in the Circular dated 14/05/2002 (Annexure P/4), it has been clarified by respondent No. 1 company itself that pending investigation (if any) will not bar the promotion of an officer and vigilance clearance has to be accorded to these officers. As such, from the date of consideration on 10/07/2010 till the date of order of promotion on 21/07/2010, no ground was available to the respondent No. 1 company for withholding vigilance clearance and not promoting the petitioner on the post of General Manager (Civil) and merely because on 08/10/2010 (Annexure R1-2) the charge sheet has been filed, it will not give a ground to respondent No. 1 company to promote the petitioner on the post of General Manager (Civil).

16. In the decision rendered by the Supreme Court in **K.V. Jankiraman** (Supra), it is quite clear that only when a charge-memo in disciplinary proceeding or chargesheet in criminal prosecution is issued, then it can be said that disciplinary proceeding/criminal proceeding is initiated against the employee and therefore, becomes pending from the date of such issue. The pendency of the preliminary investigation prior to the stage of issue of charge-memo/chargesheet will not be sufficient and it would not be proper to withhold promotion because the preliminary investigation is not complete.

Paragraph 6 of the judgment states as under :-

"6... The contention advanced by the learned counsel for the appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc., does not impress us. The acceptance of this contention would result in injustice to the employees in many cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/charge-sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it would not take much

time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities would have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy."

In the instant case, the Circular dated 14/05/2002 (Annexure P/4) has been issued by respondent No. 1 company in line with the judgment passed by the Supreme Court in the matter of K.V. Jankiraman (supra).

17. The Supreme Court in the matter of Saroj Kumar Mishra (supra) has clearly held that Mahanadi Coalfields Ltd. is "State" within the meaning of Article 12 of the Constitution of India and its action must, therefore, satisfy the test of reasonableness and fairness. It has also been held that although an employee of a State is not entitled to promotion to a higher post as a matter of right, he is entitled to be considered therefor in terms of Article 16 of the Constitution of India and that a right of promotion can be withheld or kept in abeyance only in terms of rules. Rules operating in the field do not provide that only because some allegations have been made as against an officer

of the company, the same would itself justify keeping a valuable right to be considered for promotion of an employee in abeyance. Their Lordships further observed that the circular letters issued by the appellants Coal India Ltd. and Mahanadi Coalfields Ltd. put restrictions on a valuable right of an employee. They, therefore, are required to be construed strictly. Paragraph 13 and 18 of the judgment state as under :-

"13. The circular letters issued by the appellants put restrictions on a valuable right of an employee. They, therefore, are required to be construed strictly. So construed, there cannot be any doubt whatsoever that the conditions precedent contained therein must be satisfied before any action can be taken in that regard.

18. A departmental proceeding is ordinarily said to be initiated only when a charge-sheet is issued."

18. Thus, it is a case where petitioner's promotion has been withheld without there being any valid ground in terms of Circular dated 14/05/2002 (Annexure P/4). There is no such proceeding either departmental or criminal in terms of the said Circular (Annexure P/4) which was pending against the petitioner on 10/07/2010 when the case of petitioner along with other executives was considered by the Departmental Promotion

Committee or on 21/07/2010 (Annexure P/1) when the order of promotion was passed excluding petitioner. Moreover, nothing has been brought on record except the charge sheet dated 08/10/2010 / 08/11/2010 (Annexure R1-2) demonstrating that any adverse vigilance report was issued against the petitioner by respondent No. 1 company and the said charge sheet which has been filed three months after the date of promotion of other executives i.e. 21/07/2010 would not furnish a ground for withholding petitioner's promotion as according to provision 4.13(b) of the Common Coal Cadre vigilance clearance has to be obtained before issuing promotion orders and no such document has been brought on record to justify not granting promotion to the petitioner. As such, denying promotion to the petitioner on 21/07/2010 without following the conditions prescribed in the Circular dated 14/05/2002 (Annexure P/4) is violative of petitioner's valuable right under Articles 12 and 16 of the Constitution of India and that will give a lever to respondent No. 1 company to act arbitrarily and deny the promotional avenues to the employees. In sum and substance, the petitioner has wrongly been

denied promotion on the post of General Manager (Civil) on 21/07/2010 (Annexure P/1) in the name of vigilance clearance without there being any good ground for which respondent No. 1 company has acted arbitrarily.

19. As a fallout and consequence of the aforesaid discussion, it is held that petitioner is entitled to be promoted on the post of General Manager (Civil) with effect from 21/07/2010 and respondent No. 1 is directed to grant the same to the petitioner accordingly with all consequential service benefits. Petitioner will also be entitled for a cost of Rs. 10,000/- from respondent No. 1 company for illegally depriving him from the said post.

20. Accordingly, this writ petition is allowed to the extent indicated herein-above.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Sheet

WPS No. 5767 of 2010

G.K. Sharma **Versus** Coal India Limited & Ors.

SB

Hon'ble Shri Justice Sanjay K. Agrawal

16.09.2021	In the uploaded copy of order dated 17/08/2021, "Coal Bearing Area (ASO) Act, 1957" has been typed inadvertently in paragraph 4 of the order. It be read as "Coal Bearing Area (A & D) Act, 1957". Sd/- (Sanjay K. Agrawal) Judge
Harneet	