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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 4182 of 2022

Anil Kumar Chaudhary
Vs.
The Coal India Limited & Ors.

Mr. Partha Ghosh,
Mr. Amal Kumar Dutta,
Ms. Ria Paul,
Ms. Simran Sureka,
Mr. Debasish Das,
.... For the petitioner.

Mr. Shiv Shankar Banerjee,
Ms. Sauchita Barman Roy
... For Coal India Limited.

The petitioner joined Eastern Coalfields Limited (in short, ECL) as Pharmacist in a non-executive post in terms of an office order dated 17th October, 2015. As per ECL the date of joining of the petitioner is 27th October, 2015. On 16th October, 2015, Coal India Limited (in short, CIL) published an advertisement which is described as Career-cum-Departmental Selection from non-executive to executive cadre. The petitioner applied for such Career-cum-Departmental Selection process for Welfare/Personnel. As per the advertisement dated 16th October, 2015, there were total 111 tentative vacancies, including reserved vacancy for Scheduled Castes (in short “SC”) and Scheduled Tribes (in short “ST”) category in Welfare/Personnel cadre. The promotion as per the advertisement was initially intended to be in E1-Grade but later on in view of the judgment of this Court, as approved

by the Hon'ble Supreme Court, the appointment to the executive cadre was considered in E2-Grade. The petitioner was called for the examination held in the year 2016. However, the said examination was cancelled, as will appear from the order dated 21st January, 2020 and 18th December, 2020 passed by the High Court of Judicature at Bombay, Nagpur Bench, Nagpur, in Writ Petition No. 4315 of 2017 and Civil Application (W) No.1408 of 2020 filed in the said writ petition. These two orders are respectively at pages 25 and 24 of the report filed by CIL. In the re-initiated selection process conducted in 2021 the petitioner qualified in the written examination and thereafter in the interview and his name was admittedly included in the list of 345 candidates whose names were placed before the Departmental Promotion Committee (in short, DPC) in order of merit on the basis of the marks secured in the selection process. It is also an admitted position, as will appear from paragraph 5 of the report in the form of an affidavit filed by CIL that the petitioner's result was withheld as according to the DPC the cut-off date is 30th September, 2015 as per the advertisement, while the petitioner joined ECL on 27th October, 2015 and as such he is not entitled to be considered in the said selection process. A Committee has been constituted to see about petitioner's entitlement to be considered in the said selection process. The petitioner, therefor, according to CIL, could not be

considered for the promotion.

The cut-off date mentioned in the advertisement dated 16th October, 2015 reads as follows:-

“The cut-off date for acquiring requisite qualification and experience will be 30th September, 2015”.

The petitioner says that the petitioner acquired the requisite qualification necessary for Welfare/Personnel in E2-Grade of CIL prior to 16th October, 2015. There is no experience required as per the advertisement for Welfare/Personnel in any non-executive post of ECL. In this regard, the petitioner relies on qualification for Welfare/Personnel under serial no.12 at page 44 of the writ petition and says that he joined prior to the last date of application which is 26th December, 2015 and as such is entitled to participate in the selection process. Being successful in the examination the petitioner says that he ought to have been given appointment in E2 Grade.

The petitioner further says that he had not suppressed anything. The application form along with all particulars was scrutinized by the Screening Committee constituted in terms of the advertisement. After screening the petitioner was allowed to sit in the examination and such on the ground of “cut off” date the petitioner cannot be eliminated from the selection process that too after making to the merit list. CIL says that the selection process was restricted amongst the employees of CIL and

its subsidiaries for their career advancement. Unless one has worked in ECL on 30th September, 2015, being the cut-off date, he/she is not eligible to be considered. The petitioner admittedly joined after the cut-off date and as such was not an employee of ECL on that date hence he does not come within the zone of consideration for being considered for the promotion. CIL also says that issuance of Interview Call Letter does not disentitle CIL from rejecting the petitioner's candidature even at a subsequent stage in view of the provisions of clause (1) and (7) of the Interview Call Letter.

Clause (i) under the heading "scrutiny of bio-data particulars" a Screening Committee was to be constituted by the Director (Personnel) of the respective subsidiary company/GM (MP&IR) CIL in case of CIL/RSO/NEC to scrutinize the bio-data particulars strictly as per the relevant provisions/cadre scheme. The members of such Committee shall not be below the rank of E5 Grade and the In-Charge should be not below the rank of E7 Grade. Clause (v) of the same speaks of a Committee to be constituted by CIL consisting of senior level executives, dealing with the related issues from all subsidiary companies, duly nominated by the Director (P) of the concerned subsidiary and one representative from IR Division of CIL duly nominated by GM (MP&IR) to finally scrutinize the bio-data received from the subsidiary companies/CIL and submit the final list of eligible and

non-eligible candidates of all the thirteen disciplines. The petitioner's bio-data, therefor, has been scrutinized in this format once when he was permitted to participate in the selection process held in 2016, which was subsequently cancelled and again in the selection process that took place in 2021. After having been permitted to participate in the examination by the Screening Committee, it is too late in the day for CIL or ECL to say that the petitioner should have been placed in the list of non-eligible candidates as stated in paragraphs 2k, l and n of the affidavit filed by CIL. The argument of CIL that Clause (7) contained in the Interview Call Letter issued to the petitioner permits them to automatically cancel the candidature if after scrutiny at any later stage it is found that the candidate is otherwise ineligible despite of having secured a position in the merit list cannot also be accepted in view of the provision of Clause (i),(iv) and (v) contained under the heading 'Scrutiny of Bio-data Particulars' in the advertisement notice. This cancellation according to me should involve an act of deliberate suppression to secure benefit, perpetration of fraud, relying on forged, fabricated documents and of like nature. This is not in the instant case. In the instant case, the joining date of the petitioner, the cut-off date as per the advertisement and all other relevant data were available to the Screening Committee in terms of Clause (i) of "Scrutiny of Bio-data Particulars" as also available before

the Committee constituted under Clause (v) thereof. That apart, it was the responsibility of the concerned subsidiary, i.e. in case of petitioner, ECL, to ensure correctness of the data and genuinity of documents. It cannot be said that an anomalous situation as to the cut-off date in case of the petitioner arose in terms of Clause (7) of the Interview Call Letter issued to the petitioner at a subsequent stage after having been permitted to participate in selection process by the two committees specifically constituted to screen the candidate and decide on these issues. The petitioner could not have suppressed anything regarding his date of joining, educational qualification and other requisites. The Screening Committee as also the Committee under Clause (v) (supra) had considered the petitioner's application form with all details. There may at the highest be a difference in opinion regarding the cut-off date between the Committees constituted as per advertisement on one hand and the DPC on the other but that cannot be construed as an event of being otherwise ineligible on scrutiny at a later stage after seven years. The DPC on considering the cut-off date may have formed a different opinion contrary to that of the Screening Committee and the other Committee constituted as per the advertisement but such opinion of DPC cannot be a conclusive one to set aside the view of the two Committees allowing the petitioner to participate and reject the petitioner's candidature. In fact, the

candidature of the petitioner as per the affidavit has not been cancelled but has been kept withheld. Assuming without admitting that the interpretation as to the cut-off date made by DPC and sought to be propounded by CIL then also it is at the highest a plausible interpretation when the cut-off date is not elaborated in clear terms in the advertisement and therefor, brush aside the other plausible view taken by the two Committees to allow the petitioner to participate in the promotional process. It is therefor too late in the day particularly in view of the fact that seven years have elapsed in between to reject the petitioner's candidature being ineligible due to the cut-off date. It may so happen the scope of the petitioner getting the promotion may reduce to a great extent if he is disqualified for the cut-off date that too after being in the merit list. There may be also candidates who have reached the age of superannuation at the end of the selection process in 2021 due to delay which strikes at the root of a career advancement scheme of which CIL advocate. Considering all these aspects, I am inclined to give the petitioner the benefit of the interpretation permitting him to participate in the promotional process.

There were 111 tentative vacancies under Welfare/Personnel which includes SC and ST categories. The petitioner had applied and participated in the selection process under the SC category. On his result being withheld there appears to be two unfilled vacancies

as per the order dated 21st February, 2022 published by CIL. It is, however, not clear whether any of the two unfilled vacancies is under SC category. In the event after being successful in the examination under the selection process the petitioner cannot be deprived of the promotion only on the ground of the cut-off date being 30th September, 2015 while the petitioner joined ECL on 27th October, 2015 when no experience in non-executive post of ECL is stipulated in the advertisement.

The petitioner's case should, therefor, be reconsidered by the DPC without going into the disqualification on the basis of the cut-off date and permit the petitioner to E2 Executive Grade in any of the subsidiaries or CIL against the two unfilled vacancies if he conforms to all other requisites since he is already in the merit list and candidates securing less marks than the petitioner may have been promoted under the order dated 21st February, 2022. These benefits available to the petitioner if he is promoted will be prospective.

The entire exercise should be completed within one month from date and the result to be communicated within 7 days from the meeting of DPC.

The two unfilled vacancies under Welfare/Personnel shall not be filled up till after one month from the DPC finally declaring the result in respect of the petitioner in terms of the instant order.

All parties to act on the basis of a server copy of this order duly downloaded from the official website of this Court without insisting upon production of a certified copy thereof.

Nothing further remains to be adjudicated in this writ petition. The same is disposed of accordingly without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Arindam Mukherjee, J.)