

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

ORIGINAL SIDE

Present:

The Hon'ble Justice Subrata Talukdar

and

The Hon'ble Justice Krishna Rao

APOT 30 of 2021

With

IA No: GA 2 of 2021

Eastern Coalfields Limited

Versus

Ashes Kumar Roy & Ors.

Mr. Manik Das

Ms. Tanushree Dasgupta

.....For ECL

Mr. Partha Ghosh

Mr. Amal Kumar Dutta

Ms. Ria Paul

Mr. Debashis Das

.....For the respondents

Heard on : 27.04.2022

Judgment on : 26.08.2022

Krishna Rao, J.: This is an appeal against the judgement passed in WPO No. 272 of 2020 dt. 01.2.2020 wherein the Hon'ble Single Judge had allowed the writ petition and directed the appellant to immediately take steps for appointing the respondent/writ petitioner in an appropriate category, taking into account his Colour Blindness and Amblyopia, either under Group 'A' (directly connected with Coal Mining) or under Group 'B' as stipulated in the Medical Attendance Rules of Coal India Limited.

The respondent no. 1/ writ petitioner belongs to a family of land losers as the land of the petitioner was purchased by the appellant and as per the Land Loser Scheme of the Coal India Limited, the respondent no.1 is entitled to get an employment and the respondent no. 1 had applied for such employment. An interview was held and the petitioner was found eligible to get employment and accordingly the petitioner was directed to appear before the Medical Board for his medical examination.

The appellant herein by a letter dt. 11th December, 2019 informed the respondent no. 1 as he is unfit for employment since the respondent no. 1 has Colour Blindness and Amblyopia in the left eye. Being aggrieved with the said decision the respondent no.1 had preferred an appeal and by way of communication dt. 21st July, 2020 the appeal of the respondent no. 1 was turned down by confirming the decision of rejecting the application of the respondent no. 1 for employment.

The respondent no. 1 being aggrieved with communication dt. 11th December, 2019 and 21st July, 2020 had preferred writ application being

WPO 272 of 2020 which was disposed of by the Ld. Single Judge on 16.12.2020 by passing the following order :

“27. *Since the petitioner’s vision does not suffer from any other ailment than Amblyopia and Colour Blindness, the refusal to give appointment to the petitioner despite having considered him under the Land Loser Scheme was patently de hors the Law and the Rules of the CIL itself.*

28. *In such view of the matter, WPO 272 of 2020 is allowed, thereby setting aside the decision to reject the application of the petitioner to be appointed with the respondent no. 3 under the Land Loser Scheme, as borne out by the communications dated December 11, 2019 and July 21, 2020. Respondent no. 3 shall immediately take steps for appointing the petitioner in an appropriate category, taking into account his Colour Blindness and Amblyopia, either under Group ‘A’ (directly connected with Coal Mining) or under Group ‘B’ as stipulated in the Medical Attendance Rules of the CIL (Annexure P-12 at page-73 of the writ petition.”*

Mr. Manik Das, Ld. Counsel representing the appellant, submits that the respondent no. 1 is not entitled to get an employment either under Mines Rule, 1955 or under the Medical Rules of Coal India Limited. It is further contended that vision of the worse eye of the respondent no. 1 is lower than the standard set down in the Mines Rule, 1955 and the Medical Rule of Coal India Limited. Ld. Counsel for the appellant further submits that the standard set down for worse eye distant vision of the candidate concerned for pre-employment medical examination is 6/18 but the distant vision of the worse eye of the respondent is 6/24 C.

Mr. Das submits that Medical Attendance Rule of Coal India Ltd. shall prevail over the Mines Rule, 1955. It is further contended that Mines Rules, 1955 has been promulgated by the Government of India but the Medical Attendance Rule of Coal India Limited is being prepared by the department.

Mr. Das further submits that cause of special provisions shall apply in the case of conflict of laws only when both the laws are laid down by the legislature.

Mr. Das further submits that respondent no. 1 is suffering from Amblyopia, which is an organic disease and the respondent no. 1 cannot be declared fit for the employment. It is further contended that in a mining sector, cannot be said to be restricted to the surface job only and he might be required to do underground job also in which event, the colour blindness shall be an impediment.

Per Contra, Mr. Partha Ghosh, Ld. Counsel for the respondent no. 1 submits that relevant conditions are reflected in Form P-1, framed under Rule 29-F(1) and 29 (L) of the Mines Rules, 1955. Clause 4 (a) of Form P-1 stipulates that workers employed on surface and in opencast working should have a vision of 6/12 for the better eye and 6/18 for the worse eye. The required vision for workers employed below the ground are, respectively 6/6 and 6/9. It is further contended that Clause C provides that a person having only one eye which functions normally should not be employed below ground. For employed on surface, the vision of such a person in the other eye should be 6/12 with or without glasses.

Mr. Ghosh further submits that the respondent no.1 has vision of 6/12 in the worse eye and 6/6 in the better eye and thus the respondent no. 1 qualifies for employment above the surface. Mr. Ghosh relied upon the reports of the private medical institutions which indicate that the respondent no. 1 has vision of 6/6 in the right eye and 6/24 in the left eye.

Mr. Ghosh further submits that two sets of physical standards have been stipulated under Chapter VIII of the Medical Attendance Rules of Coal India Limited, i.e. employees in mining and allied jobs.

Mr. Ghosh submits that Group A relates to the minimum physical standard for all classes of employees directly connected with Coal Mining and Group B relates to such standard required for recruitment to posts other than Group A. It is further contended that Clause (xiii) under Group A specifies that the vision in the naked eye should be 6/12 and 6/6 respectively for the naked eye and, as corrected with glasses, for the better eye and for the worse eye, the standard is 6/24 for the naked eye and 6/9, taking into account correction with glasses.

Mr. Ghosh further submits that the respondent no.1 is seeking employment under the Land Loser Scheme which is a statutory right as admitted by the Eastern Coalfields Limited.

In the present appeal the following points are under consideration before us:

- (i) *Whether the color blindness and amblyopia in the left eye of the writ petitioner will debar the writ petitioner for getting employment under Land Loser Scheme of the appellant?*
- (ii) *Whether the Medical Attendance Rules of Coal India Limited or the Mines Rule, 1955 is applicable in the case of the writ petitioner?*

Admittedly, the land belonging to the family of the respondent/ writ petitioner was acquired/ purchased by the appellants and thus the petitioner became entitled to employment under the Land Loser Scheme of the Coal India Limited. After conducting interview the appellants have

directed the writ petitioner to appear before the Medical Board for his examination and after getting the report of the Medical Board it was informed to the writ petitioner on 11th December, 2019 that the writ petitioner is unfit for employment, since the writ petitioner is suffering from colour blindness and amblyopia in the left eye. Being aggrieved with the communication dt. 11th December, 2019, the writ petitioner had preferred an appeal before the appellate authority but the same was also rejected.

Rule 29B (a)(ii) and (b) of Mines Act, 1955 reads as follows :

“29B. Initial and periodical medical examinations.- After such date or dates as the Central Government may by notification in the Official Gazette appoint in this behalf, the owner, agent or manager of every mine shall make arrangements-

(a) (ii) for the initial medical examination of every person seeking employment in a mine, unless such person has already undergone within the preceding five years, a medical examination under these rules while in employment at another mine; and

(b) for the periodical medical examination of every person employed in the mine at intervals of not more than five years.”

As per Rule 29F (1) and 29L : Standard and report of Medical Examination is provided under Form – P1 which reads as follows :

“[FORM PI

[See rules 29F(1) and 29L]

***MEDICAL STANDARD OF FITNESS FOR REASONS
TO BE EMPLOYED IN MINES***

4. (a) Distant vision of eye with or without glasses should be not less than the following standard:-

	<i>For workers employed on surface and opencast workings</i>	<i>For workers employed in below ground</i>
<i>1. Better eye</i>	<i>6/12</i>	<i>6/6</i>
<i>2. Worse eye</i>	<i>6/18</i>	<i>6/9</i>

(b) Night blindness should be tested in special cases only in underground workers where the examining authority considers it necessary.

(c) A person having only one eye which functions normally should not be employed below ground. For employment on surface, the vision of such a person in the other eye should be 6/12 or without glasses. A person will be considered uniocular when there is physical loss of one eye or when there is functional loss of vision of one eye.

(d) Colour blindness will be tested only in special cases, where the job requires good colour discrimination. Only low grade colour perceptions will be tested with Edridge Green's lantern.

(e) There should not be squint where binocular vision is essential.

(f) There should not be any organic disease of the eyes which is likely to affect the distant vision within a period of five years."

Rule 29M of the said Rule reads as follows :

"29M. Unfit persons not to be employed.- (1) Where, as a result of an initial medical examination made under clause (a), or of a periodical medical examination under clause (b) of rule 29B a person has been declared unfit for employment in mines or in a particular category of mines or in any specified operations in mines, he shall not be employed or continue to be employed in mine or in the category of mine or on the operations specified, after the expiry of thirty days from the date of his medical examination unless he has filed an appeal under sub-rule (1) of rule 29J against the declaration."

Section 58 (kk) of the Mines Act, 1952 reads as follows :

"58. Power of Central Government to make rules.- The Central Government may, by notification in the Official Gazette, make rules consistent with this Act for all or any of the following purposes, namely:-

(kk) for requiring persons employed or seeking employment at mines to submit themselves for medical examination and for prohibiting on medical grounds the employment of any person at a mine either absolutely or in a particular capacity or in particular work.”

Section 2 (j) of the Mines Act, 1952 reads as follows :

“2. (j) *“mine means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on and includes-*

(i) all borings, bore holes, oil wells and accessory crude conditioning plants, including the pipe conveying mineral oil within the oil fields;

(ii) all shafts, in or adjacent to and belonging to a mine, whether in the course of being sunk or not;

(iii) all levels and inclined planes in the course of being driven;

(iv) all open cast workings;

(v) all conveyors or aerial rope-ways provided for the bringing into or removal from a mine of minerals or other articles or for the removal of refuse therefrom;

(vi) all adits, levels, planes, machinery, works, railways, tramways and sidings in or adjacent to and belonging to a mine;

(vii) all protective works being carried out in or adjacent to a mine;

(viii) all workshops and stores situated within the precincts of a mine and under the same management and used primarily for the purposes connected with that mine or a number of mines under the same management;

(ix) all power stations, transformer sub-stations, convertor stations, rectifier stations and accumulator, storage stations for supplying electricity solely or mainly for the purpose of working the mine or a number of mines under the same management;

(x) any premises for the time being used for depositing sand or other material for use in a mine or for depositing refuse from a mine or in which any operations in connection with such sand, refuse or other material is being carried on, being premises exclusively occupied by the owner of the mine;

(xi) any premises in or adjacent to and belonging to a mine on which any process ancillary to the getting dressing or preparation for sale of minerals or of coke is being carried on;]”

As per Chapter VIII Clause 1 A (viii) of the Medical Attendance Rule of Coal India Limited vision should be the following standards:

(xiii) Vision should be of the following standards:

	<i>Naked eye</i>	<i>Corrected with glasses</i>	<i>Near vision</i>
<i>Better eye</i>	6/12	6/6	0.6
<i>Worse eye</i>	6/24	6/9	0.8
<i>Or</i>			
<i>Each eye hypermetropia</i>	6/18	6/9	0.8

Clause B (xii) vision with regard to recruitment to the posts other than Group “A” reads as follows :

(xii) Vision should be of the following standard:

	With or without Glass				
Class of Service	Better eye (Distant vision)		Worse Eye (Near Vision)	Better Eye (Near Vision)	Worse Eye (Near Vision)
Class I & II employees	6/9	OR	6/12	0.6	0.8
	6/6		6/18	0.6	0.8
Class III Senior Subordinates Employees	6/12	OR	6/12	0.6	-
	6/9		6/18	0.6	
Junior Subordinate Class III, Class IV employees excluding watch & ward personnel	6/12	OR	NIL	No standard	
	6/18		6/18		

Clause 29A & 29F of the Mines Rules, 1955 reads as follows:

“29A. Applicability of this Chapter.- Nothing in this Chapter shall apply to persons who are employed purely on temporary or casual basis for a continuous period not exceeding six months.

29F. Standard and report of medical examination.- (1) The examining authority holding initial medical examination under sub-

clause (i) of clause (a), or periodical medical examination under clause (b) of rule 29B shall examine a person according to the standard laid down in Form P and the initial medical examination under sub-clause (ii) of clause (a) of rule 29B of all persons seeking employment in a mine shall be according to the standard laid down in Form P1.

(2) As soon as may be, after examination, a copy of the medical certificate in Form O, shall be issued by the examining authority to the person concerned by Registered post or delivered under receipt and another copy sent to the manager of the mine concerned by Registered post, or delivered under receipt.

(3) The examining authority shall retain the third copy of the medical certificate.

(4) In the case of periodical medical examination of a person, the examining authority shall also sent the copy of the previous medical certificates of the person concerned received in pursuance of sub-rule (1) of rule 29D , to the manager of the mine concerned.”

On consideration of Rule 29A, 29B and Chapter VIII of the Medical Attendance Rule this Court finds that the provisions of the above Rules are not applicable to the person who has applied for compassionate employment. The Medical Attendance Rules of Coal India Limited is applicable to Eastern Coalfield Limited. In the said Rule, Chapter VIII provides for pre-employment medical examination and this is distinct from periodical medical examination under the provisions of Rule 29A and 29B of the Mines Rule, 1955 although it has been stated in the said rule to be applicable to persons seeking employment.

In Mines Rule, 1955, it is mentioned about initial examination but the same relates to an employee who is examined for the first time after such rules came into operation and the same does not apply to pre-employment medical examination. The distinction has been clearly laid down in chapter VIII of the Coal India Medical Attendance Rule by placing the pre-

employment medical examination and medical examination of an employee into two different distinct classes. With regard to jobs directly related to mining, that is covered by Group 'A' of the Coal India Limited Regulations only a test has been mentioned in case of colour blindness, which meaning thereby to classify the types of job which can be allocated to a candidate. If it is taken the petitioner's worse eye vision is 6/24, the same falls within the permissible limit as stipulated in the chart provided in clause (xiii) of the Coal India Limited Rules. The specification of clause 4(f) in form P-1 of 1955 Rules, there is no direct proof that the Amblyopia of the petitioner is likely to affect distant vision within a period of five years from employment. As per the documents available on record proves that the vision of the petitioner remained within the bounds of 6/24 for the worse eye since his childhood till the date of his examination and thus clause 4(f) of Form P-1 is not applicable in the case of the petitioner.

Ld. Counsel for the appellant has relied upon the judgment reported in (2007)1 SCC 663 (Jaswant Singh Gill –versus- Bharat Cooking Coal Ltd. & Ors.) which read as follows:-

“9. The Rules framed by the Coal India Limited are not statutory rules. They have been made by the holding company of Respondent 1.

10. The provisions of the Act, therefore, must prevail over the Rules. Rule 27 of the Rules provides for recovery from gratuity only to the extent of loss caused to the Company by negligence or breach of orders or trust. Penalties, however, must be imposed so long an employee remains in service. Even if a disciplinary proceeding was initiated prior to the attaining of the age of superannuation, in the event, the employee retires from service, the question of imposing a major penalty by removal or dismissal from service would not arise. Rule 34.2 no doubt provides for continuation of a disciplinary proceeding despite retirement of employee if the same was initiated before his retirement

but the same would not mean that although he was permitted to retire and his services had not been extended for the said purpose, a major penalty in terms of Rule 27 can be imposed.”

The judgment relied by the counsel for the appellant stood overruled in the subsequent judgment reported in (2020)18 SCC 71 (Chairman –cum- Managing Director, Mahanadi Coalfields Limited –versus- Rabindranath Choubey) and held that :

“40. *We find it difficult to agree with the said decision in Jaswant Singh Gill as Rules hold the field and are not repugnant to provisions of the Payment of Gratuity Act, 1972. This Court held that Rules could not hold the field as they were not statutory; thus, the effect of the rule providing of deeming legal fiction as if he had continued in the service notwithstanding crossing the age of superannuation was not considered. Apart from that, the validity of Rules 34.2 or 34.3 could not have been decided as it was not in question in the said case. The Controlling Authority and the Appellate Authority ordered the payment of gratuity. The main ground employed was that in the order passed by the departmental authority, the quantum of damage or loss caused was not indicated, and it was not the case covered by Sections 4 (6)(a) and 4 (6)(b). A writ petition filed by the employer was dismissed. However, the intra-court appeal was allowed, and it was opined that the Controlling Authority could not have gone into the validity of the dismissal order and forfeiture of the gratuity since it was not an appellate authority of disciplinary authority imposing the punishment of dismissal. Thus, the jurisdictional scope in Jaswant Singh Gill was limited.*

41. *We are unable to agree with the decision rendered in Jaswant Singh Gill case inter alia for the following reasons:*

41.1. *The order of termination was not questioned, nor the authority under the Payment of Gratuity Act, 1972, had jurisdiction to deal with it.*

41.2. *The validity or enforceability and vires of Service Rules 34.2 and 34.3 were not questioned.*

41.3. *The Controlling Authority under the Payment of Gratuity Act, 1972, had no jurisdiction to go into the legality of order of the disciplinary authority.*

41.4. *The scope of the case before this Court was confined to validity of the order of the Controlling Authority and to questions which could have been dealt with by the Controlling Authority.*

41.5. *No fetter is caused on the efficacy of the Rules by Sections 4(1) and 4(6) of the Payment of Gratuity Act, 1972. The Rules need not be statutory to have efficacy as they are not repugnant to the Payment of Gratuity Act, 1972. This Court did not consider the scope of provisions of the Gratuity Act and provisions of Rule 34.2, providing legal fiction of employee deemed to be in service even after superannuation.*

41.6. *The Controlling Authority had no jurisdiction to deal with Rules 34.2 and 34.3 or to pronounce upon validity thereof or of dismissal. Thus, the observations made, travelling beyond the scope of the proceedings, cannot be said to be binding and cannot constitute the ratio with respect to continuance of departmental enquiry after superannuation and what kind of punishment can be imposed by an employer. The jurisdiction of authority was only to consider payment of gratuity under Section 4 (6) of the Payment of Gratuity Act, 1972.*

42. *Thus, we overrule the decision in Jaswant Singh Gill.”*

The writ petitioner has sought for an employment with the appellant, Eastern Coalfields Limited which is a subsidiary of Coal India Limited and the terms and conditions of the appointments of the writ petitioner shall be governed by the specific Medical Examination Rule issued by the said authority and thus we are of the considered view that Medical Attendance Rules of Coal India Limited prevail over the Mines Rule, 1955. It is pertinent to mentioned here that Mines Rule, 1955 is general provisions with respect of mines but the Coal India Limited Medical Attendance Rule specifically govern with regard to the employment in the Coal India Limited and its subsidiaries.

At the time of hearing of the instant appeal, the counsel for the writ petitioner/ respondent has brought to the notice of the guidelines dt. 07.01.2022 issued by the Eastern Coalfield Limited under the subject “*Providing employment opportunity to the Colour Blind Candidates under*

NCWA & Land Looser Scheme.” In the said guidelines it is mentioned in item No. 2:

“Item No. 02 – Providing employment opportunity to the Colour Blind candidates under NCWA & Land Looser Scheme.

i) Director (Finance)/ (Personnel) (Additional Charge) apprised the Empowered Committee of Functional Directors regarding the proposal for Providing employment opportunity to the Colour Blind candidates under NCWA & Land Looser Scheme. He also apprised that the proposal was earlier placed in the ECFDs meeting for deliberation, wherein ECFDs had directed to re-examine the proposal. The proposal has been re-examined and has been found that the rules relating to medical examination of new appointees has been incorporated in the Chapter VIII of the Medical Attendance Rules of CIL where pre-employment medical examination of new appointees is categorized in two groups. **Group A covers classes of employees directly connected with coal mining, i.e. Mining, Geological, Survey, Mechanical, Electrical, Electronics, Opencast Personnel, Mining Trainees, Authorized Drivers and Watch & Ward Employees etc.** Group B covers the posts other than A. CIL MA rules has stipulated minimum physical standards for Group A jobs while there is no mentioning of night blinders and colour blindness in Group B jobs. He also apprised that other subsidiaries of CIL viz. BCCL, CCL, MCL, NCL and SECL have considered the proposal for providing employment of the colour blind candidates.

(ii) In view of the above and details as brought out in the agenda, Empowered Committee of Functional Directors after detailed deliberation approved to provide employment to the candidates who are found fit so far as other medical standards are concerned except colour blind and suitable as per the scheme of land looser and NCWA as the case may be. The concerned candidates may be placed thereafter into the surface jobs other than Group A jobs as brought out in the agenda.

iii) Empowered Committee of Functional Directors (ECFDs) also directed Director (Finance)/ (Personnel) (Additional Charge) to intimate Director (P&IR), CIL in this regard and also put the matter in the ECL Board for its information.

Subsequently, subject matter has been brought under the notice of Director (P&IR), CIL and has been put in the ECL Board in its 346th meeting held on 23.12.2021.”

In the said guidelines, it is specifically mentioned that “Group B covers the post jobs other than A CIL MA rules has stipulated minimum physical

standards for Group A jobs while there is no mentioning of night blindness and colour blindness in Group B jobs. He also apprised that other subsidiaries of CIL viz. BCCL, CCL, MCL, NCL and SECL have considered the proposal for providing employment to the color blind candidates.”

In view of the above we thus hold that the Ld. Single Judge has not committed any error and the impugned order under appeal does not require any interference.

APOT 30 of 2021 stands **dismissed** and accordingly **IA No. GA 2 of 2021** is disposed of.

Parties shall be entitled to act on the basis of a server copy of the Judgment and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I agree.

(Subrata Talukdar, J.)

(Krishna Rao, J.)

Later:

Ld. Counsel for the appellant prayed for stay of the operation of the order for four weeks. Ld. Counsel for the respondent raised objection.

Considered the prayer made by the Counsel for the appellant and refused.

I agree.

(Subrata Talukdar, J.)

(Krishna Rao, J.)