

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO.2626 OF 2017

Rajesh Kumar Singh Chouhan s/o
Ram Bahadur Singh,
Aged about 48 years,
Occ.-working as Manager (Mining)
at Project and Planning Department,
Western Coalfields Ltd.,
Umred, Tah. Umred,
District Nagpur
R/o. 13/14 Mahanubhav Nagar,
Near Palloti School, Nagpur

...PETITIONER

VERSUS

1. Coal India Limited
(Govt. of India Undertaking)
through its Chairman,
Coal Bhavan, Premise No.04 MAR,
Plot No.AF-III, Action Area-1A,
New Town, Rajarhat,
Kolkata – 700156 (West Bengal)
2. Director (P & IR),
Coal India Limited,
through its Chairman,
Coal Bhavan, Premise No. 04 MAR,
Plot No. AF-III, Action Area – 1A,
New Town, Rajarhat,
Kolkata – 700156 (West Bengal)
3. Western Coal Fields Limited
(Govt. of India Undertaking)
through its
Chairman-cum-Managing Director
Coal Estate, Civil Lines,
Nagpur – 440001

4. Krishna Kumar Singh,
Sr. Manager (Min), C-56,
Bhalar Colony,
Po : Bhalar, Tq. Wani,
Distt. Yavatmal (M.S.) - 445304
5. Jivanlal R. Gaidhane,
Sr. Manager (Min),
Gondegaon Open Cast Mine,
Po : Gondegaon, Tq. Parseoni,
District Nagpur - 04

...RESPONDENTS

Shri Mohan Sudame, Advocate for the petitioner.
Shri Ajay Ghare, Advocate for the respondents.

CORAM : A.S. CHANDURKAR AND
URMILA JOSHI-PHALKE, JJ.

JUDGMENT RESERVED ON : JULY 11, 2022.

JUDGMENT PRONOUNCED ON : AUGUST 03, 2022.

JUDGMENT (Per Urmila Joshi-Phalke, J.)

Heard learned counsel for the parties.

2. The petitioner has challenged his bottom seniority in mining discipline fixed by respondent No.1-Coal India Ltd. in this writ petition.

3. The petitioner had joined service with respondent No.3 as Surveyor on 07/05/1990 at Saoner Mine No.1, Saoner, District Nagpur. As per the contention of the petitioner while working as a Surveyor, he had improved his professional qualification. He was promoted as Senior Survey Officer in a Survey Cadre on 01/02/2006. The post of Senior Survey Officer E-3 was equated and upgraded to E-4 vide Office Memorandum No.1345 dated 25/01/2010 issued by respondent No.1-Coal India Ltd.

4. It is further the contention of the petitioner that respondent No.1-Coal India Ltd. by Circular dated 07/09/2007 invited applications from the Executives working in Survey Discipline and fulfilling the criteria of minimum qualification and experience in the cadre of Mining 1st Class Channel and who are willing to be absorbed in mining discipline. It was further directed by the said circular that the interested Executives working in Survey Discipline has to forward their applications for complete bio-data together with EER rating for last three years to the Coal India Ltd. Headquarter by 25/09/2007. It was also clarified in the said circular that the cases of the said Executives working in the Survey Discipline had been referred to the Coal India Ltd. by their

companies for horizontal placement in 1st Class channel for consideration and, therefore, the applications were invited from the from the Executives in Survey discipline working in E-3/E-4 Grade for horizontal placement as there was a shortage of statutory personnel in Mining 1st Class discipline. The petitioner who was working in Survey discipline had submitted his application on 15/09/2007 along with his testimonials and bio-data. It is further the contention of the petitioner that as per Clause 12.2 of Common Coal Cadre and Operation of Executive Establishment Rule that if interdisciplinary movement is envisaged on a permanent basis due to lack of adequate personnel in a particular cadre/discipline, executive may be drawn from other discipline horizontally only on obtaining applications through internal notification within the Company.

5. It is further provided in Clause 12.3 that their service in the new cadre for the purpose of determination of seniority and eligibility will count from the date on which they entered their grade in the parent cadre. The petitioner was selected and placed by horizontal movement to the post of Assistant Colliery Manager in Mining 1st Class channel by order dated 01/02/2010. It was

mentioned in the order that the inter-se seniority of the above Executives in First Class channel consequent upon such horizontal placement would be fixed from the date of issue of this order with bottom seniority. As per the contention of the petitioner, the order dated 01/02/2010 was passed after three years from the date of circular issued dated 07/09/2007. During the said period, petitioner was working in the Survey cadre. It is alleged by the petitioner that putting him after horizontal placement at bottom seniority is contrary to Clause 12.3 of Common Coal Cadre Rules which clearly stipulated that for the purpose of determination of seniority, service in the new cadre (Mining Cadre) would be counted from the petitioner's grade in the parent cadre (Survey cadre) upon his selection to the post of Assistant Colliery Manager (Mining). He had joined the promotional post at Umred area of Western Coalfields Ltd. on 18/03/2010. He further contended that respondent No.1-Coal India Ltd. issued a communication dated 02/09/2009 placing petitioner at bottom seniority is contrary to the provisions of Common Coal Cadre. The petitioner was placed at bottom seniority after obtaining written consent. Said consent was not free consent and was out of compulsion. It is further the contention of the petitioner that as he was in dilemma that there

are no further promotional avenues or prospects in the cadre in Survey department and there being ample opportunities in vertical movement in the mining department, he had no other option but to give consent as desired by respondent No.1-Coal India Ltd. and accordingly he gave consent on 14/09/2009. The consent was to the effect that the petitioner had accepted bottom seniority in the existing grade from the date of issue of order of horizontal movement from Survey to Mining discipline. The petitioner contended that said consent was out of compulsion, not as a result of free consent rather he was forced and compelled to sign the consent. It was obtained by exercise of coercion and force.

6. Aggrieved by the order of respondent No.1-Coal India Ltd. placing the petitioner at bottom seniority in Mining cadre, he had submitted representations on 28/02/2013 and 22/09/2013 to respondent Nos.1 and 2 and reiterated his grievances. He had been made junior to his first class batch by five years. He had requested that his seniority and eligibility be counted from the date on which he entered in the grade in the parent cadre i.e. Survey discipline, but he had not received any response. Therefore, he had again sent representation on 08/12/2015 and claimed that his claim to E-4

grade is required to be reckoned from 30/09/2005 the date on which he entered into cadre of Senior Survey Officer in Survey discipline. As there was no response from respondent Nos.1 and 2 to his representations, he filed the present petition.

7. Respondent No.1-Coal India Ltd. has contested the petition by taking stand that the writ petition itself is not maintainable as hit by the principles of equitable estoppel as well as by delay and laches not explained by the petitioner in the writ petition.

8. It is further submitted by the respondent No.1-Coal India Ltd. that the petitioner was appointed on the post of Surveyor on 07/05/1990 and was promoted to the post of Senior Surveyor on 01/02/2006 which clearly demonstrates that the petitioner took as many as 16 years to reach to E-3 cadre in the Survey Department. The minimum qualification for the said promotional post is that the person must possess Survey Certificate and three years working experience. As there was less opportunity in the Survey discipline, petitioner had opted for the horizontal placement in Mining department in the same cadre. Clause 12 of the

Common Coal Cadre provides for such horizontal inter disciplinary movement. Clause 12(b) is applicable in the present case and internal notification as contemplated under Clause 12.2 was issued subsequently that due to lack of adequate personnel in Mining Department, the employees may be drawn from other disciplines only after obtaining applications through internal notification.

9. It is further submitted by the respondents that the petitioner had willingly submitted his application in response to the correspondence by the competent authority. The petitioner had submitted his consent on 14/09/2009. Thereafter he was selected to the post of Assistant Colliery Manager (Mining) on 01/02/2010. The petitioner gave consent to place him at the bottom of seniority in his existing grade from the date of issuance of order of horizontal movement to Survey department to Mining Department. In view of the said undertaking and the order he was placed in the horizontal placement, therefore, the petitioner has no right to question about the same. The writ petition is also liable to be dismissed for non-joinder of Krishna Kumar Singh as a respondent, since the petitioner has made a specific prayer to claim seniority above the said Krishna Kumar Singh without joining him as a party

respondent. For all above these reasons, writ petition deserves to be dismissed.

10. Heard Shri Mohan Sudame, learned Counsel for the petitioner. He reiterated the contentions as per the petition. In addition to that he submitted that seniority is one of the most important matter relating to condition of service because it has a direct bearing on the question of promotion to the next higher cadre. When promotion to the next higher cadre is based on the principles of seniority and merit, the seniority of an official is of utmost importance. Even where the promotion is governed by the principles of selection, still the seniority has its own importance, therefore, the fixation of seniority is very foundation for complying with fundamental rights guaranteed under Article 16(1) of the Constitution of India, because without fixation of seniority, there can be no consideration of the case of executives of Coal India Ltd. according to the petitioner's seniority.

11. He further submitted that respondent No.1-Coal India Ltd. issued a communication dated 02/09/2009 regarding horizontal movement from Survey to Mining department on

passing First Class Mine Manager Certificate of competency is contrary to the provisions of Common Coal Cadre. He further submitted that as per the specific provision in Common Coal Cadre Rules determination of seniority on horizontal inter disciplinary movement has in case of temporary basis. The committee recommends that officers may be moved as may be decided by the management from time to time and such officers should continue to be borne in their parent cadre. If inter disciplinary movement is envisaged on a permanent basis due to lack of adequate personnel in a particular cadre/discipline executives may be drawn from other discipline horizontally only on obtaining applications through internal notification within the Company. Selection from amongst the applicants shall be made on the basis of qualification, type of experience and aptitude for the new discipline. He further submitted that on permanent absorption in the new discipline the officers will be entitled to promotion only on the new discipline from service in the new cadre for the purpose of determination of seniority and eligibility will count from the date on which they entered their grade in the parent cadre. But in the present case, respondent No.1-Coal India Ltd. issued communication dated 02/09/2009 which is contrary to the said Rules, thus the action of

the respondent No.1-Coal India Ltd. is arbitrary, illegal and liable to be set aside.

12. In support of his contention, he placed reliance on *Central Inland Water Transport Corporation Limited and anr. Vs. Brojo Nath Ganguly and anr. (1986) 3 SCC 156* wherein it is held by the Hon'ble Apex Court that term in a contract of employment as also service rules of the Company providing for termination of services of permanent employees without assigning reasons on three months notice or pay in lieu thereof on either side held on facts unconscionable, arbitrary and opposed to public policy. He also placed reliance on *Olga Tellis and ors. Vs. Bombay Municipal Corporation and ors. AIR 1986 SC 180* wherein it is held that there can be no estoppel against the Constitution. The Constitution is not only the paramount law of the land but, it is the source and sustenance of all laws. Its provisions are conceived in public interest and are intended to serve a public purpose. The doctrine of estoppel is based on the principle that consistency in word and action imparts certainty and honesty to human affairs. He also placed reliance on *LIC of India and anr. Vs. Consumer Education & Research Centre and ors. (1995) 5 SCC 482* wherein it is held that

if a contract or a clause in a contract is found unreasonable or unfair or irrational, one must look to the relative bargaining power of the contracting parties. In dotted line contracts there would be no occasion for a weaker party to bargain or to assume to have equal bargaining power. On the basis of above said submission he submitted that the relief claimed by the petitioner that the communication of respondent No.1-Coal India Ltd. placing him at bottom seniority deserves to be set aside.

13. On the other hand Shri Ghare, learned Counsel for the respondents vehemently submitted that as per the petitioner he had given consent for the horizontal placement at bottom seniority in the year 2009 that is on 02/09/2009. He was selected and horizontally placed in a mining discipline by the order dated 01/02/2010. He joined the new posting as Assistant Colliery Manager (Mining) on 18/03/2010. First time he made his grievance about the bottom seniority by making representation after three years i.e. on 28/02/2013. Thus the writ petition is not maintainable in law by the delay and laches which was not explained by the petitioner in the writ petition. He further submitted that the petitioner had given his consent for horizontal

placement in Mining discipline at bottom seniority and, therefore, he is estopped from challenging the said seniority. He further submitted that the petitioner by his own consent accepted the bottom seniority as there was less opportunities for him in the Survey discipline. He cannot approbate and reprobate at the same time. He has already obtained the benefits from the said posting. Now he cannot complain about the same. In support of his contention Shri Ghare, learned Counsel placed his reliance on ***Union of India and ors. Vs. N. Murugesan and ors. (2022) 2 SCC 25*** wherein it is held that a person who knows that if he objects to an instrument, he will not get benefit he wants cannot be allowed to do so while enjoying fruits – One cannot take advantage of one part while rejecting rest – A person cannot be allowed to have benefit of an instrument while questioning same – Such a party either has to affirm or disaffirm transaction – This principle has to be applied with more vigour as a common law principle, if such a party actually enjoys the one part fully and on near completion of said enjoyment, thereafter questions other part – An element of fair play is inbuilt in this principle – It is also a species of estoppel dealing with conduct of a party. He also relied upon ***Government of Andhra Pradesh and ors. Vs. M.A. Kareem and ors. 1991 Supp (2)***

SCC 183 wherein it is held that voluntary transfer to another organisation by forgoing previous service – Held, claim for previous service could not be raised on the ground that the Government at one stage considered to accept transfer by allowing benefit of previous service or that transfer had to be treated in public interest. It is further held that the courts and tribunals should be slow in disturbing the settled affairs in a service for such a long period. Besides, the respondents, in the application before the Tribunal, did not implead their colleagues who have been prejudicially affected by the impugned judgment.

14. After hearing both the sides and on perusal of the record admittedly the petitioner had joined service as a Surveyor on 07/05/1990 with respondent No.3-Western Coalfields at Saoner Mine No.1. During this tenure of service in Survey department he had improved his qualification and passed First Class Mine Manager Competency Certificate in the year 2006. On 01/02/2006, he was promoted as a Senior Survey Officer. Thus the petitioner's parent cadre was Survey cadre. It appears that the ladder of promotion in Survey Department was like:

Surveyor → Assistant Surveyor → Senior Survey Officer → Deputy

Manager Survey → Manager Survey → Senior Manager Survey → Chief Manager Survey → General Manager Survey.

15. The highest posting in the Survey department is the General Manager Survey. After 16 years of initial service, petitioner was promoted as a Senior Survey Officer on 01/02/2006. Needless to say that it is an admitted position by the petitioner that there was less future prospects in his parent cadre i.e. Survey discipline. It is apparent from pleading of the petitioner and the documents that on 07/09/2007, Coal India Ltd. issued a circular mentioning that the cases of some of the executives working in Survey discipline who have passed First Class Mine Manager Competency Certificate and requested for horizontal placement in First Class channel have been referred to Coal India Ltd. by their companies for consideration. The communication further shows that the issue was put up before the competent authority and it had been decided that the issue and internal circular as per provisions of Common Coal Cadre for horizontal placement of all those executives in Survey discipline working in E-3/E-4 grade and who have passed First Class Mine Manager Competency Certificate having regard to the shortage of statutory personnel in mining discipline is to be

considered. Accordingly, applications were invited from the executives who were working in the Survey discipline and who were fulfilling the criteria of minimum qualification and experience as prescribed in the cadre scheme of mining First Class channel and who were willing to be absorbed in mining First Class channel. The concerned companies are directed to forward the applications by 25/09/2007. It was further directed that the applications of the willing executives working in the Survey discipline to be forwarded along with bio-data together with EER rating for last three years. In accordance with the said communication, petitioner had submitted his application with bio-data on 15/09/2007. Thereafter on 02/09/2009, respondent No.1-Coal India Ltd. issued one communication mentioning that the following Survey officers in E-3 grade who had submitted representation for considering their request for horizontal movement from Survey department to mining discipline and who had passed First Class Mine Manager Competency Certificate are :

1. Shri Vijay Prakash Singh
2. Shri Akhilesh Pandey
3. Shri Rajesh Kr. Singh Chouhan (petitioner)
4. Shri Akhouri Ajay Kumar and
5. Shri Jaharlal Das.

16. By the said communication, the concerned companies wherein these executives were working were asked to obtain their consent for horizontal placement in a mining discipline with immediate effect with bottom seniority in their existing E-three grade. It was directed that the concerned executives may be asked to submit written consent for acceptance of bottom seniority in their existing grade from the date of issuance of order of such horizontal movement and furnish the same to the office of respondent No.1-Coal India Ltd. for further necessary action into the matter. The petitioner had submitted his consent on 14/09/2009. Accordingly, the petitioner who was Senior Survey Officer was considered for horizontal placement in mining discipline at E-4 from 01/02/2010. The petitioner had also placed on record the seniority list.

17. After three years of joining the Mining discipline, the petitioner had raised grievance to consider his seniority from the effective date of passing First Class Mining Manager Certificate of Competency.

18. Before discussing the issue raised by the petitioner, it is necessary to see the rules laid down in Common Coal Cadre. The

Rule 12 of the said Common Coal Cadre states about determination of seniority on horizontal inter disciplinary movement. This issue has the following aspects :

“(a) Movement of officers from one discipline to the other temporarily;

(b) Movement of officers from one discipline to the other on permanent basis.

12.1 As regards inter-disciplinary movement on temporary basis, the Committee recommends that officers may be moved as may be decided by the management from time to time and such officers should continue to be borne on their parent cadre. Such horizontal movement should not put the executive concerned in a disadvantageous position in career prospects in his parent cadre and for the purpose of computing the period of eligibility for promotion to the next grade in his present cadre, the period spent in other discipline should also be counted.

12.2. If inter-disciplinary movement is envisaged on a permanent basis due to lack of adequate personnel in a particular cadre/discipline, executives may be drawn from other disciplines horizontally only on obtaining applications through internal notification within the company. In the event of such induction at levels above E-5 or when adequate number of persons are not available within the company in case of officers up to E-5, inter-company notification should be issued. Selection from amongst the applicants shall be made on the basis of qualifications, type of experience and aptitude for the new discipline. In such cases, the officers selected for the new discipline may be kept on probation for a period of one year before their permanent absorption in the new discipline. Permanent

absorption on successful completion of the probation will be subject to suitability. If the executive is found to be unsuitable, he would be reverted to his parent discipline.

12.3 During the probationary period referred to in para 12.2 above the officers will continue to be borne on their parent cadre and would be eligible for promotion in that cadre as per rules. On permanent absorption in the new discipline, the officers will be entitled to be considered for promotion only in the new discipline. Their service in the new cadre for the purpose of determination of seniority and eligibility will count from the date on which they entered their grade in the parent cadre.”

19. Admittedly, the seniority confers a very valuable right on an employee and his entire future career is at times dependent upon such seniority. In the present case, the petitioner was well aware about his future prospects in his parent cadre i.e. Survey discipline. He joined service on 07/05/1990 as a Surveyor. He could reach as a Senior Survey Officer within 16 years as he was promoted on 01/02/2006 as Senior Survey Officer. The petitioner himself had admitted that there were no further promotional avenues or prospects in his parent cadre whereas ample opportunities were available in the Mining department. The petitioner had after giving thoughtful considerations to the future prospects available in mining department responded to the offer of

respondent No.1-Coal India Ltd. The language used in the circular shows that it was the request of executives working in Survey discipline in various companies who have passed First Class Mining Manager Certificate of Competency to be considered for horizontal placement in Mining cadre. In accordance with the Common Coal Cadre Rules, Competent authority of respondent No.1-Coal India Ltd. had decided to consider the request of the executives working in the Survey department for their horizontal placement in Mining department who were serving as an executives in Survey discipline in E-3/E-4 grade and who had passed MMCC. Accordingly, applications with bio-data and experience were called by respondent No.1-Coal India Ltd. Thus, respondent No.1-Coal India Ltd. had invited the application and in response to the said invitations by way of circular and as there was no bright future prospects in the parent cadre i.e. Survey discipline, the petitioner had given application for horizontal placement in Mining cadre. The pleading of the petitioner itself shows that he was not having bright future prospects in the Survey discipline. Admittedly, while considering the application for horizontal placement, respondent No.1-Coal India Ltd. issued communication on 02/09/2009 mentioning that five Survey Officers including the petitioner in E-3

grade have submitted representations which are considered for horizontal placement from Survey to Mining discipline who had passed First Class Mining Manager Certificate of Competency. On scrutiny of the same and considering the anomalies which may occur in future upon such horizontal movement Company had decided that the request for the horizontal movement cannot be considered from any prospective dates but only with immediate effect with bottom seniority in their existing E-3 grade after obtaining written consent for the same from the executives concerned. Accordingly, respondent No.1-Coal India Ltd. asked the concerned executives to submit written consent for acceptance of bottom seniority in their existing grade from the date of issuance of order of such horizontal movement and asked to furnish the same to the office of respondent No.1-Coal India Ltd. for further necessary action into the matter. The name of the petitioner was included in the list of above said five Survey Officers. On 14/09/2009, the petitioner submitted his consent letter. It is apparent that the petitioner had accepted the condition of bottom seniority as there was better future prospects in mining cadre than his parent cadre. Thereafter on 01/02/2010, the petitioner was appointed as Assistant Colliery Manager in Mining First Class

channel. For the first time, the petitioner had after three years made a grievance of bottom seniority. He contended that his consent was not free consent and it was coercion and out of compulsion. He had not taken such grounds in his representations dated 28/02/2013 and 22/09/2013.

20. Shri Ghare, learned Counsel for the respondents vehemently submitted that the petitioner cannot approbate and reprobate at the same time. He cannot take advantage of post he is holding and made grievance of rest of the condition when he had accepted the same. He rightly relied upon Union of India and ors. Vs. N. Murugesan and ors. (*supra*) wherein the Hon'ble Apex Court held that the phrases "approbate" and "reprobate" are borrowed from Scots law. They would only mean that no party can be allowed to accept and reject the same thing, and thus one cannot blow hot and cold. The principle behind the doctrine of election is inbuilt in the concept of approbate and reprobate. Once again, it is a principle of equity coming under the contours of common law. Therefore, he who knows that if he objects to an instrument, he will not get the benefit he wants cannot be allowed to do so while enjoying the fruits. One cannot take advantage of one part while

rejecting the rest. A person cannot be allowed to have the benefit of an instrument while questioning the same. Such a party either has to affirm or disaffirm the transaction. This principle has to be applied with more vigour as a common law principle, if such a party actually enjoys the one part fully and on near completion of the said enjoyment, thereafter questions the other part. An element of fair play is inbuilt in this principle. It is also a species of estoppel dealing with the conduct of a party. He further submitted that the grievance of the petitioner made by him is after unreasonable delay. Said delay is not explained by the petitioner. Admittedly, petitioner had given his consent on 14/09/2009. Thereafter he joined his service as a Survey Colliery Manager on 18/03/2010 and first time he made his grievance by making representation after three year i.e. on 28/02/2013. There is no explanation from the petitioner about the said delay. The entire issue raised by the petitioner is that he was placed horizontally at bottom seniority and his consent was not free consent. It was coercion and out of compulsion. The facts on record shows that the circular was issued by respondent No.1-Coal India Ltd. on 07/09/2007. The language used in the circular itself shows that there was a representation of Survey Officers working in various companies and respondent No.1-Coal

India Ltd. decided to consider said executives who were working in Survey discipline for horizontal placement and invited their applications. Thus circular shows that willingness from Survey Officers were called. The petitioner who had submitted his willingness now has no right to question about the conditions imposed by respondent No.1-Coal India Ltd. It is not the case that during the internal transfer, petitioner was placed from one department to the other department. On the contrary, it is significant to note that the petitioner was aware about his future prospects in survey discipline and he was also aware about the bright prospects in mining cadre so he willingly gave option for placement in Mining department. Section 14 of the Contract Act, 1872 (hereinafter referred to as 'the Contract Act' for short) defines Free Consent. Consent is said to be free when it is not caused by -

- (i) Coercion as defined under Section 15 of the Contract Act
- (ii) Undue influence as defined under Section 16 of the Contract Act
- (iii) Fraud,
- (iv) Misrepresentation and
- (v) Mistake as defined under Section 14

Consent is free when it works without obstacles to impede its exercise. A general averment that consent was not

freely obtained is not enough but it is necessary to set up one of vitiating elements innumeration under Section 14 of the Contract Act.

21. When a particular effect is said to be caused by particular factor, it must be clearly and cogently established that the effect is the direct outcome of that particular cause. Here in the present case, the petitioner failed to state what made him to give consent to accept bottom seniority. Needless to say that it is apparent that the petitioner willingly accepted bottom seniority taking into consideration better prospects in mining discipline than survey discipline. It was a thoughtful decision of the petitioner reflecting from immediate action of the petitioner by forwarding the application and forwarding the consent by accepting the bottom seniority.

22. Respondent No.1-Coal India Ltd. has also opposed the petition for non-joinder of necessary party. It was submitted by the learned Counsel for the respondents that the petitioner had claimed seniority above one Krishna Kumar Singh. Therefore, without

hearing him, issue of seniority of the petitioner above him cannot be considered. Admittedly, the petitioner had challenged the seniority of Krishna Kumar Singh and Jivanlal R. Gaidhane who were promoted E-6 grade on 19/08/2010. He had claimed seniority above Krishna Kumar Singh who has not made party to the petition. It is held by the Hon'ble Apex Court in the case of ***State of Uttaranchal and anr. Vs. Madan Mohan Joshi and ors. (2008) 6 SCC 797*** that as seniority or inter-se seniority is not a fundamental right but a civil right. The persons whose seniority might be affected are necessary parties and such rights are to be determined in their presence. In ***State of U.P. and anr. Vs. Dinkar Sinha (2007) 10 SCC 548*** wherein the Hon'ble Apex Court held that although the seniority may not be a fundamental right but a civil right, the infringement of this right is permissible only if there are validly framed rules to this effect. If however, any such rule takes away such right it has to receive a strict construction. But even if on such strict interpretation such civil right cannot be saved then it may amount to arbitrary destruction of the right violating Articles 14 and 16 of the Constitution. Since it is a civil right, the Hon'ble Apex Court has held that the questions of seniority cannot be effectively adjudicated upon unless the persons who are shown

Correction carried
out as per Hon'ble
Court's Order dated
06/09/2022.

senior to the aggrieved employee are impleaded as parties. In the present case, the petitioner had subsequently by way of amendment made Krishna Kumar Singh as a necessary party and the petitioner had challenged his seniority and claimed seniority above him. Therefore, the contention of the respondents that the petition is bad in law for non-joinder of necessary party is not sustainable.

23. From the above all discussion it is clear that the case of the petitioner is covered under the Common Coal Cadre Rules 12(b) which states about the movement of the Officers from one discipline to the other on permanent basis. Apart from the fact that the petitioner willingly accepted the bottom seniority looking to better prospects, the grievance of upper seniority was raised by the petitioner after unreasonable delay. From the entire discussion it is crystal clear that the petitioner had accepted the bottom seniority after thoughtful consideration that he had better prospects in a Mining department than Survey department, therefore, now the petitioner had no right to make his grievance about the same.

Correction carried
out as per Hon'ble
Court's Order dated
06/09/2022.

24. In the light of the above facts and circumstances, the writ petition is devoid of merits and liable to be dismissed.

25. Hence, the writ petition is dismissed. No costs.

26. Rule stands discharged.

(URMILA JOSHI-PHALKE, J.)

(A.S. CHANDURKAR, J.)

**Divya*