

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

WRIT PETITION NO.432 OF 2021

Petitioner : Gunwanta Govinda,
Ex-Employee of WCL, Nagpur,
Aged about 63 years,
R/o Chankapur, Silewara,
Tah. Saoner, Dist. Nagpur 440 019.

- Versus -

Respondents : 1. The Chief General Manager,
Western Coalfields Limited,
Nagpur Area, Kasturba Nagar,
Jaripatka, Nagpur – 440 014

2. The General Secretary,
Lal Zenda Coal Mines Mazdoor Union (CITU),
Branch – WCL HQ, Coad Estate,
Civil Lines, Nagpur – 440 001.

Mr. B. Lahiri, Advocate for the Petitioner.
Mr. C.S. Samudra, Advocate for Respondent No.1.

CORAM : **MANISH PITALE, J.**
DATE : **17th MARCH, 2022.**

ORAL JUDGMENT :-

Rule. Rule made returnable forthwith. Heard finally with the
consent of the learned Counsel for the rival parties.

02] By this writ petition, the petitioner has challenged award dated 24/09/2019 passed by the Presiding Officer, Central Government Industrial Tribunal (CGIT)-cum-Labour Court, Nagpur, whereby a Reference has been answered in the negative against the petitioner and it has been held that the petitioner is not entitled to any relief.

03] The facts leading up to the file of the present petition are that the petitioner was appointed in Time Rated Category on 16/02/1981 in Pipla Colliery of the respondent-Western Coalfields Limited (WCL) and upon promotions, on 25/11/2005, he was appointed in the post of Mechanical Fitter Category-IV. It was the case of the petitioner that during the course of the employment in the Colliery, he suffered from physical disability, as a consequence of which he was referred to the Apex Medical Board. Upon examining the petitioner, the Board opined that he had suffered from lowering of vision and that he was now fit only for surface job. Accordingly, the petitioner was deployed on surface job and by office order dated 28th/30th December, 2010, he was brought down from Category-IV to Category-I, thereby reducing his existing pay scale of ₹551.07 to lower pay scale of ₹345.67 with effect from 01/01/2011.

04] Thereafter, the respondent-WCL referred the petitioner to the

Apex Medical Board and pursuant to his examination, he was categorized as unfit. In terms of Clause 9.4.0 of the National Coal Wage Agreement-VI (NCWA-VI), the son of the petitioner, as dependent, was given employment and the petitioner stood retired with effect from 12/02/2013.

05] Thereafter, the petitioner moved a representation raising grievance that his pay scale ought to have been protected and it could not have been brought down, merely because he had suffered disability during his service. As no relief was forthcoming, ultimately the dispute raised by the petitioner led to a Reference under Section 10 of the Industrial Disputes Act, 1947. A precise question was referred by the competent authority to the CGIT on 25/11/2014 and it reads thus:

“Whether the action of the management of Western Coalfields Ltd., Nagpur Ara, Jaripatka, Nagpur in deducting the basic salary in respect of Sh. Gunwanta Govinda is just, fair and legal? If not, to what relief the concerned workman is entitled to?”

06] The CGIT-cum-Labour Court took into consideration the rival contentions and passed the impugned award. The CGIT also took into consideration the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as “the Act of 1995” for short). A reference was

made to the definitions of the terms “disability” and “person with disability”. In the context of Section 47 of the Act of 1995, despite taking note of the fact that the petitioner had suffered disability during the course of his service, the CGIT in the impugned award answered the reference in the negative, only on the ground that the petitioner had failed to file a disability certificate to support his claim. Only on this basis, it was held that the CGIT did not have jurisdiction to pass an order in favour of the petitioner.

07] Mr. Lahiri, learned Counsel appearing for the petitioner, invited attention of this Court to the provisions of the Act of 1995. Much emphasis was placed on Section 47 of the said Act to contend that the same applied to persons who acquired disability during the course of their service. This was distinct from persons with disability claiming employment on the ground of such disability, in terms of the mandatory provisions of the Act of 1995. It was submitted that although the CGIT did take into consideration the provisions of the Act of 1995, it confused the requirement for persons with disability claiming entry into service on the basis of such disability, with the case of the petitioner, who was seeking protection of pay and rank under Section 47 of the Act of 1995, which is applicable to the persons, who acquire disability during the course of their service. It was submitted that once this distinction is appreciated, the error

committed by the CGIT becomes evident. There is no requirement of producing certificate of disability from the medical authority as contemplated under Section 2(t) of the Act of 1995, which defines the expression “person with disability”. The learned Counsel placed reliance on the judgment of the Hon’ble Supreme Court in the case of Kunal Singh vs. Union of India and another – AIR 2003 SC 1623 and the judgments of Division Benches of this Court in the cases of Dhammadip Bhaurao Mankar vs. Union of India and other (Judgment and Order dated 15/11/2011 passed in Writ Petition No.4700/2010); Anil s/o Damodhar Bansod vs. Union of India and others (Order dated 01/08/2012 passed in Writ Petition No.1551/2012) and Jayram s/o Dubbar Ram vs. Union of India and others along with connected writ petitions (Judgment and Order dated 07/10/2013 in Writ Petition No.250/2013 and connected petitions).

08] On the other hand, Mr. Samudra, learned Counsel appearing for the respondent-WCL submitted that the son of the petitioner stood employed with the respondent under Clause 9.4.0 of the NCWA-VI, on the basis of the petitioner being retired from service due to his being declared unfit. Having taken advantage of the said scheme, it could not lie on the mouth of the petitioner to further claim protection of salary/rank under the provisions of the Act of 1995. It is submitted that the petitioner

claimed to have acquired disability during the course of his service and it was for the said reason that the benefit of Clause 9.4.0 of the NCWA-VI was enjoyed by the petitioner and his son and that in these circumstances, the Reference was correctly answered in the negative by the CGIT. The learned Counsel for the respondent-WCL specifically relied upon an order dated 06/10/2016, passed by a Division Bench of this Court in the case of Lakhan s/o Pyarelal Daheriya vs. Western Coalfields Ltd., Nagpur (Writ Petition No.5981/2015). It is submitted that the said case was closer on facts to the present case and that in the said order, the judgment of the Hon'ble Supreme Court rendered in the case of Kunal Singh vs. Union of India (*supra*) was distinguished. It was further submitted that the necessity to produce a disability certificate was emphasized in the said order of the Division Bench of this Court and that, therefore, the impugned award passed by the CGIT was in terms of the law laid down by this Court in the aforesaid judgment. On this, it was submitted that the writ petition deserved to be dismissed.

09] Heard the learned Counsel for the rival parties. Perused the documents placed on record. Before considering the rival contentions, certain admitted facts need to be noted. There is no dispute about the fact that during the course of service and through promotions, the petitioner was working as Mechanical Fitter in Category-IV with the respondent-WCL.

On the basis of his having suffered lowering of vision or dimness of vision during service and pursuant to the petitioner being referred to the Apex Medical Board, it was found that having suffered the said disability, he was rendered fit only for surface job. It was on this basis that the petitioner was brought down from the Category-IV to Category-I. The Office Order issued on 28th/30th December, 2010, reduced the pay scale of the petitioner from ₹551.07 to ₹345.67 with effect from 01/01/2011. This continued till 12/02/2013, when the petitioner stood retired and his son was granted employment with the respondent-WCL in terms of Clause 9.4.0 of the NCWA-VI.

10] It is clear from the said admitted facts that even according to the respondent-WCL, the petitioner had suffered disability of dimness of vision during the course of his service and that the Apex Medical Board of the respondent-WCL had certified him to be unfit, pursuant to the medical examination conducted in the year 2013. Therefore, there cannot be any dispute raised about the fact that the petitioner was indeed declared unfit for the reason that he had suffered disability during the course of his service. It is in this backdrop that the applicability of the provisions of the Act of 1995 needs to be appreciated. While Section 2(i) defines “disability”, which includes low vision, Section 2(t) defines “persons with

disability”. Section 47 of the Act of 1995 is relevant for the present case, which reads thus:

“47. Non-discrimination in Government employments - (1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits: Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.”

11] There is no dispute about the fact that Section 47 of the Act of 1995 applies to the respondent-WCL as it is covered in the definition of “Establishment” under Section 2(k) of the said Act. In the context of interplay between various provisions of the aforesaid Act and the applicability of Section 47 thereof, in the case of Kunal Singh vs. Union of India (*supra*), the Supreme Court categorically held that Section 47 of the Act deals with an employee of an establishment who acquires disability during his service. This has been distinguished from the claims of persons with disabilities in the context of reservation in employment, which

necessarily pertains to entry into service. It is relevant that in the case of Kunal Singh vs. Union of India (*supra*), the Supreme Court also observed that the protection under Section 47 of the Act is applicable to a person, who acquires disability in service, even if such a person has got the benefit of invalidity pension under the relevant Pension Rules. In other words, it has been held that the protection of pay, rank and other such status under Section 47 of the aforesaid Act is available, notwithstanding any other benefit that a person may be entitled to, who has suffered disability during the course of his service.

12] A perusal of the judgment of the Division Bench of this Court in the case of Dhammadip Bhaurao Mankar vs. Union of India and others (*supra*) would show that the distinction between benefits available to persons with disabilities at the point of entry in service have been distinguished from the protection available to a person, who acquires disability during the course of his service. After analysing various provisions of the said Act, the Division Bench of this Court in the aforesaid judgment held as follows:

“8] As against this when provisions of Section 47 are looked into, it speaks of an employee who acquires disability during his service. Section 47 does not treat such employee and does not refer to him any where as “person with disability”. Thus employee already in service acquiring disability on account of his employment has been treated distinctly by legislature. It is because of this position only that

his service conditions appear to have been protected. The legislature has stated that if on account of such disability, he is not suitable for the post which he was earlier holding, employer can shift him to some other post, "with same pay scale and service benefits". The difficulty faced by employer in undertaking such exercise is also foreseen by law and proviso to this Sub Section contemplates a case where it is not possible for employer to adjust the employee against any post. The legislature has prescribed that in that case such employee should be kept on a supernumerary post until a suitable post is available or then the employee who acquired disability attains the age of superannuation. Thus provisions made by legislature are by way of exception to normal law and therefore show emphasis upon its intention to protect service i.e. pay scale and service benefits of person who acquired disability while in employment. It is also evident from Sub Section (2) of Section 47 which stipulates that promotion cannot be denied to such a person merely on the ground of his disability. Sub Section (2) permits appropriate Government to grant exception from this requirement but then present respondent no. 2 has not claimed any exemption"

13] The said position of law has been reiterated by another Division Bench of this Court in the case of Anil s/o Damodhar Bansod vs. Union of India & others (*supra*), as also in the common judgment and order passed by another Division Bench of this Court in the case of Jayram s/o Dubbar Ram vs. Union of India & others and connected petitions (*supra*).

14] As regards the order dated 06/10/2016, passed by the Division Bench of this Court in the case of Lakhan s/o Pyarelal Deheriya vs. Western Coalfields Ltd. (*supra*), which the learned Counsel appearing

for the respondent-WCL claims to be closer on facts to the instant case, suffice it to say that the said case is clearly distinguishable on facts from the present case. Perusal of the said order would show that the Division Bench of this Court had serious doubt about the very claim of the petitioner therein of having suffered disability during the course of employment. The case of the petitioner therein was that he had suffered disability in a mine accident. It was found that nothing was brought on record to show that the petitioner therein had suffered any injury at all in a mine accident and it is in such facts that the Division Bench of this Court insisted upon a medical certificate from the competent medical board showing that the petitioner therein had indeed suffered from disability. It was also found in the said case that the petition suffered from laches, because the petitioner therein had sought relief after about 20 years. Although, there is a reference to the judgment of the Supreme Court in the case of Kunal Singh vs. Union of India and another (*supra*), distinction has been drawn primarily on the basis that there was a serious doubt about the petitioner therein having suffered disability during the course of service.

15] In the present case, as noted above, even before the CGIT, there was no dispute raised on behalf of the respondent-WCL that the petitioner indeed suffered from disability during the course of service. In

fact, the reports of the Apex Medical Board of the respondent-WCL itself certified in the years 2010 and 2013 that the petitioner had been rendered unfit. Therefore, it becomes clear that the order passed by the Division Bench of this Court in the case of Lakhan s/o Pyarelal Deheriya vs. Western Coalfields Ltd. (supra) is clearly distinguishable on facts and that the reliance placed on the same cannot take the case of respondent-WCL any further.

16] As regards the contention raised on behalf of the respondent-WCL that since the son of the petitioner was granted employment under Clause 9.4.0 of the NCWA-VI and that therefore, the petitioner could not claim benefit of protection of pay under Section 47 of the Act of 1995, suffice it to say that the protection available to the petitioner under the said provision is an independent statutory protection and it cannot be taken away. This has been clarified by the Supreme Court in its judgement in the case of Kunal Singh vs. Union of India and another (supra).

17] In view of the above, it is found that by applying the protection of pay/rank guaranteed under Section 47 of the aforesaid Act, in the present case, the petitioner could not have been brought down to the lower pay scale, merely because he suffered disability during the

course of his service. His pay scale and rank ought to have been protected, which the respondent-WCL failed to implement, thereby demonstrating that the question specifically referred to the CGIT in the present case, ought to have been answered in the positive, in favour of the petitioner. Although, the CGIT did refer to the provisions of the aforesaid Act, it got confused between the necessity of certificate showing disability to the extent of 40% in the context of entry into service claimed by a person suffering from disability, with the protection available to an employee, who suffered disability during the course of his service. It is because of this confusion that the CGIT answered the Reference in the negative against the petitioner.

18] In view of the above, it is held that the present writ petition deserves to be allowed.

19] Accordingly, the writ petition is allowed. The impugned award dated 24/09/2019, passed by the CGIT is quashed and set aside. It is directed that the respondent-WCL shall pay to the petitioner difference of wages by restoring his pay scale as Mechanical Fitter (Category-IV). This difference of wages would be payable for the period from 01/01/2011 to 12/02/2013. The respondent-WCL shall also pay the increased

consequential benefits to the petitioner. Such amounts shall be paid along with interest at the rate of 9% per annum till the date of actual payment. The respondent-WCL is also directed to disburse such amounts expeditiously and in any case within a period of six months from today.

20] Rule is made absolute in the aforesaid terms with no order as to costs.

(MANISH PITALE, J.)

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