

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

WRIT PETITION NO. 83 OF 2020

PETITIONER :-

Shri Subhash Ramkrishna
Bhandare, aged 50 years
Occupation-Service, Resident of
65, "SALEEKA" MB Town, Zingabai
Takli, Koradi Road, (Nagpur-
440030, Tahsil and District-Nagpur
(Maharashtra State).

...VERSUS...

RESPONDENTS :-

1. Coal India Limited, A Government undertaking having its office at Coal Bhawan, Premises No.04 MAR, Plot No.AF-III, Action Area 1-A New Town, Rajarhat, KOLKATA-700156 (W.B.), through its Chairman.
2. Director (PERSONNEL AND IR) Office at Coal Bhawan, Premises No.04 MAR, Plot No.AF-III, Action Area 1-A New Town, Rajarhat, KOLKATA-700156(W.B),
3. General Manager (PERSONNEL EXECUTIVE ESTABLISHMENT), COAL INDIA LIMITED, Office at Coal Bhawan, Premises No.04, MAR, Plot No.AF-III, Action Area 1-A

New Town,Rajarhat,
KOLKATA- 700156(W.B.),

4. GENERAL
MANAGER(PERSONNEL/POLICY
CELL), Office at Coal Bhawan,
Premises No.04 MAR, Plot No.AF-
III, Action Area 1-A, New Town,
Rajarhat, KOLKATA-700156(W.B)
- 5 GENERAL MANAGER /HEAD OF
DEPARTMENT (EXECUTIVE
ESTABLISHMENT),Coal Estate,
Civil Lines, WCL Head Quarter,
Seminary Hills Nagpur-440001.

Mr.Akshay Sudame, counsel for the petitioner
Mr.A.R.Patil, counsel for respondent Nos. 1 to 4
Mr. A.M.Ghare, counsel for respondent No.5.

**CORAM : SUNIL B.SHUKRE &
G.A. SANAP, JJ.**

DATE : 06.10.2022.

ORAL JUDGMENT (Per :Sunil B.Shukre, J.)

(1) Heard.

(2) Rule. Rule made returnable forthwith. Heard finally by
consent of the learned counsel appearing for the parties.

(3) The case of the petitioner is that on 05.02.2004 he was promoted to the post of Senior Under Manager (Special Grade), in E4 grade of the respondent No.1- Coal India Limited, and as per the policy of the respondent No.1, then existing, the petitioner was entitled to be promoted to E5 grade in First Class stream on completion of two years of service in his E4 grade, as the petitioner had cleared the examination of First Class Managers Competency on 02.07.2005. The petitioner submits that as per the then policy, on clearance of First Class Managers Competency Examination and completion of two years service in E-4 Grade, the concerned Manager becomes eligible for his automatic promotion to E-5 Grade in First Class Stream.

(4) In support of such case of the petitioner, Shri. Akshay Sudame, learned counsel appearing for the petitioner has invited our attention to the applicable rule as per the policy then existing. For the sake of convenience, the rule is reproduced as below:-

“Those who pass 1st Class while working in E4 grade, in 2nd Class Stream should be promoted to E5 grade in 1st Class stream only after completion of 2 years service in E4 grade (prior or after passing 1st Class). Those

who pass First Class after completing 2 years of service in E4 grade will be promoted from the effective date of the Certificate but, the service in E4 grade should not be less than two years”.

(5) Shri.Akshay Sudame, learned counsel appearing for the petitioner further invites our attention to the original certificate dated 09.08.2005, which certifies clearance of competency examination by the petitioner on 02.07.2005. Thus, learned counsel for the petitioner submits that the petitioner is entitled to be granted benefit of deemed date of promotion and seniority in earlier E5 grade which is now revised to E6, Mining Discipline with effect from 05.02.2006.

(6) Shri.A.R. Patil, learned counsel appearing for the respondent Nos. 1 to 4 submits that the petition suffers from latches and delay and therefore, it must not be entertained by this Court. He also submits that if the reliefs as prayed by the petitioner are granted, it would disturb the seniority of other Managers and the other Managers not being party to this petition, the reliefs as claimed by the petitioner cannot be granted.

(7) Insofar as, the objection relating to latches on the part of the petitioner is concerned, we are not willing to accept it and we reject it. Subsequently, the petitioner made three representations respectively on 16.11.2011, 04.02.2019 and 02.07.2019. All these representations remained pending and no decision was taken by the respondents. Therefore, now the respondents cannot say that the petitioner has approached this Court belatedly and that there has been an unexplained delay in the matter. The respondents also cannot say that just because subsequent representations were made, the petitioner had given up his right which he claimed in the year 2007 and this is for the reason that the subsequent representations were in respect of the same right which the petitioner was claiming since the year 2007. Besides, the facts of the case are squarely covered by the view taken by the Apex Court in the case of ***State of Uttar Pradesh and anr Vs. Arvind Kumar Srivastava and ors*** reported in (2015)1 SCC 347 and the view taken by the Calcutta High Court in the case of ***Akshaya Kumar Jena and ors Vs. Coal India Ltd. and ors*** reported in ***W. P No.22408(W) of 2007*** on the aspect of the latches and

delay. The decisions of the Calcutta High Court and Apex Court in respect of rule in question, were the decisions which touched upon the policy matter of the respondent No.1. Therefore, the question of laches and the delay in this case is insignificant.

(8) Before we deal with the second objection taken on behalf of the respondents, we must make an effort to find out as to whether or not the claim made by the petitioner is justified by the rule applicable to him when he says that he had become due for getting the benefit deemed date of promotion, which date, according to the petitioner is of 05.02.2006.

(9) It is not in dispute that the petitioner has been issued certificate of competency by the Directorate General of Mines Safety regarding his clearance of First Class Managers Competency Examination on 02.07.2005. It is also not in dispute that the petitioner entered E4 Grade of the Managers on 05.02.2004. If this is so, the rule quoted above, which was in force in the year 2006, would become applicable to the case of the petitioner and thus would enable him to get the benefit of deemed date of

promotion with effect from 05.02.2006. Of course, this rule was later on amended twice, but even subsequent amendments clarified that all the prior cases should be decided as per the rules then applicable to those cases. In the present case, the rule quoted above, was applicable to the case of the petitioner in the year 2006 and as per the amended rules as well, there has been no change in the situation. Thus, as per the above referred rule, the petitioner is entitled to be given benefit of deemed date promotion to E-5 grade in First Class stream, which is now revised to E6 grade.

(10) Now, the question would be if the petitioner is granted benefit of deemed date of promotion with effect from 05.02.2006, what will happen to the other Managers, already placed in E6 grade First Class stream? In our opinion, this being the case of grant of deemed date of promotion, the other Managers would not be taken by surprise and would have nothing to say in the matter in view of the clear applicability of the above quoted rule applicable to a Manager like the petitioner in the year 2006 as per the then existing policy. Therefore, we are of the view that no prejudice would be caused to the other Managers, who

had not been made any party to this petition, if the petitioner is granted deemed date of promotion, as claimed by him.

(11) In the result, we are inclined to allow the petition and it is allowed accordingly. We direct that the petitioner be granted deemed date of promotion in E5 Grade First Class stream, revised to E6 grade First Class grade Mining Discipline with effect from 05.02.2006, along with all other consequential benefits.

(12) Rule is made absolute, in above term. No costs.

(13) Pending Civil Application/s, if any, is/are disposed of accordingly.

(G.A.SANAP ,J)

(SUNIL B. SHUKRE,J)