

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12634 of 2011

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1. Nand Lal Prasad, Son of Ramnandan Mistri, Resident of RTS Qr. No. E2/203, Begusarai, P.S. and District-Begusarai.
 2. Manoj Kumar Das, Son of Late Sukhdeo Das, resident of RTS Quarter, Begusarai, Police Station and District- Begusarai.

... .. Petitioner/s

Versus

1. The Indian Oil Corporation Limited through its Chairman-cum-Managing Director, G.D. Ali Yawar Jung Road, Bandra (East), Mumbai-400051.
2. The Executive Director Indian Oil Corporation Barauni, Refiner, Barauni.
3. Senior Human Resource Officer, Indian Oil Corporation, Refinery Department, Barauni Refinery, Barauni.
4. Samir Kumar, Son of Sri Nageshwar Prasad Singh, Junior to the petitioners, Resident of RTS Qr. No. D2F-75, Begusarai, P.S. and District- Begusarai, PIN-851117.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Manoj Kumar, Advocate
For the Respondent/s : Mr. Kripa Nand Gupta, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 19-10-2023

In the instant petition, the petitioners have prayed for the following reliefs:-

“1. For holding that the petitioners having been appointed in the year 1993 and promoted in Grade-D and C in the year 1997 and 2001 respectively in Heavy Equipment Shop (Mechanical Maintenance Department) of the Barauni Refinery of Indian Oil Corporation Limited (hereinafter to be referred as the Corporation), are entitled to maintain their seniority in any Department where they are redeployed or transferred, in any case, cannot be showed junior to the persons who were appointed much later than the petitioners.



II. For holding that if for any reason petitioners were sent for training in Fire and Safety Department and subsequently redeployed there in the year 2003, they cannot be denied the Grade-C which they had already cleared while remaining in Heavy Equipment Shop (Mechanical Maintenance Department).

III. For holding that in no circumstance the petitioners can be denied Grade-V (Operator-C) in the Fire & Safety Department and be put at the bottom of the Fire & Safety Department in the year 2005 when they had already promoted and posted as Grade-V (Operator-C) in the Heavy Equipment Shop (Mechanical Maintenance Department) way back in the year 2001 and be put below the persons who had joined much after than the petitioners.

IV. For holding that as per policy decision of the Corporation, the petitioners should be awarded (Grade-VI) Operator B and A in the year 2005 and 2009 respectively and accordingly should have been given the consequential benefits of (Grade-VI) Operator-B and from the year 2005 and be placed in Grade-A with all consequential benefits.

V. For commanding the respondents to grant (Grade-VI) Operator-B to the petitioners in the year 2005 since they were already (Grade-V) Operator-C employees in the Corporation as per policy decision, they should be given (Grade-VII) Operator-A in 2009 with all consequential benefits from the respective dates/periods.

VI. For holding that by not doing so the respondents would be perpetuating injustice on the petitioner and thus causing serious prejudice to them.

VII. For issuance any other appropriate relief or reliefs in the facts and circumstances of the case.



VIII. For quashing Annexure-B Memo regarding settlement arrived at under Section 12 (3) of the Industrial Disputes Act, 1947, between the Management of Indian Oil Corporation and Barauni refinery and their workmenn represented by their recognized union) as prescribed as Annexure-B in the counter affidavit of Respondent Nos. 1, 2 and 3 as the same is a forged document.

IX. For declaration that the true memo of settlement dated 06.02.2001 is Annexure-2 (Rejoinder to the counter affidavit) to the main writ petition.

X. For quashing of the letter of upgradation promotion of Respondent no. 4 dated 22.08.2022 (Annexure-18) to the writ petition whereby the respondent no. 4 has been upgraded from operator D (F&S) grade-IV to operator C (F&S) grade-V.”

2. On 01.08.2022, the following order was passed.

“One of the question for consideration in the present petition is whether re-deployed employees from Mechanical Maintenance Department to Fire & Safety Department are entitled to count their service rendered in the Mechanical Maintenance Department or not?

It is learnt that official respondents have entered into an agreement with employees and it was signed on behalf of employees by authorized persons to the extent that such of those deployed employees from one department to another department are not entitled to count their service in the parent department. In other words, in the present case, the petitioners whose services have been re-deployed to Fire and Safety Department on 08.01.2003, they are not entitled to count the service rendered in Mechnical Maintenance Department.



At this stage, learned counsel for the petitioners submitted that the agreement entered between the management and employee is in respect of forgoing seniority/service rendered in the parent department was a forged document. In the absence of challenge to the aforesaid agreement among the management and employees-petitioners, petitioners cannot seek a direction to count service rendered in the parent organization in the re-deployed department. The petitioners are permitted to question the validity of the agreement entered between employer and employee. In the meanwhile, the respondents have to file an affidavit as to correctness of the agreement among the employer and employee in respect of forgoing seniority in the parent department in an event of re-deployment of an employee from one department to another department, whether such agreement is in accordance with the relevant provision of law and all procedure have been duly followed or not? Such affidavit be filed before the next date of hearing.

Re-list this matter on 08.08.2022.”

3. The core question for consideration is whether petitioners are entitled to have the benefit of counting service rendered in the Transport Department on their re-deployed to Transport-Mechanical Maintenance Department to Fire Service and Safety Department with reference to their initial appointment in the Transport Mechanical Maintenance Department. Redeploying the petitioners in the Fire Service and Safety Department is not at their request so as to deny whatever the CRT and other service benefits in the parent cadre and department.



4. Perusal of the record, it is evident that re-deploying the petitioners is in the public interest. Reasons for denial of past service in the Transport- Mechanical Maintenance Department in the Fire Service Safety Department is that there was memorandum of settlement among the Management and Union stated to have been proceeded on 06.02.2001 vide Annexure-B Clause -3 on page-3 (Page-2) of 2 reads as under:-

“These operators will be posted as Operator-C (Fire & Safety) in Cluster-B after successful completion of the course. Their seniority will be reckoned from the date they join in the new post.”

5. The same thing is not reflected in Annexure-R5 dated 06.02.2001, whereas Annexure-R/5 is consisting of 12 pages and signatures of the representatives on behalf of the Management and Union is reflected on page-12, three are from Management and four are from Union. There are three witnesses.

6. Perusal of yet another document dated 29.07.2002, Annexure-R/7, it relates to memorandum of settlement among the Management and employees Union is consisting of two pages Clause-3 is retreating the Annexure-B, which has been cited supra.

7. Perusal of the aforementioned documents and other documents furnished in the present lis petitioners have been denied past service rendered in the parent department in the absence of



their request, in the other words such a re-deploying or the petitioners is in the public interest, therefore, in the service jurisprudence the principle is that in the absence of request transfer of an employee it is required to be treated as transfer on public interest. If it is requested on behalf of the employees for his transfer in such an event employer is empowered to impose the condition that such a transfer would be with a rider that he is going to lose the seniority in the parent cadre. The petitioners case would fall under the public interest.

8. Further, it is required to be taken note of seniority is one of the service condition of an individual employees that cannot be adjudicated on behalf of Union. In other words, if class of employees service conditions is involved in such a matter one can draw inference that there could be memorandum of settlement among the Management and the employees Union. Whereas, in the present case individual service condition is involved, therefore, Union of the employees cannot take responsibility of an individual service condition.

9. Be that as it may, from perusal of the records as Annexure-B, Annexure-R/5 and Annexure-R/7, it is *prima facie* evident that there may be manipulation of memorandum of settlement to deny past service.



10. In the light of these facts and circumstances, the petitioners have made out a case. Accordingly, the impugned orders are set aside and the concerned authorities is hereby directed to treat the petitioners earlier service in the parent cadre for the purpose of counting the same in the re-deployed department/wing and extend all consequential benefits including promotion, seniority and monetary benefits. If the petitioners are entitled to retrospective promotion in that event the same shall be taken into consideration and promote them retrospectively. Monetary benefits shall be calculated and disbursed in favour of each of the petitioners. In this regard each of the petitioners is permitted to file a detailed representation. The same shall be considered within three months.

11. With these observations, the writ petition stands allowed.

(P. B. Bajanthri, J)

Anand Kr.

AFR/NAFR	
CAV DATE	
Uploading Date	31.10.2023
Transmission Date	

