

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Before:
The Hon'ble Justice Hiranmay Bhattacharyya

**W.PA. 10005 of 2019
Rakesh Puranik & ors.
Vs.
Coal India Limited & ors.**

For the Petitioners : Mr. Anindya Kumar Mitra, Ld. Sr. Adv.
Mr. Jaydip Kar, Ld Sr. Adv.
Mr. Saikat Banerjee,
Mr. Debdeep Sinha,
Mr. Karan Prasadadvocates

For the C.I.L. : Mr. Arunava Ghosh, Ld. Sr. Adv.
Mr. Pushpal Chakraborty,
Mr. Pradipta Bose,
Mr. Nilankan Banerjee ... advocates

Reserved on : 03.10.2023

Judgment on : 21.12.2023

Hiranmay Bhattacharyya, J.:-

1. The writ petitioners have prayed for issuance of a mandamus directing the respondent authorities to extend the benefit of the Office Order dated 13.02.2019 to the petitioner after setting aside Para-5 of the said Office Order.
2. Petitioners claim to have joined Coal India Limited and its various subsidiaries between the years 1981 and 1993 and were the non executive employees of Coal India Limited and its subsidiaries till the year 2010. Since there was delay in promoting the employees from T&S Grade C to T&S Grade A and thereafter, to T&S Grade A-1, Coal India Limited in its 255th meeting held on 17.05.2010 decided to upgrade all such non-executive

employees who were stagnating in T&S Grade A/A1 for more than 15 years to the executive category in the E-1 grade.

3. The petitioners gave their consent in the prescribed declaration form for accepting the upgradation to E-1 Grade and the petitioners were upgraded as E-1 employees under the Executive cadre. Upon upgradation to the Executive Cadre post of E1 Grade the petitioners were designated as Subordinate Engineers. Petitioners were given seniority on the basis of their respective dates of joining the E-1 cadre.
4. Coal India Limited in its 257th Board meeting held on 31.05.2010 decided that fresh recruits in the Cadre of E-1 would be termed as management trainees. A further Office Order was issued on 22.03.2012 thereby communicating the decision of the Board of Directors of Coal India Limited taken in its 277th meeting held on 30.01.2012 wherein it was decided that the recruitment of management trainees of all disciplines will be in E-2 Grade in first year and they will be placed in E3 Grade after successful completion of one year training.
5. The petitioners have alleged that implementation of the Office Order dated 22.03.2012 resulted in discrimination amongst the employees in E-1 Grade as Junior Management Trainees who joined in E-1 Grade-1 cadre after the petitioners were promoted with higher scale benefits and other service benefits were placed in E-2 grade and thereafter to E-3 grade whereas the petitioners being the Senior Officers in the cadre continued to lament in the feeder post.
6. The petitioners further claim that pursuant to a judgment and order dated 22.12.2017 in the case of **Ravindra Shyam Rao Wadhai and ors. vs. Coal India Limited and ors.** reported at **(2018) 2 CHN 235** , Coal India Limited issued Office Order dated 13.02.2019 extending the benefit of deemed placement as granted to the management trainees vide Office Order dated 22.03.2012 to the departmental candidates who were selected/ promoted/

appointed from non-executive to executive cadre to the post of Welfare Officer (Trainee) in E-1 Grade on or after 01.01.2007. The petitioners were, however, excluded from the benefit of the said Office Order dated 13.02.2019 in view of paragraph 5 of the said Office Order.

7. Alleging that the said Office Order dated 13.02.2019 created a class within a class in complete violation of the principles of Article 14 of the Constitution of India, the petitioners have approached this Court.
8. Coal India Limited contested the said writ petition by filing an affidavit-in-opposition specifically denying the material allegations contained in the writ petition. It was specifically stated in the said affidavit that the petitioners were upgraded from non-executive to executive cadre as an one time arrangement with a condition that for further promotion to E-2 Grade, the employees upgraded to E-1 shall also have to fulfill the conditions as stipulated in the Common Coal Cadre for that particular discipline that is qualifying the written test and the interview along with other eligible candidates. It was also stated in the said affidavit that pursuant to the order dated 22.12.2017 passed by the Hon'ble High Court at Calcutta, the benefit of deemed placement which was granted to the management trainees vide Office Order dated 22.03.2012 was extended to the departmental candidates who were selected from non-executive to executive cadre to the post of Welfare Officer (Trainees) in E-1 Grade on or after 01.01.2007 who were selected in the executive cadre as per the norms laid down in Common Coal Cadre, i.e., after appearing for written examination and interview. It was specifically contended in the said affidavit that some of the non-executive employees who were upgraded and placed in E-1 grade in Executive Cadre vide the same Office Order dated 22.12.2010 subsequently applied against the advertisement issued for promotion/selection either through departmental quota or direct recruitment and after qualifying in the written examination and meeting other eligibility criteria as mentioned for career

growth process in Common Coal Cadre were promoted to E-2 Grade. The respondent Coal India Limited accordingly prayed for dismissal of the writ petition.

9. Mr. Aninda Kumar Mitra, learned Senior Counsel assisted by Mr. Kar learned Senior Counsel contended that in the E-1 Grade, employees were drawn from different sources namely departmental employees and direct recruits. The departmental employees consisted of the petitioners being the subordinate Engineers and the welfare officers both of whom initially belonged to the non-executive cadre and were subsequently upgraded in the E-1 Grade. It is the further contention of Mr. Mitra that the management trainees who were mostly recruited in E-1 Grade subsequent to the recruitment of the petitioners and the said welfare officers were further upgraded to E-2 grade and subsequently to E-3 Grade after completion of one year of training without qualifying in any departmental examination. He further submitted that challenging the arbitrary action of Coal India Limited in upgrading the management trainees to E-2 and E-3 Grade even though they were juniors to the petitioners and the welfare officers, the welfare officers approached this Court and the Hon'ble Division Bench by a judgment and order dated 22.12.2017 in the case of **Ravindra Shyam Rao Wadhai** (supra) held that all the employees in the E-1 Cadre are similarly situated and equal and, therefore, no discrimination can be made between a departmental recruit and a direct recruit. He, further contended that while implementing the judgment and order dated 22.12.2017 in **Ravindra Shyam Rao Wadhai** (supra), Coal India Limited issued an Office Order dated 13.02.2019 categorically excluding the departmental non-executives who were selected/promoted/appointed in E-1 Grade in Executive Cadre in balance disciplines not covered in the said Office Order and were not eligible for selection/promotion/appointment from non-executive to executive cadre in E-2 Grade as per the Cadre requirement. Mr. Mitra placed reliance upon a decision of the Hon'ble Supreme Court in the case of **Food Corporation of**

India and ors. vs. Ashis Kumar Ganguly and ors. reported **at (2009) 7 SCC 734** in support of his contention that the conditions of service of employees from two different sources cannot be different only because they were recruited from different sources.

10. Mr. Arunavo Ghosh learned advocate appearing for the Coal India Limited seriously disputed the submissions advanced by Mr. Mitra. He submitted that the petitioners were upgraded to E-1 Grade as one time arrangement on certain conditions. He submitted that the Coal India Limited issued the Office Order dated 13.02.2019 extending the benefit of deemed placement as granted to the management trainees vide Office Order dated 22.03.2012 to the Welfare Officers (Trainee) in E-1 Grade pursuant to the judgment and order dated 22.12.2017 passed by the Hon'ble High Court. In order to justify incorporation of paragraph 5 in the said Office Order dated 13.02.2019, Mr. Ghosh contended that the petitioners are not similarly situated as the welfare officers or the management trainees. He therefore, submitted that the writ petition should be dismissed.
11. Heard the learned advocates for the parties and perused the materials placed.
12. Record reveals that the Board of Directors of Coal India Limited in its 255th meeting held on 17.03.2010 on the subject relating to career growth of diploma holders who are stagnating in A/A1 after detailed deliberation approved the following terms and conditions for their upgradation.

“

- i) *Upgradation of all Diploma Holders of Engineering Disciplines i.e., Mining, E&M, Excavation, Civil, E&T, Industrial Engineering, Coal Preparation, etc., who have been stagnating in T&S Grade-A or A-1 for more than 15 years as on the cut-off date to be decided by the implementing authority, to E-1 Grade as a ONE TIME ARRANGEMENT.*

- ii) *Upgradation shall apply to those who were promoted in T&S Grade and completed 15 years service in T&S Gr A/A-1 as on 31.03.2010. The details of all eligible candidates will be collected and dealt accordingly.*
- iii) *The employees thus upgraded to E-1 grade shall continue to do the current job as well as job of the upgraded post but would be re-designated as Subordinate Engineer in respective discipline.*
- iv) *The service conditions of the upgraded employees shall be governed by the provisions of CDA Rules, 1978 (as amended up to date) and all other rules applicable to the executives of CIL.*
- v) *The exact number of posts of T&S Grade A/A1 shall have to be surrendered by the concerned subsidiary company in the respective discipline against such upgradation till such time such upgraded executives retire for service, resign or get promoted to the next higher level.*
- vi) *The posts shall be personal to the persons thus upgraded, i.e, on superannuation/separation/promotion of the person concerned the post shall be reverted so T&S Grade A/A-I as the case may be.*
- vii) *For promotion to E-2 grade, the persons upgraded to E-1 under this Scheme shall also have to fulfill the conditions as stipulated in the Common Coal Cadre for that particular discipline i.e., qualify the written test and the interview: along with other eligible candidates.*
- viii) *The upgradation shall also be subject to the regular departmental, vigilance and safety clearance.*
- ix) *On up-gradation in E-1 grade, the non-executives will be retained in the subsidiary. However, these employees will be transferred out from the Subsidiary when they get selected through written test and interview for becoming E-1.”*

13. It appears from the aforesaid resolution that it was specifically decided by the Board of Directors of Coal India Limited that all diploma holders of engineering discipline who have been stagnating in T&S Grade A or A1 for more than 15 years as on the cut of date shall be upgraded to E-1 Grade as a “one time arrangement”. It was also decided that the posts shall be personal to the persons thus upgraded i.e., on superannuation/separation/promotion of the person concerned the post shall be reverted to T&S Grade

A/A1 as the case may be. It was further decided that for promotion to E-2 Grade the persons upgraded to E-1 under this scheme shall also have to fulfill the conditions as stipulated in common coal cadre for that particular discipline i.e., qualifying the written test and interview along with other eligible candidates.

14. Pursuant to the approval of the proposal to upgrade all diploma holders of engineering disciplines who was stagnating in T&S Grade A/A1 for more than 15 years to E-1 Grade as an one time arrangement, Coal India Limited issued an Office Order dated 16.04.2010 requesting its subsidiaries to send the following documents for implementing the aforesaid decision.

- (1) Complete details in respect of employees, discipline wise as per the format at Annexure A,

- (2) Declaration of the employee as per the Annexure B,

- (3) Copy of the relevant diploma obtained duly attested by the head of the department of the Personnel Division of the subsidiary.

15. Thereafter, an Office Order dated 22.03.2012 was issued whereby it was decided that the recruitment of management trainees of all disciplines will be in E-2 Grade in the first year and they will be placed in E-3 Grade after successful completion of one year training. The said circular was challenged in a writ petition at the instance of the officers of the Personnel/welfare department in the E-1 Grade. Challenging the order passed by the learned Single Judge an appeal was preferred and the Hon'ble Division Bench by a judgment and order dated 22.12.2017 directed that the benefit of the resolution of the Board of Directors taken on 30.01.2012 and communicated by the Office Order dated 22.03.2012 shall be deemed to be applicable to the beneficiaries of the said order from the same date and in the same manner as it has been made applicable to the direct recruits in the E-1 cadre.

16. Pursuant to the said order dated 22.12.2017, Coal India Limited issued an Office Order dated 06.12.2018 which states that the departmental non-executives who were promoted/appointed to the post of welfare officer Trainee in E-1 Grade in Executive cadre and who were the writ petitioners in the said writ petition are upgraded and they would be deemed to have been promoted/appointed in E-2 Grade with effect from 05.06.2012 and after successful completion of one year training would be deemed to have been placed in E-3 Grade and their pay would be appropriately fixed notionally in terms of the Office Order dated 22.03.2012.
17. Thereafter, the Coal India Limited issued an Office Order dated 13.02.2019. Since the writ petitioners have prayed for quashing of paragraph 5 of the said office order and for a direction upon the respondents to extend the similar benefits to them the said office order is extracted hereinbelow-

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OFFICE ORDER

In pursuance of order dated 22.12.2017 of the Hon'ble High Court of Calcutta in APO No 368 of 2017/W.P. No 1064 of 2015 (RS Wadhai & Ors Vs. CIL & Ors) & orders dated 05.02.2018 in W.P. No. 14212 (W) of 2012 (Giridhari Mondal & Ors. Vs UOI & Ors.) and in. W.P. No. 11044(W) of 2012 (Arun Kumar Singh & Ors. vs. UOI & Ors.) the benefit of deemed placement as granted to the Management Trainees vide Office Order No. CIL/C-5A(PC)/CCC/42 dated 22.03.2012 is hereby extended to the departmental candidates in the following manner to maintain uniformity:

- 1. Departmental candidates who were selected/promoted/appointed from Non-Executive to Executive cadre to the post of Welfare Officer (Trainee) in E-1 Grade on or after 01.01.2007 to till date shall be deemed to have been placed in E-2 grade from the date of their selection/promotion/appointment in executive cadre and subsequently they are deemed to have been placed in E-3 grade from the date of successful completion of 1-year training period.*
- 2. Departmental candidates who were eligible for selection/promotion/appointment in E-2 grade as per cadre scheme and were selected/promoted/appointed from Non-Executive to Executive cadre to the post of Sr. Officer in E-2 grade on or after 01.01.2007 to till date shall be deemed to have been placed in E-3*

grade from the date of successful completion of 1-year probation period in E-2 grade.

- 3. They shall be granted notional seniority and notional pay fixation from the date of deemed placement in E-2 and E-3 grade.*
- 4. No arrears will be paid on account of such re-gradation and notional pay fixation.*
- 5. The above principle of deemed placement, re-gradation & notional pay fixation will not be applicable to the departmental Non-Executives who were selected/promoted/appointed in E-1 grade in Executive cadre in balance disciplines not covered above and were not eligible for selection/promotion /appointment from Non-Executive to Executive cadre in E-2 grade as per cadre requirement.*
- 6. This is inclusive of CIL's Office Order No. □□□□□□/□□-□□ (□□□)/WP 1064 of 2015/ 2018/1389 dated 06.12.2018 & 1658 dated 04.02.19.*

This is issues with the approval of Competent Authority.”

18. The writ petitioners claim that the Subordinate engineers and the welfare officers both initially belonged to the non-executive cadre and were subsequently promoted/upgraded in E-1 Grade. Therefore, the writ petitioners are similarly situated with that of the welfare officers and should be treated equally.
19. Mr. Mitra would contend that incorporation of paragraph 5 in the Office Order dated 13.02.2019 amounts to creating a class within a class and therefore, the same is discriminatory and in violation of Article 14 of the Constitution of India. The writ petitioners claim that since they have been upgraded from non executives to executive cadre in E-1 Grade along with the welfare officers, the benefit of deemed placement as extended to the welfare officers in E-1 Grade vide Office Order dated 13.02.2019 should be extended to the petitioners also.
20. As would be evident from the resolution of the Board of Directors of Coal India Limited in its 255th meeting held on 17.03.2010 that the subject of career growth of only diploma holders of engineering discipline who were

stagnating in A/A1 Grade was under consideration and it was decided that such diploma holders who had been stagnating in A/A1 Grade for more than 15 years will be upgraded to E-1 Grade as a one time arrangement. It is further evident from the said resolution that the employees, thus, upgraded to E-1 Grade shall continue to do the current job as well as job of the upgraded post and the service conditions of the upgraded employees shall be governed by the provisions of CDA Rules 1978 and all other rules applicable to the executives of Coal India Limited. It was also decided that for promotion to E-2 Grade the persons upgraded to E-1 under the said scheme shall also have to fulfill the conditions as stipulated in the common coal cadre for that particular discipline i.e., qualify the written test and the interview along with other eligible candidates.

21. Admittedly, the petitioners furnished a declaration to the following effect for being upgraded to the executive E-1 grade –

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- 1. I will continue to perform my current job as well as job of the upgraded post, subsequent to my up-gradation in E1 grade.*
- 2. My service conditions will be governed by the provisions of Conduct Discipline & Appeal Rules, 1978 on my subsequent upgradation.*
- 3. My further career growth from E1 Grade will be as per conditions stipulated in the cadre scheme for the particular discipline as per Common Coal Cadre i.e. qualify the written test and the interview along with eligible candidates."*

22. Therefore, upgradation of the petitioners to E-1 grade was subject to the aforesaid conditions.

23. It would not be out of context to point out at this stage that the upgradation of diploma holders in engineering discipline from A/A-1 non-executive grade to E-1 grade was a one time arrangement.
24. The writ petitioners after having accepted that his service condition will be governed by the provisions of Conduct, Discipline and Appeal rules 1978 on their subsequent upgradation and also that their further career growth from E-1 Grade will be as per the conditions stipulated in the cadre scheme for the particular discipline as per common coal cadre i.e., qualify the written test and the interview along with other eligible candidates cannot now turn round and contend that they have to be promoted to E-2 Grade without qualifying in the written test and interview.
25. It is the contention of the writ petitioners that they were constrained to give their consent in the prescribed declaration form for accepting the upgradation to E-1 Grade. Such contention is not acceptable to this Court for the following reasons.
26. It appears from the record that the diploma holders in engineering discipline, who had completed 15 years or more service in T&S Grade A/A1 were given upgradation in E-1 Grade as Subordinate engineers as a one time arrangement, submitted a representation before the authorities of Coal India Limited and upon considering such representation the Coal India Limited vide Office Order dated 31.05.2013 afforded opportunity to the Subordinate engineers to revert back irrevocably to their substantive post in non-executive cadre. In spite of such an opportunity being afforded by the Coal India Limited, the petitioners did not exercise their option to revert back to their substantive post in non-executive cadre. Therefore, this Court is of the considered view that the writ petitioners took a conscious decision in favour of accepting the upgradation to E-1 Grade. Therefore, the allegation of the writ petitioners that they were constrained to give their

consent to accept upgradation to E-1 grade is without any substance and the same is therefore rejected by this Court.

27. A similar issue fell for consideration in a writ petition filed by the association of diploma engineers being WP No. 766 of 2011. In the said writ petition a declaration was prayed to the effect that upgraded E-1 Grade executives cannot be subjected to written test and interview for promotion to E-2 Grade executives. A prayer for setting aside the Office Order dated 22.12.2010 prescribing for written test and interview for the upgraded E-1 Grade executives for promotion to E-2 Grade was also made. The learned Single Judge directed the authorities of Coal India Limited to consider the case of the members of the association who have been upgraded to the post of executive E-1 Grade to follow the method of seniority-cum-merit as and when they will come in the zone of consideration and promotion without insisting upon them to sit in the written examination.
28. The said order of the learned Single Judge was carried in appeal giving rise to APOT No. 331 of 2012. The Hon'ble Division Bench, by a judgment and order dated 12.02.2013, allowed the said appeal thereby setting aside the order impugned. The Hon'ble Division Bench held thus-

"There is a difference as to the qualifications of the incumbents. I.T.I. certificate-holders could have gone to E-1 cadre from A and A/1 non-executive cadre; whereas diploma-holders on clearing selection test subject to written examination as well as interview were to be promoted to E-2 cadre. Merely by their upgradation to E-1 grade, the rider which was prevailing with respect to their further promotion to E-2 grade was never given a go-bye or diluted in any manner whatsoever but formed part of the Common Coal Cadre Scheme. The same was reiterated by the Committee in its recommendations which were accepted by the Board of Directors of CIL and based thereupon, upgradation was made and undertaking/declaration was furnished by such upgraded incumbents. As a special case, they were given this upgraded cadre personally. Although till such time they are holding the posts, thereafter posts are to be reverted back to the original cadre of Non-executive. Posts held by them are personal and were further subjected to rider completion of probation period successfully. Thus by no stretch of imagination it can be said that at any

point of time any right was conferred upon such diploma holders by upgradation to be promoted on the basis of seniority-cum-merit to the executive cadre of E-2 without selection test, viz. passing examination written and clearing Interview. Thus they cannot claim any such right. Condition imposed cannot be said to be arbitrary in any manner but such condition was invoked earlier and remains the upgradation.

Aptitude is quite significant factor for holding the executive posts and suitability can also be adjudged by written examination. The rider of selection test and Interview cannot be said to be uncalled for or unreasonable condition for promotion to E2 cadre for such employees who have been upgraded without such test to E-1 cadre. They are substantially discharging their functions even after upgradation of non-executive cadre apart from some functions assigned of E-1 cadre. By subjecting them to further rider of selection test for furtherance of their pursuit to the higher post of E-2 cadre, rider imposed cannot be said to be unreasonable or suffering from the vice or arbitrariness contravening Article 14 of the Constitution of India.

Holding of selection test and interview for such post is appropriate requirement to adjudge suitability."

29. The Hon'ble Division Bench after taking into consideration the decision taken by the Board of Directors of Coal India Limited for upgradation of the diploma holders for non-executive cadre to the E-1 Grade held that no right was conferred upon the diploma holders engineers by way of upgradation to be promoted on the basis of seniority-cum-merit to the executive cadre of E-2 without selection test namely passing written examination and clearing interview.
30. The judgment of the Hon'ble Division Bench dated 12.02.2013 in APOT 331 of 2012 squarely applies to the case on hand and by applying the said decision, this Court holds that the petitioners cannot claim to be promoted to E-2 grade without qualifying the written test and clearing the interview.
31. Mr. Mitra would contend that the Subordinate engineers and the Welfare Officers, both of whom being upgraded from non-executive cadre to executive E-1 Grade stand on the same footing and therefore, the petitioners being the subordinate engineers have to be treated equally with that of the

welfare officers. He contended that since the welfare officers were extended the benefit of deemed placement as granted to the management trainees vide Office Order dated 22.03.2012, the petitioners are to be extended the same benefit.

32. Coal India Limited in its affidavit-in-opposition has specifically stated that the departmental candidates who were selected from non-executive to the post of Welfare Officer (Trainee) in E-1 grade were selected in the executive cadre as per the norms laid down in Common Coal Cadre i.e., after qualifying in written test and interview whereas the petitioners were upgraded to E-1 grade without participating in the selection test. Such positive assertion of Coal India Limited does not appear to have been specifically denied by the petitioner. That apart the petitioners have not produced any material to satisfy this Court that the non-executives were upgraded as Welfare Officers (Trainee) in E-1 grade without qualifying the written test and interview.
33. In view thereof, this Court is not inclined to accept the submission of Mr. Mitra that the petitioners are similarly situated as that of the Welfare Officer (Trainee). Therefore, the decision in **Ravindra Shyam Rao Wadhai** (supra) cannot be applied to the case on hand.
34. The Office Order dated 13.02.2019 was issued in order to implement the judgment and order dated 22.12.2017 passed in **Ravindra Shyam Rao Wadhai** (supra). For the reasons as aforesaid, paragraph 5 of the Office Order dated 22.12.2017 cannot be said to be arbitrary, discriminatory and in violation of Article 14 of the Constitution of India. This Court is also of the considered view that the benefit of deemed placement which was extended to the Welfare Officers (Trainee) in E-1 grade cannot be extended to the petitioners.
35. In **Ashis Kumar Ganguly** (supra) the issue that fell for consideration was whether the employees transferred from the Central Government and those

deputationists who were absorbed fall in different classes. On such issue the Hon'ble Supreme Court held that the conditions of service of employees from different sources cannot be different only because they were recruited from different sources in view of the fact that both the sets of employees were governed by the same set of regulations. In the case on hands, this Court has already held that the petitioners after having accepted the conditions for their promotion to E-2 grade cannot claim deemed placement like Welfare Officers (Trainee) on management trainees. Therefore, the said reported decision cannot come to the aid of the petitioner.

36. Accordingly, the writ petition fails and the same stands dismissed. There shall be, however, no order as to costs.
37. Urgent Photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(Hiranmay Bhattacharyya, J.)