

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

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

WPA 16132 of 2021

RAJU DIDAR SINGH GILL & ORS.

VS.

COAL INDIA LTD. & ORS.

For the petitioner : Mr. Soumya Majumdar,
Ms. Ashmita Chakraborty,
Mr. Victor Chatterjee advocates

For the Respondent : Mr. L.K. Gupta, Id. Sr. Adv.
Mr. Snehatosh Majumdar,
Mr. Sudhakar Prasad advocates

Reserved on : 25.08.2023

Judgment on : 31.08.2023

Hiranmay Bhattacharyya, J.:

1. The executives of Coal India Limited (hereinafter referred to as "CIL") have prayed for a writ of mandamus commanding the respondents to cancel the promotion order dated 27.08.2021 and to prohibit the respondent from giving any effect to the revised promotion policy dated 05.11.2020 for filling up of vacancies in E-7 grade that arose in 2019 and 2020 for the eligibility cut-off date of 30.09.2020.
2. The petitioners are the executives working in mining discipline in the E6 grade in various subsidiaries of CIL. The petitioners claim that they are all eligible for promotion to E7 grade. The petitioners further claim that the promotion of the petitioners from E6 to E7 grade was governed by the promotion policy dated 3rd/5th of May, 2011 which was subsequently amended vide Office Order dated 23.07.2019. The petitioners claim that in violation of the common coal cadre, CIL did not conduct Departmental Promotion Committee (for short "DPC") for the cut-off date 30.09.2020 at the stipulated time. On 05.11.2020 CIL introduced a new policy for promotion of executives up to E8 grade

wherein the marking system and criteria of obtaining the maximum score for length of service was changed. In terms of the new promotion policy the executives working in E6 grade for only seven years was entitled to maximum marks of 25. The petitioners claim that the CIL conducted a DPC in August, 2021 for filling up vacancies in E-7 grade that arose in 2019 and 2020 for the cut-off date of 30.09.2020 in accordance with the new policy. The petitioners state that CIL issued a promotion order on 27.08.2021 whereby the vacancies existing and declared as on 30.09.2019 and 30.09.2020 have been partly filled up by the private respondents. Being aggrieved by the said promotion order dated 27.08.2021, the petitioners have approached this Court.

3. Mr. Majumdar learned advocate representing the writ petitioners contended that CIL issued an Office Order dated 05.05.2011 (for short "the old policy") laying down the guidelines for promotion of executives from E6 to E7 grade. He contended that as per the said Office Order such promotion shall be based on merit cum seniority by paper DPC. He further contended that the said Officer Order provides the cut-off date for eligibility to be 30th of September of every year. By referring to Office Memorandum dated 10.04.1989 issued by the Department of Personnel and Training (for short "DoPT"), Mr. Majumdar contended that such Memorandum stipulates that a vacancy shall be filled up in accordance with the recruitment rules in force on the date of vacancies unless rules made subsequently have been expressly given a retrospective effect. Mr. Majumdar drew the attention of this Court to the new guidelines for promotion of executives dated 05.11.2020 and contended that such guidelines have not been given any retrospective effect. Thus, according to Mr. Majumdar, CIL ought to have filled up the vacancies existing and declared as on the eligibility cut-off date 30.09.2020 by applying the guidelines contained in the Office Order dated 05.05.2011. Mr. Majumdar further referred to the schedule for holding meetings of DPCs as laid down in the promotion procedures. By referring to Clause 4.5.(D) thereof he contended that the DPCs for promotion of executives in mining discipline has to be convened in the month of September each year. Mr. Majumdar contended that the accrued right of the writ petitioners for promotion to E7 grade in terms of the old rules was taken away by way of amendment of the rules. Mr. Majumdar further contended that the eligibility cut-off date pertaining to the vacancies of the year 2020 was 30.09.2020 and since at that relevant point of time the old promotion policy was in operation, CIL was bound to fill up such vacancy only in terms of the old promotion policy. In support of such contention Mr.

Majumdar placed reliance upon a judgment dated 12.01.2017 passed by the Hon'ble Division Bench in a batch of appeals, the lead case being AST 83 of 2016 in the matter of **Kajal Datta Ray and ors. vs. Anil Kumar Joshi and ors.**

4. Mr. Gupta learned senior advocate representing CIL seriously disputed the contention of Mr. Majumdar. He referred to the frequently asked questions (for short "FAQ") and the answers thereto issued by the General Management Division in support of his contention that rules and guidelines formulated by DoPT are not applicable to the CPSEs. He further submitted that the petitioners upon being appointed in CIL have agreed to be governed by the rules and regulations of service and administrative orders of CIL in force from time to time and in support of such contention he placed reliance upon a copy of the appointment letter issued to Sri Amit Chaturvedi i.e., the petitioner no. 3 herein, a copy of which was taken on record. Mr. Gupta placed reliance upon a letter issued by the department on 27.09.1975 to the Chairman, Coal Mines Authority Limited on the subject of setting up of CIL, as holding company for the coal industry in the Central Public Sector. He, therefore, submitted that the Central Government has deep and pervasive control over CIL. Mr. Gupta further contended that in January 2021, due to restructuring of the cadre strength on 01.03.2021 certain vacancies were made available for consideration and for that DPC was held on 20.08.2021. He further contended that the new promotion policy being Office Memorandum dated 05.11.2020 was directed to be implemented with immediate effect. He submitted that while conducting DPC on 20.08.2021, the vacancy position in E7 grade as on 01.03.2021 was taken into consideration. He further submitted that since the DPC was held after 05.11.2020, CIL followed the new guidelines dated 05.11.2020 in the instant case. Mr. Gupta further contended that a candidate has a right to be considered in the light of the rules that is in force as on the date when the DPC considers the eligible candidates for promotion. In support of such contention Mr. Gupta placed reliance upon a decision of the Hon'ble Supreme Court in the case of **State of Himachal Pradesh and ors. vs. Raj kumar and ors.** reported at **(2023) 3 SCC 773**. Mr. Gupta also referred to an order of a co-ordinate bench dated 10.05.2023 in WPA 6861 of 2020 in the case of **Shyam Kumar Chaurasia vs. Coal India Ltd. and anr.** in support of his contention that an executive of Coal India Limited is a public servant.

5. In reply Mr. Majumdar contended that in **Raj kumar** (supra) the Hon'ble Supreme Court was dealing with the case of an employee whose relationship is governed under Part XIV of the Constitution. He further submitted that the petitioners do not enjoy the status as enjoyed by the employees whose relationship with the employer are governed by Part XIV of the Constitution. Thus, according to Mr. Majumdar the said decision do not have any manner of application to the case on hand.
6. Heard the learned advocates for the parties and perused the materials placed.
7. Clause 4.1 of the cadre schemes and promotion procedures provide that all promotions from one executive grade to another will be on the basis of recommendation of duly constituted Departmental Promotion Committee. Clause 4.5 deals with Schedule for holding of DPCs. Sub-clause D thereof states that DPC for other general service shall be September of each year. Mr. Majumdar would contend that in view of the procedures laid down in the cadre schemes and promotion procedures, meetings of DPCs has to be mandatorily convened in case of promotion of executives in mining discipline on September of each year. It would be relevant to take note that the paragraph incorporated under the said clause after the time schedule states that meetings of DPCs may be convened at any time than those in the schedule mentioned therein as may be decided by the cadre controlling authority. Therefore, though the procedures laid down speaks of holding DPC for other general services on September of each year but at the same time sufficient leverage has been given to the cadre controlling authority for convening meetings of DPCs at any time than the dates mentioned in the schedule. In the affidavit in opposition filed by CIL it has been specifically stated that due to restructuring in the cadre strength in January, 2021 some vacancies were made available as on 01.03.2021 for which the DPC was held on 20.08.2021.
8. Mr. Majumdar would contend that as per the rules for promotion, executives of a particular grade who were eligible for promotion as on 30.09.2020 ought to have been considered for promotion to the next higher grade in terms of the policy/ rules prevailing as on such cut-off date. In other words, according to Mr. Majumdar, the rules/policy prevailing on the eligibility cut-off date shall be applicable for considering the promotion of eligible candidates.

9. The issue whether the vacancies which arose prior to the promulgation of the new rules are to be filled up as per the old rules or as per the amended rules came up for consideration before the Hon'ble Supreme Court in the case of **Y.V. Rangaiah vs. J. Sreenivasa Rao** reported at **(1983) 3 SCC 284**. The Hon'ble Supreme Court in paragraph 9 of the said reports held that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules.
10. The proposition of law laid down in **Rangaiah** (supra) gave rise to a large number of decisions and three Hon'ble Judges of the Supreme Court of India in **Raj Kumar** (supra) noticed that most of the decisions have, in fact, watered down the principle in Rangaiah case while distinguishing it.
11. The Hon'ble Supreme Court in **Raj kumar** (supra) took note of its own decision in the case of **Y.V. Rangaiah and ors. vs. J. Sreenivasa Rao and ors.** and the Hon'ble Supreme Court felt the necessity to examine the correct position of law in view of the observation in Rangaiah case that has construed as a general principle that vacancies arising prior to the amendment of rules are to be filled only as per the old rules. The Hon'ble Supreme Court further noted that a large number of decisions have either followed the principle in Rangaiah case or have distinguished it. Various decisions that followed Rangaiah (supra), were analysed by the Hon'ble Supreme Court and it was held that all judgments except in P. Ganeswar Rao (supra) which not only followed Rangaiah but also observed that the new rules enabled vacancies to be filled as per the rule that existed prior to the amendment, all the other judgments adopted the principle in Rangaiah and directed appointment to be made as per the rules that existed when the vacancies arose. Thereafter, the Hon'ble Supreme Court analysed the decisions that have distinguished **Rangaiah** and held as follows-

"82.1 There is no rule of universal application that vacancies must be necessarily filled on the basis of the law which existed on the date when they arose, Rangaiah case must be understood in the context of the rules involved therein.

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82.5 When there is no statutory duty cast upon the State to consider appointments to vacancies that existed prior to the amendment, the State cannot be directed to consider the cases."

12. The Hon'ble Supreme Court, thereafter, noted the decision in the case of **Deepak Agarwal vs. State of Uttar Pradesh and ors.** reported at **(2011) 6 SCC 725** which held that a candidate has a right to be considered in the light of the existing rules i.e., rule in force on the date the consideration takes place. The Hon'ble Supreme Court further noted the decision in the case of **Union of India vs. Krishena Kumar** reported at **(2019) 4 SCC 319** wherein it was held that there is only a right to be considered for promotion in accordance with rules which prevail on the date on which consideration for promotion takes place. The Hon'ble Supreme Court in paragraph 85 of the said reports held that the consistent finding in the Supreme Court decisions that distinguished Rangaiah compelled the Hon'ble Supreme Court to conclude that the decision in Rangaiah is impliedly overruled. However, since there was no declaration of law to that effect, the Hon'ble Supreme Court held that the statement in **Rangaiah** that "the vacancy which occurred prior to the amended rules would be governed by the old rules and not by the amended rules" does not reflect the correct proposition of law and the said decision was accordingly overruled. After making the aforesaid observation the Hon'ble Supreme Court noted that if the amended rules comes into force immediately after the same were notified and also that there is no provision for the old rules to be applied, the employee cannot claim that such rules to be applied for consideration of their case.
13. Now coming back to the facts of this case, this court finds that the DPC for the eligible candidates as on the cut-off date 30.09.2020 was held on 20.08.2021. Therefore, the consideration for promotion of the eligible candidates took place after the new policy/rules came into operation. In the affidavit filed by CIL detailed reasons have been assigned for convening the DPC on 20.08.2021 for filling the vacancies in E-7 grade declared as on 01.03.2021. In view of the reasons stated in the affidavits of CIL this Court is of the considered view that CIL was entitled to take the decision for filling up the existing vacancies by convening the meeting of DPC on 20.08.2021. Such decision of CIL cannot be said to be an arbitrary one.
14. Mr. Majumdar would vehemently contend that the rules prevailing on the eligibility cut-off date ought to have been applied for filling the vacancies declared as on 01.03.2021 in view of the Memorandum issued by DoPT. The directions contained in O.M. dated 10.04.1989 more particularly Clause 3.1 thereof which states that a vacancy shall

be filled up as per the rules prevailing on the date of vacancies cannot be said to be applicable to CIL in view of the clarification contained in the answer given by the General Management Division to the FAQ No. 3. The Question No. 3 and the answer thereto are extracted hereinbelow-

“Question 3: Is all DoPT instructions/guidelines applicable to CPSEs?”

Answer: All the rules and guidelines formulated by DoPT, Ministry of Personnel, Public Grievances and Pensions are not applicable to the Central Public Sector Enterprises (CPSEs) except the statutory Acts of Government of India as promulgate and procedure laid down in this regard like reservations etc. DPE extends only those guidelines of DoPT/Government of CPSEs, which are specifically meant for CPSEs.”

15. The employees of CIL are governed by its rules and the policies framed by the management with the approval of the Board and in consultation with their respective Ministry/ Department. Such position has been clarified by the answer to Question No. 4 of FAQ. The said question and the answer thereto are extracted hereinbelow.

“Question 4: Under what rules CPSEs employees are governed?”

Answer: The employee of a Central Public Sector enterprises (CPSEs) are governed by its own conduct, Discipline and Appeal (CDA) rules and also as per their Human Resource (H.R.) policy. These CDA rules and HR policy is framed by the management of CPSEs with the approval of their Board and in consultation with their respective administrative Ministry/ Department as and when required. DPE has only issued a Model CDA Rules for CPSEs vide it's BPE OM No. 2(121)/73-BPE (GM-I) dated 26th April, 1974 amended time to time.”

16. From the clarifications made by the General Management Division it follows that the Memorandum issued by DoPT do not have any manner of application to this case. That the employees of CIL shall be governed by the policies framed by CIL has also been clarified.
17. It is evident from the materials on record that majority of the shares of CIL are held by the Central Government. That the Central Government has deep and pervasive control over CIL is also evident from the records.

18. That apart the petitioners have agreed to be governed by the rules and regulations of service and administrative orders of the company in force from time to time as would be evident from the appointment letter of one of the writ petitioners which was taken on record. The promotion of the executives, in the considered view of this Court, shall be governed by the policies framed by CIL in that regard from time to time.
19. The new policy came into force with immediate effect i.e., on 05.11.2020. The said policy state that the cut-off date for eligibility is 30th September every year and the vacancy date is that of 1st March of subsequent year. The said policy do not contain any provision for the old rules to be applied for filling the vacancies. The old rules/policy stood amended from the date of coming into effect of the new policy. CIL took a conscious decision to amend the old rules with immediate effect.
20. The Hon'ble Division Bench in Anil Joshi (supra) reiterated the proposition of law that an employee has no fundamental right of promotion in terms of Article 16 of the Constitution, but has a fundamental right to be considered therefor. In **Raj kumar** (supra) it was held that an employee only has a right to be considered for promotion in accordance with rules which prevail on the date such consideration takes place. In the case on hand, the consideration for promotion took place on August 20, 2021. At that point of time the new rules had already come into force. In Anil Joshi (supra) it was further observed that an authority can act only in terms of the rules that are in operation. The revised rules dated 05.11.2020 was in force when DPC was convened.
21. The decision to hold DPC vests with the authorities of CIL. CIL took a conscious decision to hold DPC on 20.08.2021 for filling the vacancies with the eligibility cut-off date 30.09.2020. The writ petitioners do not have a vested right to be considered for promotion in terms of a particular policy. It is now well settled that the right to be considered for promotion accrues on the date of consideration of the eligible candidates. Therefore, this Court is not inclined to accept the contention of Mr. Majumdar that an accrued or vested right of the petitioners have been taken away by amendment of the rules. The rules/ policy prevailing on the date of consideration for promotion i.e., the date of holding DPC shall be applicable for filling the vacancies. This Court, therefore, holds that the new policy dated 05.11.2020 was

rightly applied by the DPC while considering the candidature of the eligible candidates for promotion which culminated in the promotion order dated 27.08.2021.

22. In **Anil Joshi** (supra), the Board of Directors of CIL took a conscious decision to consider promotion of executives on pre-revised promotion guidelines and the promotion orders were issued on the basis of pre-revised promotion policy. On such factual background, the Hon'ble Division Bench observed that it was incumbent upon CIL to consider the writ petitioners' claim for promotion in terms of the pre-revised promotion policy. In view thereof the ultimate conclusion of the Hon'ble Division Bench cannot come to the aid of the writ petitioners.
23. There is, however, no quarrel to the proposition of law laid down by the Hon'ble Supreme Court in the case of **Vice Chairman, Delhi Development Authority vs. Narendra Kumar & ors.** reported at **(2022) 11 SCC 641** that a Central Government Scheme cannot automatically apply to an autonomous statutory organisation. The said decision cited by Mr. Majumdar is of no assistance to the petitioners.
24. In **Shyam Kumar Chaurasia** (supra) the question that fell for consideration was whether the authority was justified in proposing to enhance the punishment to that of dismissal from service on account of a judgment of conviction passed under the provisions of Prevention of Corruption Act, 1988. The said decision, however, has no manner of application to the issue involved herein.
25. For all the reasons as aforesaid, this Court holds that the writ petitioners have failed to make out a case for a direction upon CIL to initiate a denovo promotional exercise for filling up the vacancies as on September 2020 on the basis of old promotion policy. The writ petition accordingly fails and the same stands dismissed. There shall be, however, no order as to costs.
26. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(Hiranmay Bhattacharyya, J.)