

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

Before:

The Hon'ble Justice Lapita Banerji

W.P.A. No. 17774 of 2019

With

IA No. CAN 1 of 2020 (Old CAN 232 of 2020)

CAN 2 of 2020 (Old CAN 4339 of 2020)

CAN 3 of 2020

Subhash Ramkrishna Bhandare & Ors.

Vs.

Coal India Limited & Ors.

For the petitioners : Mr. Biswaroop Bhattacharya, Adv.
Ms. Ashmita Chakraborty, Adv.
Mr. Pratik Majumder, Adv.

For the Respondents/CIL : Mr. L.K Gupta, Sr. Adv.
Mr. Snehatosh Majumder, Adv.
Mr. Sudhakar Prasad, Adv.

Hearing concluded on : 08.02.2023.

Judgment on : 01.03.2023.

Lapita Banerji:- The petitioners are executives who were working in E-6 Grade in different subsidiaries of Coal India Limited (for short, "**CIL**") at the material point in time. All the 235 writ petitioners held the post of Senior Managers at time of filing of the Writ Petition. The petitioners have challenged the promotional policy from E-6 to E-7 Grade along with the **PRIDE** system of Marking of the Executive Evaluation Reports (**EERs**) and the Orders of Promotion dated August 13, 2019; August 14, 2019; August 15, 2019 and

August 16, 2019 promoting some of the executives from E-6 to E-7 Grade in supersession to that of the petitioners.

2. The petitioners have challenged the promotional policy dated May 3rd/5th, 2011 as well as the Performance Report for Individual Development of Executives (for short, “**PRIDE**”) system of marking as communicated in **PRIDE** form and Performance Management System (for short, “**PMS**”) manual. The **PRIDE** system of marking came into effect from 2013-14. The performance of the executives was assessed by way of Executive Evaluation Report (for short, “**EER**”). Initially assessment of **EER** was by way of preparation of Task Assignment and Acceptance Document (for short, “**TAAD**”). Later the said system of Evaluation of **EER** was replaced by **PRIDE** system.

3. Mr. Bhattacharya, appearing for the petitioners, assailed the promotional policy of 2011 and the promotional orders of 2019 primarily on 2-fold grounds. The first limb of the argument related to the issue that both under **TAAD** and **PRIDE** the executives/petitioners’ right to appeal/make representations till May 2018, against the **EER** ratings was restricted to only those officers who obtained an *inadequate/poor* rating.

4. The second limb of his argument related to the issue that in certain cases, the officers in the same Grade (i.e. E-6 Grade) assessed the **EERs** of the other officers in the same grade leading to violation of the principles of Natural Justice. An officer, who is also an incumbent to be considered for promotion to E-7 Grade, should not have been the Reporting officer/prescribed authority to assess the **EER/PRIDE** rating of the other executives in the same Grade.

5. Mr. Bhattacharya relied on **Dev Dutt Vs. Union of India & Ors.** reported in (2008) 8 SCC 725 for the proposition that communication of each and every grading of the **EER** has to be made. Not only *poor* or *inadequate* gradings but all the gradings are to be communicated to employees working in Government Offices, Statutory Bodies, Public Sector Undertakings or Instrumentalities of the State, where constitutional obligations and principles of Natural Justice and fairness apply. The gradings are to be communicated within a reasonable period of time so that the employee concerned gets an opportunity of representation for improvement of his grading. Such representation, if made, is required to be decided fairly and within a reasonable period by an authority higher than the one who made the entry.

6. It is the specific grievance of the petitioners that despite the office order dated February 4, 2010, stating that all the gradings would be communicated to the officers' concerned along with an opportunity to make representations, the same was never implemented. It is only on May 8, 2018 the said policy was amended and all the officers were permitted to appeal against their **EER** ratings whether *poor/inadequate* or any other rating above the same.

7. A Departmental Promotional Committee (**DPC**) was constituted by CIL in 2019 and upon consideration of the **EERs** (against which the petitioners were not allowed to make any representations) and on the basis of the same, (some of which were evaluated by their own contenders,) 376 executives were promoted to the next higher grade (i.e. E-7 Grade). The petitioners were deprived of their valuable right to be considered for promotion to the next

higher grade as the promotional policy was arbitrary, patently illegal and wholly irrational.

8. In support of his contention that confidential reports should only have been written by the superior officers higher than the cadres whose reports were being prepared or performance was being assessed, he placed reliance on a Judgment reported in (1996) 8 SCC 762 (**State Bank of India vs. Kashinath Kher & Ors.**). He submitted that where an **EER** was graded by an officer of E-6 Grade, who was also an incumbent for being considered for promotion to E-7 Grade, the said procedure had to be highly unfair and violative of principles of Natural Justice as it was likely that the senior officers in the same grade would not assess the other incumbents fairly.

9. Furthermore, it was submitted that a Writ Court can interfere with the policy decisions of the Government/Employer in the event it is patently illegal, arbitrary and wholly irrational. The decision of CIL in not allowing executives to represent against the **EER** ratings unless the same was *poor/inadequate*, was flawed and patently illegal. He reiterated that **EERs** being prepared/evaluated by the contenders in the same grade, is against the principles of Natural Justice.

10. In support of his contention that the Writ Court can interfere with the policy decisions of the employer/Government, he cited the following Judgments:

- (a) **A. Satyanarayana & Ors. Vs. S. Purushottam & Ors** reported in (2008) 5 SCC 416;

- (b) ***Union of India & Anr. Vs. A.K. Narula*** reported in (2007) 11 SCC 10;
- (c) ***Harshit Agarwal Vs. Union of India*** reported in (2021) 2 SCC 710;
- (d) ***Rachna & amp; Ors. Vs. Union of India & amp; Anr.*** reported in (2021) 5 SCC 638.

11. Mr. Gupta, Learned Senior Counsel appearing on behalf of Coal India Limited (**CIL**) submitted that the procedure to assess an **EER** of an officer is not faulty. The procedure formulated by CIL in the matter of performance appraisal clearly provides for guiding the executives to improve their performance and/or to appreciate them for their work within the well-defined parameters with almost arithmetical precision based on figures available on record. Even though an element of subjectivity cannot be ruled out altogether, but, the entire evaluation is based on objective criteria. The assessment is based on a multi-tier system for making the final rating by officers of senior grades. The said multi-tier system is provided for ensuring that there is no error in calculation.

12. CIL with its several subsidiaries owns large number of coal mines in the country. Some of the mines are big and some are small. Each mine is operated and managed by employees and executives at different levels. Depending upon the size of the mines, the number of operating staff varies. A bigger mine has more operative staff and executive officers. Each mine is headed by a Manager of E-5/E-6/E-7 Grade. There may be more than one executive in the same grade at a particular mine. The senior most officer is

designated the post of the Manager of the mine even though there may be same grade executives in a particular mine.

13. Performance appraisal of a candidate can only be done properly by a person, who has firsthand knowledge of the working of the Candidate. The head of a unit can only assess the performance of the people working under him whether or not such a candidate belongs to a lower grade or to a same grade. Only an officer under whom a candidate/incumbent has worked for at least 4 months, is eligible to initiate the **EER** in a particular assessment year, as per the policy. It is only possible for an officer with firsthand knowledge of the incumbents' performance to initiate the assessment.

14. Some of the petitioners have admittedly reviewed **EERs** of their juniors in the same grade and some of their juniors have been promoted. Such an admitted factual position negates the argument that there would be a perceived bias or mala fide intent on part of the senior while assessment of a junior in the same grade since both are incumbents to be considered for promotion to the next higher grade.

15. Mr. Gupta referred to the case of **Kashinath**(Supra) and submitted that even though in that case it has been held that superior officers higher than the cadres whose reports were being written, should write the assessment reports, liberty was given to the employer to prescribe the officer who was competent to write such reports with further provision for another higher rank officer to review such report.

16. He submitted that the Doctrine of Necessity is an exception to the general principle of Natural Justice, "*nemo judex in Causa Sua*". As per CIL's Policy the initial rating is done by the officer concerned himself. After the self-appraisal, the performance rating is initiated by a Reporting Officer under whom the officer/executive has worked for at least 4 months even if the Reporting Officer is in the same grade. Thereafter, the assessment of the Reporting Officer is assessed by the First Reviewing Authority and then the Second Reviewing Authority. He distinguished **Kashinath Kher** (Supra) on the following points. In **Kashinath** (Supra) there was no provision for self-assessment. The recording officer as well as the reporting officer were of the same rank. There was no review by the First Reviewing Officer and the Second Reviewing Officer of higher grades. Admittedly, the procedure followed in **Kashinath** (supra) was violative of principles of Natural Justice.

17. He relied on a Judgment reported in 2004 (4) SCC 714 (**State of U.P. &Anr. Vs. Johrimal**), in support of his contention that the Courts do not usually interfere in policy matters, even if in the opinion of the Court, the policy is not wise or prudent.

18. He contended that at the instance of some of the litigants, an existing policy applicable throughout the country is never knocked down on the plea of likelihood of prejudice. Actual prejudice has to be proved. The petitioners have failed to plead and prove how the assessment of their **EERs** by Reporting Officers in the same grade (wherever applicable) have adversely affected their **EER** ratings causing Prejudice. There was no pleading to the aforesaid effect.

He relied on 2006 (8) SCC 776 (**P.D. Agarwal Vs. State Bank of India & Ors.**) in support of his contention.

19. Furthermore, by a Circular dated February 4, 2010, CIL introduced the system of entertaining representations by an aggrieved executive against any grading obtained by him in the Annual Performance Appraisal Reports (**APAR**)/Executive Evaluation Reports (**EERs**) with effect from assessment year 2008-2009. After launching of new Performance Management System (**PMS**) on March 4, 2013, the General Manager (Personnel), CIL circulated consolidated guidelines vide Office Memorandum dated January 30, 2014 regarding disposal of representations by aggrieved executives against gradings obtained by them. Due to inadvertent mistake the same was not incorporated in the manual of new **PMS**. The right to represent was inadvertently incorrectly restricted to the executives obtaining *poor* grading only. The said error was apparent on the face of the record since the O.M. dated January 30, 2014 was issued subsequent to the coming into effect of the new **PMS**. Subsequently, the new **PMS** was amended.

20. He submitted that the **EERs** of 2014-2015, 2015-2016, 2016-2017 were considered for the Impugned promotional orders passed in 2019 since the cut off dates for the vacancies in E-7 grade arose earlier.

21. Mr. Mukherjee, Learned Senior Counsel appearing on behalf of the private respondents, submits that the petitioners were aware of their **EER** ratings from 2008 onwards. Such ratings could be accessed and downloaded by an executive of CIL through personal login id from the website of CIL.

22. Since 2014, the **EER** gradings were known to all the executives of CIL and the Book (whether evaluated through **PRIDE** or **TAAD** system of Marking) could be downloaded in PDF format from the official website of CIL. The present promotional policy was also known to the petitioners from May, 2011. The petitioners did not seek to challenge the same. It is only after the promotional orders being passed in 2019, the petitioners have challenged the said promotional policy.

23. He submits that in order to justify the delay in filing the writ petition, reliance has been placed on the interim order passed in W.P. No. **11710 (W) of 2011, (S.D. Sukla & Ors Vs. Coal India Ltd & Ors)** but, the same only dealt with the issue regarding the differential treatment meted out to the Diploma and Degree Mining Engineers and did not deal with **EER/ACR** assessments at all relating to the two purported limbs of challenge. Whether or not the policy with regard to the distinction/differentiation done between the degree holders/ Diploma holders was set aside would not and could not make any difference to Petitioners' grievance. Therefore, the Petitioners have not been able to give, any plausible explanation for the delay in filing the Writ Petition.

24. Furthermore, the policy dated May 3rd/5th, 2011 has been upheld in a Division Bench Judgment of the Hon'ble High Court at Calcutta (**Coal India Limited & Ors. vs. Anil Joshi**), reported in (2017) 3 CHN 479. The DPCs were conducted in non-mining discipline and the same were under challenge. Since the promotional policy of May, 2011 was upheld by the said decision, the same was implemented in mining discipline also. All the executives of CIL including

the petitioners accepted and availed of Performance Related Pay (**PRP**) based on their **EER** ratings from 2012 onwards. They did not raise any grievance against the system of marking of **EER**. The petitioners should not be allowed to approbate and reprobate at the same time by contending illegality and unfairness of the promotional policy after submitting themselves to such a policy and failing to qualify.

25. The petitioners themselves have taken advantage of the promotional policies of CIL. Many of the writ petitioners, who were juniors to the respondent No.11, became senior to him in E-6 Grade since they were placed for promotion in the first class channel being Degree Holders.

26. The petitioners have not been able to show that promotion has been given to any executive from E-6 to E-7 Grade in violation of the policies/guidelines of CIL.

27. Mr. Mukherjee submitted that under Section 17 of the Mines Act, 1952, every mine was required to be under a sole Manager and it is the owner/agent of every mine who is required to appoint the Manager with the prescribed qualifications. It is the Manager who has the authority to prepare the **EERs** based on **PRIDE** rating. All the employees working in a mine would be under the Manager of the mine. A mine Manager may be an executive of E-5/E-6/E-7 Grade and all the employees work under the mine Manager even if they may belong to the same grade.

28. The petitioners and the private respondents have been subjected to the same promotional policy and, therefore, there is no discrimination against the petitioners.

29. The petitioners after participating in the entire process of promotion and having drawn the benefits based on their PRP ratings and after being considered for promotion, have now sought to abuse the process of law by challenging the self same promotional policy. Such a challenge would totally disrupt the functioning of the CIL and cause a serious impact on the career growth of the deserving candidates.

30. Having considered the rival submissions of the parties and the materials placed on record. This Court is of the view that:-

a- CIL by issuing a Circular dated February 4, 2010 introduced the system of intimating all the grades and inviting of representations from an aggrieved executive against the **APAR/EER** gradings with effect from assessment year 2008-2009. However, there may have been confusions regarding disposal of such representations by the officials till 2014.

b- Assuming that only **EER** ratings were communicated and *representations* were not accepted by CIL even after 2010 against ratings which were not *poor/inadequate*, there was a clear guideline issued by the General Manager (Personnel), CIL on January 30, 2014 regarding the disposal of all representations made by the aggrieved executives.

c- The said office Memorandum dated January 30, 2014 was issued after the new **PMS (PRIDE)** system of Marking came into effect.

d-No document has been brought on record to show that any representation was made by any of the petitioner challenging the **EER (PRIDE ratings)** for 2014-2015, 2015-2016, 2016-2017 based on which the 2019 promotional orders were passed.

e-A document relied on by the petitioners annexed to the notes of argument (which is in any event beyond the scope of the pleadings) shows that a representation was made by one Babon Singh on April 19, 2016 regarding review of **EER** rating for the year 2013- 2014. There is nothing to show on record that within 15 days of receiving the **PRIDE** rating the petitioner challenged the same.

f- Moreover, the **EER (PRIDE rating)** for the year 2013-2014 was not under consideration in DPC of 2019.

g- Furthermore, another document has been annexed to the written notes to show that a representation was made in 2012 for reviewing the **PAR** rating for the year 2010-2011. By a communication dated October 17, 2013 the General Manager (Personnel), rejected the said request for review. The said **PAR/EER** rating of 2010-2011 was not considered for issuance of promotional orders passed in 2019. The said communication of the General Manager was issued prior to the guidelines of 2014.

h-Admittedly, there was a provision for appeal from May 8, 2018.

i- From the documents it appears that not even one writ petitioner made a representation or preferred an appeal after May 8, 2018 till the filing of the writ petition on September 6, 2019.

j- The conduct of the writ petitioner leads this Court to take the view that even if a provision for appeal was present in 2014 the petitioners would not have availed of the same since not even one representation has been brought on record to show how the Petitioners were in fact actually prejudiced by the two purported flaws in the Impugned promotional policy of 2011 and the **PRIDE** system of Marking.

k- The writ petitioners have not brought on record any document to show how the **EER** ratings have affected their right to be considered for promotion.

l- Mr. Bhattacharya placed reliance on a Judgment reported in 2008 (8) SCC 725 (**DevDutt Vs. Union of India & Ors.**). In that case, it was held:

“Every entry (and not merely a poor or adverse entry) relating to an employee under the State or an instrumentality of the State, whether in civil, judicial, police or other service (except the military) must be communicated to him, within a reasonable period, and it makes no difference whether there is a benchmark or not.”

There is no dispute with regard to the fact that every entry must be communicated whether or not adverse. The **CIL** also amended their policies in accordance with the directives laid down in the **DevDutt’s** case (Supra).

m- In the event the petitioners chose not to make any representation despite the guidelines issued by the General Manager on January 30, 2014, fault for the same cannot be attributed to the **CIL**.

n- The last three years’ **EERs**, which were relevant for being considered for promotion, had been prepared after discussing the

performance of the executive himself with the Reporting Officer. No specific allegation was made with regard to the Reporting/Assessing Officers not following the procedure/guidelines laid down in the **PRIDE** for assessment of the executive in preparation of the **EER**. There is nothing on record to show that the petitioners were unfairly marked (or protested against it) due to malafide intent or unfairness or arbitrariness or extraneous consideration on the part of the Reporting Officer/Reviewing Officer/Accepting Officer. There is no allegation of non-communication of the **EER** ratings since 2009/2010. Therefore, the ratio in **Dev Dutt** (Supra) does not come to the aid of the petitioners.

o- The next decision cited by Mr. Bhattacharya is reported in 2013 (9) SCC 566 (**Sukhdev Singh vs. Union of India & Ors.**). In that case also, it was held that every entry must be communicated to a candidate within a reasonable period. The said entries were required to be communicated for threefold reasons.

*“First, the communication of every entry in the **ACR** to a public servant helps him/her to work harder and achieve more that helps him in improving his work and give better results. Second and equally important, on being made aware of the entry in the **ACR**, the public servant may feel dissatisfied with the same. Communication of the entry enables him/her to make representation for upgradation of the remarks entered in the **ACR**. Third, communication of every entry in the **ACR** brings transparency in recording the remarks relating to a public servant and the same system become more conforming to the principles of natural justice.”*

Again, there is no dispute with regard to the proposition laid down in **Sukhdev Singh** (Supra).

p- However, the said case cannot be considered to lay down the proposition that in the event the **EERs/ACRs** are communicated and the candidates/incumbents choose not to make representations against the same and the departmental promotions are held on the basis of unchallenged **EERs**, the candidates would be permitted to upset the entire promotional orders by approaching the Court after the promotional orders are passed, admittedly at least after 2 years of the **EER** ratings.

q- Next, he cited a Judgment reported in AIR 1996 SC 1328 (**State Bank of India Vs. Kashinath Kher& Ors.**). He cited the said case for proposition that the preparation of ACRs/character rolls of the officers by other officers of the same rank is violative of the principles of Natural Justice. *Such procedure/practice is obviously pernicious and pregnant with prejudicious and manipulation violating the principles of natural justice and highly unfair.* The Apex Court held that the object of writing confidential report is twofold, i.e. to give an opportunity to the officer to remove deficiency and to inculcate discipline. The second object was to seek improvement of quality and excellence and efficiency of public service.

r- In the said case, it has been held that confidential and character reports should be written by superior officers, higher above the cadres who are being assessed. The officer was required to impartially and fairly assess an incumbent without any prejudice in order to inculcate devotion to duty, honesty and integrity and improve excellence of an individual

officer but it was upto the employer to prescribe the officer who would be competent to write the confidential reports.

s- It has been clearly held in paragraph 15 of the said Judgment that:

“There should be another higher officer in rank above the officer who has written confidential report to review such report”.

In the instant case, the Reporting Officer in some of the cases may have been **E-6** Grade Officers, but the Reviewing Officer or the Accepting Officer or the Moderating Authority, (as the case may be), were officers of higher grades. There is no allegation with regard to the fact that Reviewing or Accepting authority were not officers of higher grades. Therefore, this Court is of the view that there is no violation of the proposition laid down in **Kashinath Kher** (Supra). It was also alleged by Mr. Bhattacharya that the Reporting Officers were not seniors to the petitioners but such a contention cannot be accepted in view of the fact that the documents annexed by the petitioners in affidavit in reply affirmed on March 10, 2020 to the supplementary affidavit in opposition go to show that the petitioners have worked under the Reporting officers for at least 12 months. Not only the nomenclature of the grade requires to be considered but the actual duties performed by the officers have to be taken into account also.

t- Next, he relied on (2008) 5 SCC 416 (**A. Satyanarayana& Ors. Vs. S. Purushotham& Ors.**). The said case is with regard to the fixation of ratio for promotion of the Section Officers and the Private Secretaries to

be considered for promotion to the posts of Assistant Secretaries to the Government of Andhra Pradesh. In that case, it was held that for a rule regarding the ratio of the incumbents to be considered eligible for promotion should not be ordinarily interfered with or disturbed by the Court. The said rule, if wholly arbitrary or irrational, can be declared to be ultra vires. A rule or a policy cannot be accepted if it takes away the right of a class of employees. In order to declare a rule or policy to be ultra vires, a plea of discrimination based on adequate pleadings would be considered essential. Laying down of a condition after adoption of a policy which defeats the object and purpose of the policy decision, was held to be impermissible.

u- In the present case, there is no allegation with regard to any discrimination in the promotional policy or the **PRIDE** system of Marking between the petitioners/unsuccessful candidates and the private respondents/representatives of the successful candidates. Both the unsuccessful and successful class of candidates have been considered by way of the same promotional policy. Therefore, the question of discrimination of one class against the other does not arise. The ratio of the incumbents eligible for promotion is also not under challenge in the present writ petition. Therefore, the decision of **A. Satyanarayana**(Supra) does not come to the aid of the petitioners.

v- Next, he cited the decision of (**Union of India & Anr Vs. A.K. Narula**) reported in 2007 (11) SCC 10. In that case, the writ

petitioner/respondent (before the Apex Court) prayed for upgradation of his **ACR** from “good” to “very good” by including him in the panel for promotion since another incumbent for promotion, who was claimed to be similarly placed with the writ petitioner, was considered eligible for promotion by upgradation of his **ACR** from “good” to “very good”. The Apex Court set aside the Judgment passed by the Hon’ble Division Bench and dismissed the writ petition by holding that the case of the respondent/writ petitioner was different from that of the other incumbent and the decision of the reviewing **DPC** that the writ petitioner did not qualify for an upgradation from “good” to “very good” deserved to be upheld.

w- This Court fails to see how **A.K. Narula**(Supra) aids the case of the petitioners. There is no allegation of discrimination with regard to the policy adopted for grading the petitioners’ **ACRs/EERs** with the policy adopted for grading of the private respondents’ **ACRs/EERs**. In **Narula**, the writ petitioner challenged the findings of the **ACR** and complained of discrimination against a candidate considered eligible for promotion. In the present case, without challenging the ratings in the **EERs** or without complaining of a discriminatory promotional policy between the successful and unsuccessful candidates, the petitioners have sought to challenge the Impugned orders of promotion dated August 2019.

x- The next decision cited by Mr. Bhattacharya is reported in 2021 (2) SCC 710 (**Harshit Agarwal & Ors. vs. Union of India & Ors.**). The said decision was cited for the proposition that Judicial Review of an administrative action is permissible on the grounds of illegality, irrationality and procedural impropriety. An administrative decision is flawed if it is illegal. A decision is illegal if it pursues an objective other than that for which the power to make the decision was conferred. There is no unfettered discretion in public law.

y- The facts of that case related to the issue whether or not the qualifying cut-off marks for admission to the first year of Bachelor of Dental Surgery (**BDS**) course could to be lowered for the students who appeared in National Eligibility Cum Entrance Test (**NEET**). The issue that fell for determination before the Supreme Court was whether lowering of qualifying marks of percentile for admission to **BDS** course on the recommendation of Executive Committee of Dental Council of India was illegal or not.

z- In such a circumstance, the Apex Court held that lowering of the minimum marks and reducing percentile for admission to the First Year **BDS** course would not amount to lowering of standard of education and the decision of the Central Government not to reduce the minimum marks for admission to **BDS** course suffered from illegality and irrationality and was, therefore, set aside. This Court again fails to appreciate how the ratio of the decision of the Apex Court in **Harshit**

Agarwal (Supra) arrived at by the Apex Court in a completely different factual scenario, aids the writ petitioners.

aa) Next, he relied on a Judgment reported in 2021 (5) SCC 638 (**Rachna& Ors. Vs. Union of India &Anr.**). In that case, it was held by the Apex Court that policy decisions are open for judicial review for a very limited purpose. The Court can interfere into the realm of public policy so framed if it is either absolutely capricious, totally arbitrary or not informed of reasons. In that case, the petitioners prayed for grant of one additional attempt due to Covid-19 pandemic in appearing for Civil Services (Preliminary) Examination, 2020. It was held that rules 4 and 6 of the Civil Services Examination Rules, 2020 clearly stipulate that the entry age to participate in the competition was 21 years and the exit age was 32 years. Only the reserved category candidates were entitled to unlimited chances and age relaxations. In that case, the Apex Court held that not only the petitioners but also all other candidates, who appeared in various examinations in 2020 during Covid-19 pandemic, have faced same constraints/impediments/inconveniences in one way or the other and the prayer for an additional attempt made in the guise of Covid-19 pandemic was nothing but a lame excuse. Therefore, the policy decision not to allow an additional attempt by the petitioners in the 2021 Civil Service Examination, was not set aside or interfered with. This Court fails to comprehend how the decision arrived at by the Apex Court in the facts and circumstances of the case aids the writ petitioners. On

the contrary, to the mind of this Court the decision in **Rachna** (Supra) aids the Case of the private respondents.

bb) In the present case the successful and the unsuccessful candidates have all been promoted by way of the same promotional policy and the same system of marking and therefore must have faced the same handicaps (if any), related to the policy/system of marking.

cc) After sitting on the fence till such time the Impugned Promotional Orders were passed in 2019 the writ petitioners have challenged the same on the ground of violation of the principles of Natural Justice since there was no provision for Appeal/Review till 2018 unless the employees were rated *inadequate/poor*.

dd) Such a course of action is deprecated by the Hon'ble Supreme Court of India. This Court places reliance on a judgment reported in (2010)12 SCC 471 (**Shiba Shankar Mahapatra & Others vs. State of Orissa and Others**).

ee) This Court is also of the view that compliance of rules of Natural Justice cannot be insisted upon if the outcome of compliance of the same would have made no difference to the merits of the case.

ff) Since not a single representation against 2014-2015 **EER** rating has been brought on record this Court is of the view that even if there was a provision for appeal since 2014 the petitioners would not have availed of the same.

gg) The petitioners have approached this Hon'ble High Court in its high prerogative writ jurisdiction, without making any representation since the date of publication of **EERs** in 2014-2015.

hh) The second limb of the argument of the petitioners relates to the violation of principles of Natural Justice since no one can be a judge in his own cause (*Nemo Judex in Causa Sua*).

ii) Reliance has been placed on **EERs** of one candidate. One Suresh Prasad Saha was rated outstanding by his Reporting authority in 2014-15. He was again rated outstanding by his Reporting authority in 2015-2016. In 2016-17 he was rated "very good" both by Reporting authority and Accepting authority. How the said Executive suffered due to the assessment of the Reporting officer who may have been an officer in the same grade remains unexplained. In 2017-2018 (though not relevant for promotional orders of 2019) the same officer was marked 'outstanding' by Reporting Authority, Reviewing Authority and Accepting Authority by following the **PRIDE** system of marking and assessment of **EERs** by following the 2011 policy. Such documents annexed by the petitioners to the affidavit affirmed on March 10, 2020 bolsters the contention of the respondents/CIL that no prejudice has in fact been suffered by the Petitioners due to the 2011 Promotional Policy or **PRIDE** system of marking.

jj) Admittedly some of the juniors of the petitioners who have been assessed by the petitioners themselves being officers in the E-6 Grade

have been promoted. The argument that the seniors who are also incumbents for promotion will unfairly assess their juniors in the same grade is self-defeating. Furthermore, it is also not lost upon this Court that the petitioners had an opportunity of self-appraisal prior to the same being assessed by the Reporting Authority. Prior to 2018 amendment in the first half yearly review, a feed back discussion of the officer/incumbent with the Reporting Officers was to be noted. During the final review at the end of the year after the self- appraisal feed back discussion with the Reporting Officer as well as the feed back discussion with the Accepting Officer was also to be noted. After that the petitioners could approach the Appellate Authority/ Moderation Committee in certain Cases.

kk) Therefore, under no stretch of imagination can it be said that the Reporting authority was the final Reviewing/Assessing Authority. The final Reviewing/Assessing authorities were admittedly officers of higher grades leading this court to hold that there is no violation of the principles of Natural Justice that no one can be a Judge in his own cause. The petitioners should not be permitted to challenge the promotional process by actively participating in the same.

ll) The petitioners have participated in the Promotional Process since the time of their recruitment on various dates in 1980's and 1990's. The petitioners have been working in the E-6 grade on and from various dates in 2003 till 2015. After participating in the Promotional Process

and after being rejected the petitioners cannot now pray for striking down of the Promotional Policy of 2011 for being violative of Articles 14 and 16 of the Constitution of India. The two flaws on which the promotional policy of 2011 is sought to be assailed were applicable to the promotional policies that existed even prior to the 2011 policy. The two purported flaws were not introduced by the 2011 policy.

mm) It is also observed that, in 2018, the guidelines were further amended. The assessment would have 3 levels of appraisal. After self-appraisal there would be appraisal by the Reporting Authority then by the Reviewing Authority (old Accepting Authority) and then finally by the Accepting Authority.

nn) This Court also cannot accept the argument that since previous writ petition are being WPA No. 11710 (w) of 2011 (**S.B. Sukla and Others Vs. Coal India Limited and Others**) was pending, the petitioners could not challenge the 2011 promotional policy earlier. In the previous writ petition the promotional policy was challenged on a completely different ground/issue. The second class mining engineers who acquired mine manager's certificate's wanted to be considered at par with the first class mining engineers.

oo) Even if for the sake of the petitioners argument it is accepted that due to the interim order of stay of operation of 2011 promotional policy (albeit/ on a different ground) the same was not challenged before, still the reason for not challenging the previous promotional policies on the

aforesaid two limbs/flaws remains unexplained as the previous promotional policies also suffered from the same defects. What prevented the petitioners from assailing the promotional policy of 2011 on the abovementioned two grounds which are admittedly different from the grounds taken in **S.B. Shukla's Case**, prior to the passing of the promotional orders remain unexplained.

pp) This Court is of the view that had the 2019 Promotional Orders been passed in favour of the writ petitioners, the promotional policy that the petitioners were submitting themselves to over the years, particularly after being promoted to E-6 grade would not have been challenged by the petitioners.

qq) Mr. Bhattacharya, referred to a representation dated September 13, 2017. The prayer made in the 2017 representation was renewed on July 25, 2019 by the Coal Mines Officers' Association of India (CMOAI). From the said representations it appears that the petitioners have agitated their grievances with regard to the marking pattern in the new promotion policy of 2011 as opposed to the old marking policy. The CMOAI has agitated that even if an officer secures "*excellent*" grading in the relevant **EERs** the officer may not be able to secure 75% marks and be in the promotable group due to the change in the making pattern in the 2011 policy. Moreover, the belated approach to the petitioners in making the aforesaid representations is perplexing.

rr) The **PRIDE** system of marking of **EERs** is prevalent since 2013-14 and the petitioners sought to challenge the same in September 2017 after the **EERs** of 2014-15, 2015-16, 2016-17 have been prepared. The petitioners without availing of the appeal provisions in May 2018 chose to make another representation in July 2019 after the **DPC** was constituted in June 2019. None of the two purported flaws which have been urged in the present writ petition were agitated in the aforesaid representations. The said representations only go to confirm the views of the court that as late at July 25, 2019 the petitioners had no grievance with regard to not being able to make representations against the grading which were not *inadequate/poor* and also had no grievance against the officers of the same E-6 grade being the Reporting officers and initiating their **EERs**. The purported flaws agitated by the petitioners are in the nature of an afterthought which the petitioners have sought to contend after the promotional orders were passed in August 2019.

ss) Since this Court has already held that after participating in a promotional process the petitioners cannot challenge the same after being held to be unsuccessful, this Court has not gone into the question whether assessment by the same grade officers in the E-6 category was prompted by the “doctrine of necessity”.

tt) This court also observes that the submission of Mr. Mukherjee that in **Anil Kumar Joshi** (Supra) the 2011 promotional policy was accepted by the Division Bench of this Hon’ble Court and therefore not open to

challenge anymore cannot be accepted. In that case, it was held that the Ld. Single Judge was not correct in setting aside the entire 2011 promotional policy when the issue was only whether the vacancies of 2010, 2011 and 2012 could be clubbed together and the 2011 promotional policy could be applied with retrospective effect for vacancies arising in 2010. On such facts the Hon'ble Division Bench held that the pre revised promotional policy of 1992 was applicable for 2010 vacancies and not the New 2011 policy with retrospective effect. The 2011 promotional policy was not challenged in that case. The present challenge on the two purported grounds seems to be in the nature of an afterthought which cannot be sustained due to the aforesaid reasonings and not because of the fact that the 2011 policy was already accepted by the Hon'ble Division Bench.

31. In the light of the discussions above **WPA 17774 of 2019** is **dismissed** without any order as to costs. **CAN 1 of 2020, CAN 2 of 2020** and **CAN 3 of 2020** are accordingly **disposed of**. All interim orders passed therein from time to time stand vacated.

32. All parties to act on the downloaded server copy of this order from the official website of this Hon'ble Court.

33. Urgent certified photocopy of this judgment, if applied for, be supplied to the parties upon compliance of all the requisite formalities.

(Lapita Banerji, J.)

Later:-

Mr. Bhattacharya prays for a stay of the judgment/order passed today.

Such prayer is considered and refused.

(Lapita Banerji, J.)