

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

W.P.A. 25594 of 2018
with
IA NO: CAN 1/2020
(Old No: CAN 3520/20), CAN 5/2020 (Old No: CAN 4336/20)

Niraj Kumar & Anr.

Versus
Coal India Limited & Ors.

With

W.P.A. 5664 of 2020
with
IA NO: CAN 2/2020 (Old No: CAN 4318/20), CAN 9/2021, CAN 10/2021

Parveen Choudhary & Anr.

Versus
Coal India Limited & Ors.

For the Petitioners : Mr. Soumya Majumder, Ld. Adv.
Mr. Victor Chatterjee, Adv.
Mr. Samrat Dey Paul, Adv.

For Coal India Ltd. : Mr. Lakshmi Kumar Gupta, Ld. Sr. Adv.
Mr. Snehatoosh Majumder, Adv.
Mr. Sudhakar Prasad, Adv.

Hearing concluded on : 19th December 2022

Judgment On : 15th February 2023

Saugata Bhattacharyya, J.:

1. The two writ petitions one being W.P.A. 25594 of 2018 and another being W.P.A. 5664 of 2020, each filed by two petitioners, are under consideration before this Court. In both the writ petitions petitioners have lodged claim of promoting them to E-7 grade w.e.f. 28th July, 2009 since three other mining executives were promoted to E-7 grade w.e.f. 28th July, 2009. These four petitioners have already been promoted to E-7 grade from E-6 grade vide orders dated 13th August, 2019, 14th August, 2019, 15th August, 2019 and 16th August, 2019.

2. Petitioners are working in subsidiary companies under Coal India Ltd. being the respondent no.1. All the petitioners are possessing First Class Mine Managers Certificate of Competency (for short "FMCC"). It has been submitted by Mr. Soumya Majumder, learned counsel representing the petitioners that such FMCC certificate is essential for holding the posts of manager in Coal India Ltd. and its subsidiary companies. Petitioners obtained FMCC on 20th July, 2003. The grievance of the petitioners as voiced before this Court is that in spite of acquiring FMCC certificate in 2003 they were promoted to E-6 grade (old E-5 grade) vide order dated 27th September, 2004 and according to the petitioners as per promotional policy of the respondent no.1 they ought to have been promoted to E-6 grade (old E-5 grade) from the date of acquiring FMCC. Subsequently, petitioners were granted notional seniority and notional fixation in E-6 grade being executives of mining first class discipline vide order dated 13th September, 2017 w.e.f 20th July 2003.

3. According to the petitioners grant of such notional seniority in E-6 grade requires consideration of their seniority in the said E-6 grade w.e.f. 20th July, 2003 not from 27th September, 2004. It has further been

submitted on behalf of the petitioners that with restoration of their seniority in E-6 grade w.e.f. 20th July, 2003 the concerned respondent authorities as per promotional policy ought to have treated the petitioners to be eligible for promotion to next higher grade i.e. E-7 from 28th July, 2009 being the date from which three other similarly circumstanced executives of mining first class discipline were promoted to said E-7 grade.

4. The issue which has been emphasized on behalf of the petitioners is three other executives of mining first class discipline namely Meraj Ahmed, Anish Ahmed and M. Uday Raju were granted promotion to E-6 grade on 30th September, 2003 whereas the petitioners were placed in E-6 grade on 20th July, 2003 but in disregard to the *inter se* seniority amongst the petitioners and aforementioned three executives in E-6 grade those three executives were promoted to E-7 grade w.e.f. 28th July, 2009 whereas petitioners were promoted to E-7 grade from the month of August 2019. Such anomalous stand on the part of the respondent authorities in granting benefits of promotion in utter disregard to the seniority of petitioners in E-6 grade requires interdiction by the this Court in order to render justice to the petitioners otherwise such anomaly would never be corrected during the tenure of the petitioners and they would suffer in future years of service.

5. It is the contention on behalf of the petitioners that in consideration of the relevant promotional policy on acquiring FMCC mining executives are placed on the first class channel of promotion and they are entitled to be placed in the next higher grade. In the present case petitioners obtained FMCC in the year 2003 by which they were placed in First Class Channel and from the date of acquiring such qualification upgradation in grade was imminent which in effect placed them in E-6 grade w.e.f. 20th July, 2003. Therefore, they are required to be considered as senior to three aforementioned mining executives in E-6 grade which justifies the demand of the petitioners at least to be granted notional seniority w.e.f. 28th July,

2009 being the date when those three mining executives were promoted to E-7 grade from E-6. In support of such contentions the learned advocate for the petitioners has placed reliance on following judgments: -

- i) **(2008) 6 SCC page 797**, paragraph 16 (**State of Uttaranchal and Another Vs. Madan Mohan Joshi and Others**);
- ii) **(2013) 8 SCC page 693**, paragraphs 44 to 47 (**P. Sudhakar Rao and Others Vs. U. Govinda Rao and Others**);
- iii) Unreported judgment dated 17th May, 2017 in the writ petition being **W.P. 3703 (W) of 2017 (Uditya Singh and Others Vs. Coal India Ltd. and Others)**;

6. Mr. Lakshmi Kumar Gupta, learned senior advocate appears for Coal India Ltd. and submits that Director General of Mines and Safety (DGMS) being the statutory authority under the Mines Act holds examinations and grants two types of certificates for Mine Managers – one is Second Class Mine Managers Certificate of Competency and another is First Class Mine Managers Certificate of Competency. As per relevant provisions of Coal Mines Regulations 1957 there is statutory prescription for appointment of Mine Managers possessing either First Class or Second Class certificate. It has further been submitted that no mine can be opened, worked or reopened unless there is a Mine Manager who is duly qualified as per the provisions of said Regulations of 1957.

7. It is submitted that mining cadre of Coal India Ltd. has two channels – (i) First Class Channel and (ii) Second Class Channel. Shifting of Second Class to First Class Channel is only permissible when a Mine Manager acquires FMCC. It has been submitted that the promotional policy of 2000 for placement and promotion of Mine Managers is relevant in determining the claim of the petitioners. On promoting/placing the officers in E-5 grade, seniority in E-5 grade of all the Mine Managers was to be refixed in the

manner laid down in the said policy. One of the means of fixation of seniority in E-5 grade as prescribed in said policy of 2000 was officers who passed FMCC earlier to be placed higher. Effective date of certificate to act as First Class Manager as indicated under the certificate issued by DGMS should be determining the date for fixation of such seniority. Therefore, the officers having earlier effective date of First Class (FMCC) was required to be placed higher.

8. It has been submitted on behalf of the respondents that indisputably four petitioners obtained FMCC in 2003 whereas three mine officers namely Meraj Ahmed, Anish Ahmed and M. Uday Raju obtained FMCC in 1994-1995 and as such, as per the said policy of 2000 in E-5 grade those three candidates are to be treated senior to the petitioners.

9. According to the respondents these four petitioners obtained FMCC on 20th July, 2003 but were shifted to First Class Channel and promoted to E-6 (old E-5) grade vide order dated 27th September, 2004 whereas three other candidates namely Meraj Ahmed, Anish Ahmed and M. Uday Raju were shifted to First Class Channel on acquiring FMCC and promoted to erstwhile E-4 grade (new E-5) in the year 1999 albeit they acquired qualification in 1994/1995. Therefore, in E-5 grade these three candidates were senior to the petitioners but those three candidates were promoted to new E-6 grade on 30th September, 2003.

10. It has further been contended on behalf of the respondents that some aggrieved executives filed a writ petition in 2009 being W.P. No. 386 of 2009 (Kumar Narendra & Ors. vs. Coal India Limited [Government of India Enterprise] & Ors.). In the said writ petition a coordinate Bench delivered judgment on 10th September, 2013 directing the benefit of promotion to be given from the date of passing FMCC. Pursuant to such directions as contained in the judgment dated 10th September, 2013 the writ petitioners

vide order dated 13th September, 2017 were notionally granted seniority and fixation in E-6 grade w.e.f. 20th July, 2003 instead of 27th September, 2004. Such grant of notional seniority and fixation in E-6 grade in favour of the petitioners was as per the judgment dated 10th September, 2013 passed in Kumar Narendra (Supra) though petitioners were not parties to the said writ petition.

11. It has been submitted by Mr. Gupta that the petitioners got the full benefit of judgment of Kumar Narendra (Supra) by grant of notional seniority and notional fixation in E-6 grade w.e.f. 20th July, 2003 being the date of obtaining FMCC whereas those three mine officers though obtained FMCC in 1994/1995 and in spite of their entry into E-5 grade in 1999 could not be allowed full benefit of the said judgment in Kumar Narendra (Supra). According to the respondents had the benefit of judgment of Kumar Narendra (Supra) been extended fully to those three mine officers they would have been in higher grade much earlier. However, that could not have been made possible since the grant of full benefit as it has been extended to the petitioners as per the judgment of Kumar Narendra (Supra) would have cascading effect in subsequent promotions in E-6 and E-7 grades.

12. It has also been pointed out that in April 2009 when the Departmental Promotion Committee was considering promotion of executives, the petitioners as well as those three mine officers were in E-6 grade. Those three mine officers in 2009 were senior to the petitioners in E-6 grade since petitioners at that point of time had seniority in E-6 grade w.e.f. 27th September, 2004 whereas Meraj Ahmed, Anish Ahmed and M. Uday Raju were considered to be in E-6 grade w.e.f. 30th September, 2003. Since the said Departmental Promotion Committee was for all disciplines of respondent no.1, the mining executives including four petitioners and three others were considered for promotion. Ultimately those three were recommended but no promotion order could be issued since there was a

restraint order passed by the Court not to give effect to actual promotion. However four petitioners were not recommended for promotion to E-7 grade at that juncture in consideration of their seniority in E-6 grade. After disposal of the legal proceeding the restraint order not to grant actual promotion stood vacated and order of promotion was issued for mining discipline; those three mine executives were promoted to E-7 grade w.e.f. 28th July, 2009.

13. Another limb of submission made on behalf of the respondents is grant of retrospective promotion to E-7 grade w.e.f. 28th July, 2009 as claimed by the petitioners will lead to filing of similar other cases which would render the situation topsy turvy in fixation of seniority of mining executives. In addition thereto, it has also been argued that *inter se* seniority of the petitioners qua three other mining executives has been refixed in E-5 grade in terms of 2000 policy and such policy has not been questioned in the writ petition. Therefore, the petitioners cannot claim promotion to E-7 grade w.e.f. 28th July, 2009 on the basis of notional promotion w.e.f. 20th July, 2003 in E-6 grade. In support of such submissions made on behalf of the respondents reliance has been placed on the following judgments: -

- (i) **1975 (2) SLR 852 (D.B.) Orissa High Court**, paragraph-7 (**Rabindra Kumar Adhikari and others vs. State of Orissa and others**);
- (ii) **(2018) 5 SCC 798**, paragraphs 9,11,14 and 16 (**Union of India and Others vs. Chaman Rana**);
- (iii) **AIR 1975 SC 1269**, paragraph 9 (**Malcom Lawrence Cecil D'Souza vs. Union of India and others**);

14. While balancing two lines of submissions made on behalf of the respective parties this Court is tasked to appraise the claim of the petitioners for grant of notional benefits in E-7 grade w.e.f. 28th July, 2009

since three other mining executives were promoted from E-6 grade to E-7 grade from 28th July, 2009. Such claim of the petitioners is based on the contentions that those three mining executives were borne in E-6 grade w.e.f. 30th September, 2003 whereas petitioners, four in number, were promoted from E-5 to E-6 grade, according to the petitioners, w.e.f. 20th July, 2003. Therefore, it has been claimed on behalf of the petitioners that in E-6 grade *inter se* seniority of these two groups four writ petitioners and those three mining executives unleashes the fact that petitioners are senior to those three mining executives which ought to have been relevant consideration at the time of promoting the mining executives from E-6 to E-7 grade.

15. In taking note of submissions made on behalf of the respondent authorities it appears that those three mining executives obtained FMCC in 1994-1995 whereas petitioners obtained FMCC in the year 2003. There is no denying fact that those three mining executives were promoted to E-5 grade in the month of November 1999 whereas petitioners were promoted to E-5 grade in the month of December 2000. According to the respondents in E-5 grade those three mining executives were senior to the petitioners and they obtained FMCC in the year 1994-1995 whereas petitioners obtained FMCC in the year 2003.

16. In the aforesaid backdrop claim of the petitioners for either promoting them to E-7 grade w.e.f. 28th July, 2009 or to grant notional benefits for promotion to E-7 grade in the year 2009 needs to be examined. The chronology of facts reveals those three mining executives were senior to the petitioners in 2009 when Departmental Promotion Committee was considering the promotion of the executives from E-6 grade to E-7 grade. Since the petitioners at that juncture was found to be borne in E-6 cadre on 27th September, 2004 whereas those three executives were in the same cadre w.e.f. 30th September, 2003 which led the said Departmental

Promotion Committee to recommend in favour of the three mining executives to promote them from E-6 to E-7 grade. On the contrary petitioners were granted notional seniority and notional fixation vide order dated 13th September 2017 w.e.f. 20th July, 2003 in E-6 grade in terms of the decision of the coordinate Bench dated 10th September, 2013 on a writ petition being W.P. No. 386 of 2009 Kumar Narendra (Supra) albeit petitioners were not party to the said writ petition.

17. As per order dated 13th September, 2017 notional seniority and notional fixation in E-6 grade was accorded to the petitioners in terms of the decision of Kumar Narendra (Supra) which is also the very basis of claim of the petitioners for being promoted to E-7 grade w.e.f. 28th July, 2009 since three other executives were promoted to E-7 grade from the said date or to grant notional seniority in E-7 grade accordingly. Grant of notional seniority and notional fixation in E-6 grade in favour of the petitioners w.e.f. 20th July, 2003 was allowed since they obtained FMCC on 20th July, 2003 which cast an obligation on respondent authorities in terms of the judgment of Kumar Narendra (Supra) to allow such benefits. However, similar benefits could not be allowed in favour of those three executives who obtained FMCC in 1994-1995. It has been pointed out that had these benefits been granted in favour of those three executives then there would have been cascading effect in the matter of promotion and re-designation of mining executives from 1994-1995 onwards.

18. It is fortuitous circumstances so far petitioners are concerned who were accorded notional benefits and notional fixation in E-6 grade vide order dated 13th September, 2017 w.e.f. 20th July, 2003 albeit originally they were promoted to E-6 grade w.e.f. 27th September, 2004 vide order dated 27th September, 2004 on acquiring FMCC in 2003 upon placing them in first class channel.

19. Therefore, from 27th September, 2004 till grant of notional seniority and notional fixation w.e.f. 20th July, 2003 in E-6 grade vide order dated 13th September 2017 petitioners did not raise any demur against such arrangements relating to promotion in terms of relevant Promotional Policy of Coal India Ltd. The Promotional Policy-2000 which was circulated undercover memo dated 22nd September, 2000 provides officers who passed First Class (FMCC) earlier to be placed higher and effective date of First Class (FMCC) should be determining date for fixation of such seniority. It has also been provided in the said Promotional Policy that after promoting/placing the officers in E-5 grade, seniority in E-5 grade of all such officers was to be re-fixed in the manner provided in the said Policy. One of the methods prescribed in the said policy for determining seniority in E-5 grade was the date of acquiring FMCC. In the present case petitioners were in E-5 grade prior to 20th July, 2003 (initially prior to 27th September, 2004) whereas those three mining executives were in E-5 grade prior to 30th September, 2003. If 20th July, 2003 being the date to be reckoned in case of the petitioners then prior to said date petitioners as well as those three mining executives were in E-5 grade; those three mining executives were indisputably senior to the petitioners in E-5 grade since petitioners were borne in E-5 grade in the month of December, 2000 whereas those three mining executives were borne in E-5 grade in the month of November, 1999. In addition thereto three mining executives obtained FMCC in 1994-1995 whereas petitioners obtained FMCC on 20th July, 2003.

20. The aforesaid *inter se* seniority of the petitioners and those three mining executives in E-5 grade on the anvil of Promotional Policy of 2000 cannot be brushed aside while considering the claim of the petitioners for promoting them from E-6 grade to E-7 grade w.e.f. 28th July, 2009 or to grant notional benefits thereof as it has been pointed out previously that it is the fortuitous circumstances under which petitioners approximately thirteen (13) years after being promoted to E-6 grade on 27th September, 2004 got the benefits of notional seniority and notional fixation w.e.f. 20th

July, 2003 in terms of the order dated 13th September, 2017 as per the judgment of the coordinate Bench in Kumar Narendra (Supra) and such full benefit of the said judgment could not be extended in favour of three other mining executives.

21. In **Madan Mohan Joshi** (supra) it is true that the Apex Court recognised *inter se* seniority as civil right in the context when High Court passed order impacting seniority of the employees who were not parties to the writ petition in the backdrop of the different rules. It is trite law that judgment is an authority on what court decides not what is deduced therefrom. In the case at my hand *inter se* seniority in E-6 grade ought not to have been sole consideration before the court in recognising the claim of the petitioners for grant of seniority in E-7 grade w.e.f 28th July, 2009 since three other mining executives were borne into E-5 grade prior to the petitioners and obtained FMCC much before the petitioners.

22. In **P. Sudhakar Rao** (Supra) the Apex Court was considering *inter se* seniority of two groups, members of one group were upgraded from Supervisors to Junior Engineers on acquiring engineering degree and members of other groups were direct recruits with engineering degree wherein it was held seniority of members of one group cannot be reckoned from the date when those members were not borne in the cadre thereby impacting seniority of eligible members of other group. In this context it was decided by the Apex Court that seniority amongst members of the same group must be counted from the date of their initial entry to the grade. It was a case of seniority of in-service candidate which was reckoned in terms of GOMs No. 54 dated 15th February, 1983 wherein it was provided that in-service candidate was entitled to count 1/3rd of the service rendered as Supervisor before appointment as Junior Engineer subject to a maximum of 4 years' weightage for the purpose of computing the service as Junior Engineer for being considered to be eligible for promotion to Assistant

Engineer and such provision was laid down attributing seniority of in-service candidates without any reference to any existing vacancy when they were not even eligible to hold such post. In consideration of these aspects Apex Court held that seniority needs to be reckoned from the date of entry into a particular grade. It was further held that retrospective seniority cannot be ascribed to employee from the date when he was not even borne in the cadre. In the case at my hand facts are completely different and the Court is required to strike a balance on the anvil of Promotional Policy-2000 viz-a-viz, date of acquiring FMCC by the mining executives. The decision taken by the respondent authorities in the present case does not reveal a situation that an attempt has been made to attribute seniority to those three mining executives from a date when they were not even borne in the cadre (E-5 and E-6) and their seniority was not considered in reference to vacancies which were not existing at the material point of time. Therefore, the ratio of the judgment in P. Sudhakar Rao (Supra) is of no help.

23. In above conspectus both the writ petitions along with connected pending applications stand dismissed. However there shall be no order as to costs.

24. Urgent photostat certified copy of this order, if applied for, shall be supplied to the parties expeditiously.

(Saugata Bhattacharyya, J.)