

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 205 OF 2020

Shri Yogesh Kanhaiyalal Kathuria,
Aged about 46 years, Occ.- Service,
R/o 205, Shivrani Heights, Gokul
Housing Society, Gorewada Road,
Nagpur.

.... **PETITIONER**

VERSUS

- 1) Coal India Limited,
through its Chairman,
- 2) Coal India Limited,
through its General Manager
(Personal)/Policy Cell,
Both having office at Coal Bhawan,
Premises No.4, Car Mar, Plot No.
AA-III, Action Area, 1A, New Town,
Rajarhat, Kolkatta - 700 156.
- 3) Western Coalfields Limited,
through its Deputy Manager
(Personal)/Nodal Officer (PMS-
WCL HQ), Coal Estate, Civil Lines,
Nagpur – 440 014.
- 4) Western Coalfields Limited,
through its Senior Manager (Personnel)
cum Area Nodal Officer (PMS), Nagpur
Area, Kasturba Nagar, WCL Nagpur
Area, Jaripatka – 440 014.
- 5) Shri Dhirendra Singh s/o Rameewaj
Singh, Assistant Manager (Survey),
Aged about 48 years, Occ.-Service,
Office at Sub-Area Manager, Bhanegaon,
Singhori S A Post Chankapur Colony,

Tahsil – Saoner, District Nagpur-
441 109.

.... **RESPONDENTS**

Mr. M.M. Sudame, Counsel for the petitioner,
Mr. A.R. Patil, Counsel for respondents 1 and 2,
Mr. O.A. Ghare, Counsel for respondents 3 and 4.

CORAM : ROHIT B. DEO & Y.G. KHOBRADE, JJ.
DATED : 7th FEBRUARY, 2023

ORAL JUDGMENT : (PER : R.B. DEO, J.)

Heard. **Rule.** Rule made returnable forthwith with consent of the parties.

2. Petitioner is assailing the communication dated 24-11-2019 issued by respondent 2 whereby the representation dated 05-10-2017 preferred by the petitioner assailing the imposition of penalty of 0.5 from the final rating/original score of 4.29 for the year 2016-17, is rejected.

3. The substantive prayers in the petition are extracted below :

“(a) Quash and set aside the order/communication dated 24-11-2019 passed by the respondent No.2 (Annexure-N) and allow the representation dated 05-10-2017 (Annexure-J) filed by the petitioner and thereby the penalty imposed upon the petitioner for the year 2016-17 be quashed and set aside by restoring the original score of 4.29 of the petitioner in the interest of justice.

(b) Further, direct the respondents to consider the petitioner for promotion for vacancies of year 2017 considering his score as 4.29 marks as per the said PMS system in the interest of justice.”

4. On the date of the institution of the petition, the petitioner was posted as Colliery Manager in E-6 Grade (First Class Mining) at the Bhanegaon OCM (Open Cast Mine), Western Coalfields Limited (WCL), Nagpur.

PRIDE which stands for Performance Report for Individual Development of Executives is the Performance Management System introduced by respondent 1 with the avowed object of assessing the performance of the executives. The employee is required to set his/her goal in the window of the PRIDE between 1st April till 15th May of the year. The performance of the employee is monitored by the said system and the final score is allotted to the employee on the system at the end of 30th July of the concerned year, on the basis of performance, and the score is graded from 1 (Lowest) to 5 (Highest).

5. The scheme envisages that if there is non adherence to the timeline for submission of the PRIDE form, penalty of 0.5 deduction in the overall rating shall be imposed. It is further envisaged that if the reporting authority neither accepts nor refuses the goal setting

submitted by the executive/s, the same will be deemed as accepted on the expiry of the time limit, with penalty of 2 marks imposed on the reporting authority.

6. The petitioner was the reporting authority of seven employees in the year 2016-17 namely Mr. Vijay Kumar, Mr. Ashim Prakash, Mr. Mohanand Jha, Mr. Raju Zade, Mr. Kamlesh Verma, Mr. Tarni Prasad Pandit and Mr. Durgashankar Roy. The petitioner asserts that during the year 2016-17 the petitioner set his goal well within the time prescribed i.e. between 01-4-2016 to 15-5-2016, and so did the employees mentioned supra, and the goals set by the subordinate employees were approved by the petitioner as the reporting authority.

7. The petitioner avers that respondent 5–Dhirendra Singh-Senior Officer (Survey) was transferred and posted under the present petitioner vide Order 973 dated 31-10-2016. Mr. Dhirendra Singh reported to the petitioner on 01-11-2016. In accordance with the PMS, an employee who is transferred or whose assignment is changed, is required to set his goal again and his window is activated by the Area Nodal Officer within fifteen days of transfer or change in assignment. Such employee is required to set his new goal within fifteen days from the activation of the window by the Area Nodal Officer.

8. The Area Nodal Officer did activate the window on 01-12-2016 to enable Mr. Dharendra Singh to set the new goal. However, the activation was not brought to the notice of the petitioner who was the reporting authority.

9. On 06-12-2016 the petitioner received office order nominating him to undergo training on “General Management Programme” from 12-12-2016 to 23-12-2016 at the Administrative Staff College of India, Hyderabad and was asked to report on 11-12-2016. The petitioner was relieved for the purpose of attending training vide order dated 10-12-2016 which relieves the petitioner from 11-12-2016 to 24-12-2016.

10. The petitioner worked on 10-12-2016 and left Nagpur on the same day. The petitioner was at Hyderabad from 11-12-2016 till 23-12-2016. In view of Christmas, 25-12-2016 was a holiday. The petitioner assumed duty on 26-12-2016 and was informed by Mr. Dharendra Singh on 27-12-2016 that he (Mr. Dharendra Singh) had set his goal in the window of PRIDE. Immediately the present petitioner verified and accepted the goal set by Mr. Dharendra Singh on 27-12-2016.

11. The final rating/score of all the employees were published on the website in the month of August, 2017. The petitioner was allotted final score of 4.29 which correspond to the rating “outstanding”. A score between 4.00 and 5.00 qualifies as outstanding, while score from 3.00 to 3.99 is graded as “very good”. The petitioner avers that while the final score allotted by the system was 4.29, he was shocked to notice that penalty of 0.5 was imposed with the result that the final score of 4.29 was reduced to 3.79.

12. The petitioner addressed email dated 21-8-2017 to the Deputy Manager (Personnel)/Nodal Officer (PMS), WCL Headquarters requesting him to clarify on the penalty of 0.5 is imposed. In response, the petitioner was informed vide reply dated 28-8-2017 that the penalty was imposed since his subordinate having EIS 9006907 was unable to achieve the goal setting.

13. The petitioner verified the record and noticed that EIS 9006907 was of Mr. Kushal Yadav who was not subordinate to the petitioner. The petitioner addressed an email to the Nodal Officer with a request that the petitioner’s explanatory letter dated 29-8-2017 be forwarded to the General Manager (Personnel)/Policy Cell. Respondent 4-Area Nodal

Officer did confirm that Mr. Kushal Yadav was not reporting to the petitioner.

14. The Nodal Officer then addressed email dated 03-10-2017 requesting the petitioner to peruse the trailing mails. The trailing mails reveal that respondent 3 recommended to respondent 2 that penalty imposed on the petitioner be waived.

15. The petitioner was thereafter informed that the penalty was imposed since the goal set by Mr. Dharendra Singh was not verified and accepted within the timeline prescribed. The petitioner addressed representation dated 05-10-2017 to the General Manager (Personnel/Policy Cell), Coal India Limited which did not evoke any response and was ultimately rejected. It was only on 24-11-2019 that the petitioner received email stating that the penalty was imposed on the petitioner in accordance with the PMS Manual.

16. The petitioner contends that the imposition of penalty of 0.5 deduction in the overall rating is irrational and indeed perverse. The petitioner did set his goal well within time. The petitioner contends that irrefutably he was relieved from duty from 11-12-2016 to 24-12-2016 to attend the training. The petitioner resumed duty on 26-12-2016 and immediately after receiving information from Mr.

Dhirendra Singh that the goal was set, the petitioner verified and approved the same on 27-12-2016. The petitioner asserts that there was no occasion for the petitioner to verify and approve the goal prior to 27-12-2016 since he was relieved from duty from 11-12-2016, and as a fact, was not even aware that Mr. Dhirendra Singh set the goal in the window of the system.

17. The petitioner contends that even if it is assumed that the petitioner failed to adhere to the timeline for verifying and approving the goal set by the subordinate employee, the penalty which is provided is 2 marks from 100 marks assigned which correspond to 0.1 percentile marks. The 0.5 deduction in overall rating is attracted only in the event, the employee does not adhere to the timeline for submission of his “own” PRIDE form.

18. The petitioner contends that to fill in the vacancies existing, DPC was constituted and office order dated 16-8-2019 was issued promoting as many as 179 Senior Managers in E-6 Grade to the post of Chief Manager (Mining First Class) in E-7 Grade. The petitioner asserts that but for the imposition of the illegal penalty of 0.5 from the overall marks which reduced the grading of the petitioner from “outstanding”

to “very good”, the petitioner’s name would have been included in the list of the promotees.

19. Respondents 1 and 2 have filed affidavit-in-response dated 18-1-2023. The first objection raised is that the petition suffers from inordinate delay inasmuch as the penalty was imposed in relation to the year 2016-17 and the challenge is mounted in the year 2020. We are not inclined to consider the objection on the ground of inordinate delay inasmuch as the petitioner did represent and was justified in waiting for a reasonable period for the authority to decide the representation, and as a fact, the petitioner did approach us with reasonable promptitude after the rejection of the representation.

20. Respondents 1 and 2 have averred in the affidavit-in-response that the petitioner cannot be considered for promotion for the vacancies of the year 2017 since no vacancies exist. Respondents 1 and 2 further aver that the petitioner was promoted as Chief Manager (Mining) Grade E-7 vide order dated 01-3-2022 pursuant to the DPC held for the cut-off date 30-9-2021. It is then contended by respondents 1 and 2 that the petitioner has not joined the persons promoted vide order dated 16-8-2019 and the petition suffers from the defect of non-joinder of necessary parties.

21. Respondents 1 and 2 deny that the petitioner was not responsible for the alleged delay in verifying and approving the goal set by Mr. Dhirendra Singh. Respondents 1 and 2 contend that every executive is provided with a Laptop Computer and even while undergoing training, the petitioner could have done the needful. Respondents 1 and 2 do not dispute that the executive has to submit the goals within fifteen days, and the reporting authority is required to approve the same within the next fifteen days. Respondents 1 and 2 categorically state that in the case of Mr. Dhirendra Singh, the fifteen days period ended on 16-12-2016. Respondents 1 and 2 further assert that while 2 marks are liable to be deducted from 100 marks since the petitioner as reporting authority did not accept the goal set by the subordinate within time, in addition 0.5 from overall rating is also liable to be deducted and, therefore, there is nothing wrong in the penalty imposed.

22. The petitioner has filed rejoinder dated 30-1-2023. It is asserted that the petition is preferred with promptitude after the rejection of the representation vide order dated 24-11-2019. The petitioner emphasized that in accordance with the PRIDE system, any executive who fails to complete the goal setting by the goal end date, is allowed goal setting within the extended period of fifteen days. The petitioner set out the timeline which we may extract below :

- i) *May 2015 to May 2021 – The petitioner was Colliery Manager of Bhanegaon OCM.*
- ii) *31-10-2016 – Shri Dhirendra Singh Assistant Manager Survey was transferred to Bhanegaon (P54).*
- iii) *1.11.2016 – Shri Dhirendra Singh reported on duty and joined under petitioner (P55A).*
- iv) *20-4-2015 – Guidelines for Pride were revised as follows :*
 - 1) *For Executive joining new location on transfer Pride will be activated by Area Nodal Officer.*
 - 2) *Nodal Officer will create new pride entering following dates:*
 - a) *New Reporting/Reviewing/Accepting Authority.*
 - b) *Charge Assumption date.*
 - c) *Goal start date.*
 - d) *Goal end date.*
 - e) *New Pride will get activated on entering Goal start date.*
 - 3) *In case any executive fails to complete goal setting by the goal end date he will be allowed goal setting within extended period of 15 days from Goal End Date with penalty of deduction of weightage by 2 marks from total weightage.*
- v) *As per above guidelines PRIDE page of Dhirendra Singh was opened by Area Nodal Officer only on 1-12-2016 as supposed to deadline of 16-11-2016 prescribed in guidelines.*
- vi) *Since Goal start date was entered as 1-12-2016 Goal End date was considered 16-12-2016 (3(d)) P56.*
- vii) *Pride page shows that Shri Dhirendra Singh self-submitted only on 10-12-2016.*
- viii) *Neither Dhirendra Singh Nor Area Nodal Officer informed about Pride activation to the petitioner. The Pride of Dhirendra Singh created was not opened in Mail or Message. Area Nodal Officer accepted this fact (P71).*
- ix) *On 6-12-2016 the petitioner was deputed for Training to Hyderabad. Training was from 12-12-2016 to 23-12-2016 (P58).*
- x) *On 11-12-2016 the petitioner was relieved for Training from 11-12-2016 to 24-12-2016 (P59).*

- xi) 25-12-2016 was Holiday.*
- xii) 26-12-2016 the petitioner joined office.*
- xiii) 27-12-2016 Dhirendra Singh informed about submission of Pride.*
- xiv) 27-12-2016 the petitioner accepted Pride.”*

Referring to the timeline extracted supra, the petitioner reiterated that he was preventing from accepting and approving the goal set by Mr. Dhirendra Singh since he was not made aware of the submission of the PRIDE Form either by Mr. Dhirendra Singh or the Area Nodal Officer. He did not receive any mail or message and he was relieved on 11-12-2016 and resumed duty on 26-12-2016. The petitioner contended that there was no roaming facility on mobile nor internet or wi-fi facility at the training centre and in any event, goal setting or approval could not have been done without personal discussion.

The petitioner emphasized that while the total PRIDE marks are 100, the appraisal rating is categorised from “poor” to “outstanding” on the scale of 1 to 5. 0.5 penalty on the overall PRIDE score is provided in case of non-compliance of the PMS process and if the reporting authority does not accept the goal before the expiry of the time limit, the penalty is restricted to 2 marks out of the total 100 marks which works out to 0.1 from the rating on the scale of 1 to 5. The petitioner contended that even if it is assumed that he did not accept the goal set

by Mr. Dhirendra Singh within the stipulated period of fifteen days, the penalty which could have been imposed is 2 marks out of 100 which corresponds to 0.1 from the rating of 1 to 5, and which would effectively result in reducing the grading score of the petitioner from 4.29 to 4.19 which would still be categorised as “outstanding”. The endeavour of the petitioner is to demonstrate that in any event, the grading score could not have been reduced by 0.5, and scaled down to 3.79 which relegates the petitioner to the “very good” category.

23. We may fruitfully extract paragraphs 3 to 5 of the rejoinder filed by the petitioner, which read thus :

“3. It is submitted that the respondents made promotion on 16-8-2019 (P .82) for cut off dated 30-09-2017 and sr. no.66 onwards are petitioners junior. The DPC which met in August, 2019 and considered following ACR of petitioner.

<i>2016-17</i>	<i>Very Good</i>
<i>2015-16</i>	<i>Outstanding</i>
<i>2014-15</i>	<i>Outstanding</i>

The petitioner could not fulfil bench mark of weightage of Pride score and was not promoted. Therefore to redress grievance and do complete justice “Outstanding” for 2016-17 is required to be restored and DPC held in August 19 for 16-8-2019 promotion E7 grade is required to be reviewed for grant of deemed dated promotion.

4. Cascading effect of illegality due to non-application of mind can be seen from the fact that next DPC was held in March 2020 wherein again 2016-17 PRIDE score was considered and petitioner was not promoted.

5. Therefore another DPC was held on September, 2021 for cut off date September, 2021 wherein following ACR’s were considered :

2020-21 Outstanding
 2019-20 Outstanding
 2018-19 Outstanding.

And the petitioner was promoted to E7 grade w.e.f. 2-3-2022 (P.111)

Thus the petitioner should have been in E7 grade on 16-8-2019 but due to fault of respondent which they claim was automatic system generated he could enter E7 grade on 2-3-2022 affecting his right of promotion seniority and causing financial loss to him. And violating his fundamentals rights under Articles 14, 16, 21 and 300A of the Constitution of India. The petitioner is therefore required to be allowed in the interest of justice.”

24. We have heard the learned Counsel for the petitioner Mr. M.M. Sudame, the learned Counsel for respondents 1 and 2 Mr. A.R. Patil and the learned Counsel for respondents 3 and 4 Mr. O.A. Ghare.

25. In our considered view, the imposition of penalty of 0.5 from the grading score is manifestly illegal and is indeed irrational and arbitrary.

26. It is not in dispute that the petitioner was relieved from duty vide order dated 10-12-2016 and was nominated to attend the training at Administrative Staff College of India, Hyderabad. It is further not in dispute that the petitioner verified and accepted the goal set by Mr. Dharendra Singh at the first available opportunity, on 27-12-2016. The averment in the petition that neither Mr. Dharendra Singh nor the Nodal Officer informed the petitioner that the PRIDE window was opened and Mr. Dharendra Singh set his goal on 10-12-2016, is not rebutted. We do

not approve the stand of respondents 1 and 2, who are expected to act as model employers, that notwithstanding that the petitioner was relieved from duty from 11-12-2016 to 24-12-2016, he was obligated to discharge the regular duties with the assistance of Laptop etc. We are more than satisfied that the imposition of penalty is vitiated by serious non application of mind and indeed irrationality inasmuch as it was next to impossible for the petitioner, given the admitted factual situation, to accept and approve the goal set by Mr. Dharendra Singh before 16-12-2016 since the petitioner was undergoing training at the Administrative Staff College of India, Hyderabad at the relevant time.

27. We further find considerable substance in the submission canvassed by Mr. M.M. Sudame that even if assumed that the petitioner did not adhere to the time limit set for accepting goal of his subordinate Mr. Dharendra Singh, the punishment envisaged is not 0.5 from the graded scale score of 1 to 5, but is 2 marks from the overall 100 assigned by the system which correspond to 0.1 of the graded score. However, we are not inclined to delve deeper, since we find that the petitioner has committed no wrong and could not have been punished for not approving or accepting the goal set by Mr. Dharendra Singh within the timeline stipulated.

28. We record the statement of Mr. M.M. Sudame that the petitioner is not interested in claiming any financial benefit and shall be satisfied with a direction that his case be considered for notional promotion qua the vacancies existing in the year 2017 and on the basis that the overall scores is 4.29.

29. In view of the conclusion drawn by us that no fault can be attributed to the petitioner for not having approved the goal set by his subordinate within the timeline prescribed and the imposition of penalty is manifestly illegal, we quash the imposition of penalty of 0.5 and direct that DPC be constituted within the next six weeks to consider whether the notional promotion can be granted to the petitioner with effect from the date the other executives are promoted in the exercise conducted to fill in the vacancies existing in the year 2017.

30. The petition is allowed in the afore-stated terms.

(Y.G. Khobragade, J.)

(Rohit B. Deo, J.)

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