

22-02-2024
ct no. 13
Sl. 131
sp

WPA 7618 of 2021
Shri Tirthankar Basu
-Versus-
Coal India Limited & Anr.

Mr. Piyush Chaturvedi,
Mr. Anujit Mookherji,
Mr. Prithish Chandra
...for the petitioner

Mr. Sanajit Kumar Ghosh
...for the Coal India Limited

1. This Court has carefully considered the report filed by the Coal India Limited.
2. It appears from the report that the petitioner, prior to his removal on April 5, 2013 was allowed promotion from E-6 to E-7 grade on 26.12.2011. The promotion was not given effect to in view of the pending vigilance case, i.e., criminal proceedings.
3. During the pendency of the criminal proceedings, and after reinstatement on March 19, 2020 and until retirement, the employer did not initiate any departmental proceedings against the petitioner.
4. In fact, during pendency of criminal proceedings, he was transferred to another department and he continued to work there until his removal consequent upon conviction in the criminal proceedings.

5. Upon failure of the employer to reinstate the petitioner after acquittal from the criminal proceedings, the petitioner filed WPA 21513 of 2019 and during contempt proceedings arising out of orders therefrom, the petitioner was reinstated on March 18, 2020.
6. Learned counsel for the CIL would argue that the petitioner until 2021 and even in WP No. 21513 of 2019 had not raised the grievance of not being allowed promotion to E-7 grade in 2011. The prayer is barred by the principles of waiver, delay and laches.
7. It is now well settled that the right to promotion already allowed to the petitioner by the employer is the right guaranteed under Article 16 of the Constitution. Fundamental rights cannot be waived.
8. Such right assumes all the more importance in view of the fact that the petitioner claims terminal benefits now.
9. Admittedly, the petitioner was promoted from E-6 to E-7 grade in the year 2011. Upon reinstatement on March 18, 2020, he ought to have been given the E-7 grade instead of E-6.
10. It is further admitted in the affidavit that the petitioner was granted notional

promotion strangely from E-6 to E-7 grade after his joining on December 15, 2021. This promotion, albeit from and to an incorrect grade, should have been effectively given to the petitioner on March 18, 2020 with effect from December 26, 2011.

11. This is so as the entire vigilance case and criminal proceedings which was reason for not giving effect to the promotion order from E-6 to E-7 came to an end after the petitioner was acquitted. Hence, the petitioner was entitled to be reinstated on March 18, 2020 in promoted E-7 grade.
12. The petitioner is therefore entitled to,
 - (a) All arrears in the E-7 grade with effect from December 26, 2011 till the date of his removal on April 5, 2013;
 - (b) The full pay and allowances increments shall be calculated notionally for the period between the date of removal and the date of reinstatement.
13. Now coming to the issue of the further promotion process from E-7 to E-8 grade which the petitioner did not succeed.
14. This Court notes that the petitioner ought to have been considered for promotion from E-7 to E-8, since after the date of acquittal by

the criminal Court on June 26, 2019. He would have then been entitled to participate in the promotion processes from E-7 to E-8 conducted from 26th June 2019 till 15th December 2021. He would thereupon be entitled to participate in December 2021 for promotion from E8 to E9 grade.

15. In the above circumstances, this Court directs that the petitioner should be notionally promoted to the E-8 grade, with effect from September 30, 2022. He shall be entitled to arrears of salary in E-8 grade from such date till the date of actual superannuation.
16. The aforesaid arrears shall be calculated on the basis of revised grades as directed hereinabove which the petitioner would have been entitled to, by calculating,
 - (a) The arrears of difference in actual pay and allowances, between E-6 and E-7 grade from December 26, 2011 till the date of his removal, i.e., April 5, 2013;
 - (b) The notional calculation of pay allowances and increments in the E7 grade from the date of removal i.e. 05.04.2013 till the date of reinstatement i.e. 18.03.2020 for

fixation of his pay in the E7 grade as on 18th March 2020.

- (c) Difference in actual pay vis-à-vis pay in accruing from E-6 and E-7 grade from March 18, 2020 till September 30, 2022;
- (d) The difference in salaries and emoluments payable to him from E-7 to E-8 grade from September 30, 2022 to the date of actual superannuation;
- (e) For the period between the date of acquittal and date of actual joining, full salary and benefits in the E-7 scale and the same shall be paid to the petitioners.

17. The aforesaid order is passed in view of the fact that the respondents have wrongfully and illegally denied the petitioner's fixation in the E-7 grade at the time of reinstatement after acquittal from the criminal proceedings on March 18, 2020. The petitioner should have been notified by the CIL that he was actually entitled to reinstatement in E-7 grade which ought to have been given to him in the year 2011.
18. It is in that backdrop that the petitioner missed the bus of participating in a

promotion process from E-7 to E-8 after reinstatement in the year 2020 or during the pendency of the criminal proceedings when several promotional process must have occurred. The Coal India Limited could have adopted the normally followed sealed cover directed for the aforesaid period.

19. For the period from the date of conviction till the date of acquittal, the petitioner is not be entitled to any actual payment since he has not discharged any service. The petitioner shall, however, be entitled to notional increments in the peculiar facts and circumstances of the case.
20. The decision of the 3-Judge Bench of the J & K High Court in the case of ***Dr. Mir Zaffar Aman Vs. State of Jammu and Kashmir*** reported in ***2016 SCC OnLine J&K 168*** relied upon by the CIL, would not apply in the facts of the case. The Jammu & Kashmir High Court went on to interpret the effect of “Dies Non” on a Veterinary Doctor in the State Animal Husbandry Department, who was proceeded departmentally against, for unauthorized absence and subsequently reinstated.

21. Let arrears as directed hereinabove be paid to the petitioner within a period of one month from date.
22. Let a pension payment order be issued to the petitioner based on the last drawn pay in the E-8 scale, having due regard to all benefits as indicated hereinabove.
23. With the aforesaid directions, the instant writ petition shall stand disposed of.
24. There shall be no order as to costs.
25. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(Rajasekhar Mantha, J.)