

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

**FMA 584 of 2024
with
IA No.: CAN 1 of 2024**

**Coal India Limited
Vs.
Tirthankar Basu & Anr.**

For the appellant

: Mr. Sakya Sen, Advocate
Mr. Varun Kedia, Advocate
Mr. Avey Jaiswal, Advocate

For the writ petitioner/
Respondent No.1

: Mr. Piyush Chaturvedi, Advocate
Mr. Anujit Mookherji, Advocate
Mr. Prithish Chandra, Advocate

Heard & Judgment on

: August 5, 2024

DEBANGSU BASAK, J.:-

1. Appeal is at the behest of the employer and directed against an order dated February 22, 2024 passed in WPA 7618 of 2021.
2. By the impugned order, the learned Single Judge directed promotion to the private respondent to E-8 grade with effect from September 30, 2022.

Learned Single Judge proceeded to give benefits to the private respondent on the basis of the private respondent being promoted to the E-8 grade.

3. Learned Advocate appearing for the appellant submits that, the private respondent suffered an order of conviction in a criminal case on November 30, 2012. Consequently, the appellant was required to remove the private respondent from services which the appellant did. Such removal from services occurred on April 5, 2013 when private respondent was in the E-6 grade. Thereafter, the order of conviction was set aside on appeal on June 26, 2019. Appellant was issued an order of reinstatement on February 25, 2020 and the private respondent rejoined on March 16, 2020. He submits that, the private respondent was given promotion to the E-7 grade with effect from January 18, 2012 notionally on December 15, 2021.
4. Learned Advocate appearing for the appellant submits that, the private respondent cannot be promoted to E-8 grade pay since he did not qualify for the same during the promotional exam for such post. Since the question of the private respondent being promoted to the grade E-8 does not arise, the private respondent was not entitled to such promotion. Private respondent superannuated on January 31, 2024. Private respondent is at best entitled to promotion to the E-7 grade which the private respondent was granted on December 15, 2021 with notional effect from January 18, 2012.

5. Learned Advocate appearing for the private respondent submits that, although, the private respondent was convicted in a criminal case on November 30, 2012 resulting in the private respondent being dismissed from service on April 5, 2013, such conviction was set aside on appeal on June 26, 2019. Immediately, thereafter, private respondent informed the appellant as to the acquittal in the criminal case and applied for reinstatement on July 2, 2019. Thereafter, the appellant took about 7 months time and passed an order of reinstatement on February 25, 2020.
6. Learned Advocate appearing for the private respondent submits that, private respondent is entitled to actual payment of salary for the E-7 grade from July 2, 2019 being the date on which the private respondent applied for reinstatement. In support of such contention, he relies upon **(2013) 11 Supreme Court Cases 67 (State Bank of India and Another vs. Mohammed Abdul Rahim).**
7. Learned Advocate appearing for the private respondent submits that, his client is entitled to promotional and incremental benefits that accrued to his client on and from April 5, 2013 being the date of removal from service till his reinstatement on March 16, 2020.
8. Learned Advocate appearing for the private respondent also relies upon **(2004) 1 Supreme Court Cases 121 (Union of India and Others vs. Jaipal Singh)** and submits that, the date of acquittal is crucial for the purpose of calculation of the benefits that are to be given to an employee

as the private respondent. He submits that, his client is entitled to all benefits with effect from the date of acquittal or at least a date subsequent to the date of acquittal or at best the date on which the order of acquittal was informed to the appellant.

9. In the facts of the present case, private respondent was working in E-6 grade as a Senior Manager and drawing a grade pay of E-6. He was convicted in a criminal case on November 30, 2012. Employer did not institute such criminal case in which he was convicted. Consequent thereupon appellant removed the private respondent from service on April 5, 2013. Thereafter, an order of acquittal was passed in favour of the private respondent on June 26, 2019. Consequent upon the order of acquittal, private respondent applied for reinstatement on July 2, 2019. Appellant passed an order of reinstatement on February 25, 2020. Order of reinstatement was to the E-6 grade pay in which, the private respondent was removed from services. Private respondent rejoined the service on March 16, 2020. Private respondent was promoted to the E-7 grade pay on December 15, 2021 with effect from January 18, 2012 notionally. Thereafter private respondent superannuated from services on January 31, 2024.
10. Issues before us are the grade pay to which, private respondent is entitled to and the date of commencement of the benefits that the private respondent is entitled to upon the order of acquittal.

11. Learned Single Judge directed the private respondent to be promoted to the grade pay E-8 and be given the consequential benefits. Promotion to the grade pay E-8 cannot be sustained. Private respondent participated in the promotional exam for promotion to grade pay E-8. He did not succeed there. Promotion to grade pay E-7 so far as the private respondent is concerned with retrospective effect from January 18, 2012 can, however, be sustained. This was granted by the appellant on December 15, 2021.
12. The next issue is the period of time when, the private respondent will be entitled to notional benefits and the period of time when the actual benefits should commence on his being promoted to E-7 with retrospective effect from January 18, 2012 on December 15, 2021.
13. Private respondent was acquitted on June 26, 2019. He applied for reinstatement on July 2, 2019.
14. ***Jaipal Singh (supra)*** is of the view that, there is a difference in effect between removal from services on the basis of conviction in a criminal case instituted at the behest of the employer and the one which is not. When an employee is removed from services on such employee suffering an order of conviction in a criminal proceeding when such criminal proceeding was initiated at the behest of the management and on such employee being acquitted subsequently, then the position of reinstatement with back wages occurs. However, if the criminal

proceeding was not at the behest of the management but the employee concerned suffered initially an order of conviction and thereafter, was acquitted, then, the period of time for which, the management was not enjoying the services of the employee, due to no fault of the employer should be treated differently.

15. In ***Mohammed Abdul Rahim (supra)***, Court granted back wages from the date when, the employee lodged the demand for reinstatement following his acquittal.
16. In the facts of the present case, as noted above, order of acquittal occurred on June 26, 2019. Appellant issued an order of reinstatement on February 25, 2020 and the appellant rejoined on March 16, 2020.
17. Appellant granted notional benefits to E-7 grade pay with effect from January 18, 2012. Appellant enjoyed the benefits of services from March 16, 2020 till the superannuation of the private respondent on January 31, 2024.
18. In our view, with the appellant granting promotion to the private respondent on December 15, 2021 to E-7 grade pay with retrospective effect from January 18, 2012 notionally, private respondent is entitled to the promotional and incremental benefits again notionally from January 18, 2012 to March 16, 2020 when he rejoined the services. For the period between March 16, 2020 and December 15, 2021 when he was actually promoted to E-7 grade pay *albeit* with retrospective effect from January

18, 2012, private respondent is entitled to promotional, incremental benefits and all other benefits associated to grade pay E-7 till his superannuation.

19. In view of the discussions above, the impugned order of the learned Single Judge is modified to the extent as noted above.

20. It is expected that the appellant disburses all consequential benefits in terms of this judgment and order within a period of four weeks from date.

21. Court is informed that a portion of the retiral benefits of the private respondent is yet to be disbursed. No doubt, the appellant will disburse the retiral benefits that the private respondent is entitled to in terms of this judgment and order, in its entirety, within four weeks from date.

22. **FMA 584 of 2024** along with **IA No.: CAN 1 of 2024** are disposed of without any order as to costs.

(Debangsu Basak, J.)

23. I Agree.

(Md. Shabbar Rashidi, J.)