

D/L 04.
August 14, 2024.
KAUSHIK.

WPA No.21916 of 2023

Eastern Coalfields Limited
Vs.
Union of India and others

Mr. Manik Das

... for the petitioner.

Mr. Amit Kumar Chakraborty
Ms. Sarda Sha

...for the Union of India.

The grievance of the petitioner is directed against a final award dated December 22, 2022 passed by the Central Government Industrial Tribunal-cum-Labour Court, Asansol (CGIT) in Reference Case No. 46 of 2008.

Briefly, the private respondent no. 6 was appointed as a 'Timber Mazdoor' (Time-Rated), which is not a 'cadre' post and was performing his duties in underground mines. Significantly, the post of 'mining sirdar' is a Grade 'C' level post in the Cadre Scheme of the Technical and Supervisory Grade. It is also alleged that the above post is a feeder or entry level post. There are also different qualifications required for being selected for the post of 'mining sirdar'. Admittedly, the petitioner had initially been posted at the Patmohana Colliery and thereafter had been selected for the post of 'mining sirdar' and

was sent to the Kalidaspur Project of the petitioner company for undergoing training for six months. It is further alleged that after the respondent no. 6 had completed the necessary training he was regularized to the post of 'mining sirdar' w.e.f. May 1, 1997 and pay fixation was made accordingly. This fact also appears from the letters dated July 29/30, 1997 and October 15, 1996 respectively.

After serving the post of 'mining sirdar' for five years, the petitioner raised an industrial dispute on July 3, 2005 through the respondent no. 5 Trade Union claiming promotional benefits for the post of 'mining sirdar'. In such circumstances, the private respondent alleges that this was a promotion and not a regularization.

In the above circumstances, the disputes were referred to Central Government Industrial Tribunal-cum-Labour Court, Asansol and the impugned order was passed on December 22, 2022.

By the impugned award, the petitioner has been granted promotional increment w.e.f. May 1, 1997 on being promoted to post of 'mining sirdar' under Grade-C in the Cadre Scheme of Technical and Supervisory Grade.

The primary challenge against the impugned award is that there has been no

adjudication on the aspect of whether the post of 'mining sirdar' is a promotional post or an entry level or feeder post in the Technical and Supervisor Grade.

It is alleged that the post of mining sirdar is an entry level/feeder post wherefrom promotional avenues open up for an employee as prescribed in the Cadre Scheme but no question of promotion to the post of mining sirdar arises. The said post cannot be considered as a promotional post as contended by the respondents under the scheme. The posts are promotional posts for which there is no selection process but a Department Promotional Committee (DPC) is formed to evaluate the employee's performance to promote suitable candidates.

In any event, this issue has not been adverted to before passing of the impugned award. *Prima facie*, the 'CGIT' has erred in relying upon the Office Order dated June 7, 1996 wherein due to an inadvertent error the word "promotion" was written instead of "regularization". The impugned award also fails to enumerate the promotional benefits which are to be provided to a similarly situated employee. It is further submitted that the employee without any objection or protest has worked at the given post for 8 years and for the first time raised an

industrial dispute on July 3, 2005. As such, the petitioner was estopped from bringing up such disputes at such a belated stage.

The impugned award proceeds on the basis that the post of 'mining sirdar' is a promotional post and not an entry level and/or feeder post. Significantly, this aspect of the matter has not been considered in the impugned award. There has been no adjudication as to whether the post of 'mining sirdar' could be considered to be a promotional post or not. The question of promotional benefits being given to the respondent no. 6 has also not been adjudicated upon.

As such, the impugned award has been mechanically passed without considering the above fact. In passing the impugned award, the respondent authorities have also not considered the question of delay, raised on behalf of the petitioner.

These were crucial issues which go to the root of the matter and which had been raised and ought to have been adverted to and adjudicated before passing the impugned award.

For the above reasons, the impugned award is unsustainable and is set aside.

The matter is remanded to the respondent authorities to *inter-alia* consider the aspect of

'mining sirdar' post whether the same is a promotional post or not as well as the issue of delay, as raised by the writ petitioner.

In view of the above, the petitioner has been able to make out a strong prima facie case on merits. The balance of convenience and irreparable injury is also in favour of orders being passed as prayed for herein. Accordingly, the impugned award dated December 22, 2022 is set aside. The matter is remanded afresh for a final decision which ought to be preferably completed within a period of eight weeks from the date of communication of this order and after giving notice to all the parties.

To the above extent, the writ petition stands allowed. There shall, however, be no order as to costs.

(Ravi Krishan Kapur, J.)