

01.04.2024
SL No.6
Court No.8
(gc)

**MAT 1617 of 2022
CAN 1 of 2022**

**The Coal India Limited & Ors.
Vs.
Anil Kumar Chaudhury & Ors.**

Mr. Shiv Shankar Banerjee
...for the Appellants.
Mr. Partha Ghosh,
Mr. Amal Kumar Datta,
Ms. Simran Sureka,
Mr. Debashis Das
...for the Respondent No.1/
Writ Petitioner.

1. The appeal is arising out of an order dated 10th August, 2022 in a writ petition in which the writ petitioner has challenged the decision of the appellants in not promoting him to the Executive (E2-Grade) from Non-Executive Grade. The learned Single Judge on consideration of the fact that although he was appointed in the Non-Executive Cadre on 17th October, 2015, he was allowed to participate in the examination and he was selected in the said examination disposed of the writ petition by directing the DPC to reconsider the case of the writ petitioner for promotion to E2 Executive Grade in any of the subsidiaries or CIL against the two unfilled vacancies if he conforms to all other

requisites since he is already in the merit list and candidates securing less marks than the petitioner may have been promoted under the order dated 21st February, 2022 ignoring the disqualification on the basis of the cut-off date.

2. The moot point required to be answered in this appeal is with regard to the eligibility of the writ petitioner for being considered for promotion to the Non-Executive Grade to Executive (E2-Grade).
3. Mr. Shiv Shankar Banerjee, learned Counsel appearing on behalf of the appellants has submitted that on the date of the notification, the writ petitioner was not qualified as the cut-off date for acquiring requisite qualification and experience would be 30th September, 2015. He was not even born in the service of the Non-Executive Grade having been appointed on 17th October, 2015 and he joins service on 27th October, 2015. Upon his appointment on 27th October, 2015, the writ petitioner was treated to be on probation for one year. Mr. Banerjee has submitted that the learned Single Judge has proceeded on the basis that the

selection process was re-conducted in 2021 and having regard to the fact that the writ petitioner was allowed to participate in the said selection process and he had secured the highest marks it would be too late in the day to deny the benefit of promotion to the writ petitioner/respondent No.1 who had otherwise applied within the last date fixed for submission of application, i.e., 26th December, 2015. Mr. Banerjee has submitted that although he was allowed to participate in the selection process which was purely a mistake committed by the Committee was based on an “offer of appointment” for Pharmacist, letter issued by the Eastern Coal Fields Limited dated 16th July, 2015 although he was appointed much later on July 17, 2015 on probation to the post of Non-Executive Grade. Moreover, serial no.4 of the Instructions of the Candidates in the Admit Card would show that the applicants, who appear to be prima facie eligible are provisionally permitted to appear in the examination, if after scrutiny at any stage, it is found that the candidates is otherwise ineligible, his/her candidature will be automatically

cancelled, even if he/she has appeared in the examination and secured a position in the merit list.

4. Mr. Banerjee further submits that this would clearly show that the participation was provisional and the authority reserved the right to reject if the candidate is found to be ineligible and hence the question of estoppel or creating any indefeasible right in favour of the writ petitioner merely because he has participated in the examination does not arise.

5. Per contra, Mr. Partha Ghosh, learned Counsel appearing on behalf of the writ petitioner/respondent No.1 has submitted that it is an admitted position that the writ petitioner has the requisite qualification as on 16th October, 2015. His selection was delayed as there were certain issues to be sorted out by the erstwhile employee and the present employer. It is submitted that the cut-off date was relevant only for the purpose of ascertaining the acquisition of requisite qualification and experience by the candidate as on 30th September, 2015. There is no dispute that he had acquired the requisite qualification within the cut-off date for being considered for the

promotion. Mr. Ghosh has submitted that the validity of the notification was extended till 26th October, 2015 by which time he was appointed and in view thereof he was allowed to participate in the examination and had secured highest marks which is a relevant consideration to be taken by the DPC as directed by the learned Single Judge in deciding his promotion. In view of the extension of the validity period for promotion from the Non-Executive Grade to Executive (E2-Grade) and having regard to the fact that by that time he has already appointed in the Non-Executive Cadre and was allowed to participate in the promotion, the decision of the DPC not to consider his candidature on the ground of ineligibility does not survive.

6. Mr. Ghosh has also referred to the departmental circular of Coal India Limited regarding Frequently Asked Questions in which in column no.1, that is, when can a departmental candidate apply against the said notification, the Coal India Limited has answered that the departmental candidates who were found eligible for the written test held on 17th January, 2016 and are still on rolls of the Company are

eligible to apply against the said notification as this is a re-examination of the exam held on 17th January, 2016 and subsequently cancelled. In this regard, Mr. Ghosh has relied upon a decision where the same set of candidates who were found eligible for the written test held on 17th January, 2016 and are still on rolls of the Company in pursuance of the order passed by the High Court of Bombay, Nagpur Bench in WP 4315 of 2017 were held to be eligible to participate in the examination held on 17th January, 2016.

7. The materials disclosed by the parties clearly establish that the writ petitioner was appointed in the Non-Executive Grade on 17th October, 2015 and he joined service on 27th October, 2015 in the said Grade. The letter of appointment clearly shows that the writ petitioner would remain in probation for a period of one year and after successful completion of the probation period, he would be confirmed in the present Grade. When he was allowed to participate, he was on probation. Moreover, notification of 16th October, 2015 is meant for selection/promotion from Non-Executive Grade to Executive

Cadre in various disciplines and subsequent extension of the validity period for participation in the said selection process has clearly stated that the cut-off date for eligibility criteria would be 30th September, 2015. The notification dated 16th October, 2015 contemplates employees who are in the Non-Executive Cadre on that date itself. The writ petitioner was not in the pay roll on 16th October, 2015 as a Non-executive Cadre. He was not even born in the service of the Non-Executive Cadre having been appointed only on 27th October, 2015. The participation in the interview in the selection process cannot create right in favour of the writ petitioner as he was not appointed on or before 30th September, 2015, in any event, he was on probation for a period of one year. The instructions to the Admit Card clearly reserved right for the appellants to deny the candidature if the candidate is found to be ineligible. Since he was *ex facie* ineligible on the date when the notification was published and that he was on probation for a period of one year after which his service can only be confirmed, we are of the view that he

was not eligible for being considered for the said promotion.

8. In view thereof, the impugned order is set aside.

9. The appeal and the applications are, accordingly, allowed and disposed of.

10. However, there shall be no order as to costs.

11. The affidavits filed by the parties are taken on record.

12. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Soumen Sen, J.)

(Uday Kumar, J.)