

FMA 219 of 2024
CAN 1 of 2024

Amarendra Deo Gupta
Vs.
Coal India Limited & Anr.

Mr. Swarup Banerjee
Mr. Arindom Chatterjee
Mr. Arinjay Paul
Mr. Subham Biswas ... for the appellant

Mr. Shiv Shankar Banerjee
Ms. Sanchita Barman ... for respondent no.1

1. The appeal is arising out of an order dated 28.11.2023 in which the writ petitioner has challenged the decision of Coal India Limited not to consider his candidature for promotion although he was recommended by the Departmental Promotion Committee (in short DPC) for promotion on 21.8.2021.
2. Briefly stated, a disciplinary proceeding was initiated by Coal India Limited against the writ petitioner who was a Deputy Manger (Finance), Grade E-3, at Rajmahal area at Eastern Coalfields Limited. The said proceeding was ultimately concluded and resultant in a minor penalty of 'Censure' on 18.8.2021 under the Conduct Disciplinary and Appeal (in short CDA) Rules of Coal Indian Limited. The Departmental Promotion Committee for the promotion of eligible executives

from E1-E2, E2-E3, E3-E4, E4-E5 grades for the cut of date 30.9.2020 for different disciplines including finance was held on 31.7.2021 and 21.8.2021.

3. In the first DPC meeting on 31.7.2021 his case was considered but no final decision was taken with regard to eligibility of promotion and in the subsequent meeting held on 21.8.2021 which was in fact the continuation of the first of DPC, a minor penalty in the form of 'Censure' was awarded to the writ petitioner. However, the DPC finally recommended the name of the petitioner for promotion from E3-E4.

4. The question arises whether the minor penalty by way of 'Censure' in between the two dates of the sitting by the DPC for consideration of the promotion of eligible executives, the cut of date 30.9.2020 would come under the circular dated 05.10.2007, the said circular was clarificatory in nature and reads as under ;-

"With regard to minor penalty, it is hereby clarified as follows;-

(i) *As per existing provisions of Common Coal Cadre, if the 'Censure' has been imposed to an executive, arising out of disciplinary proceedings as per CDA Rules after holding of DPC and whose name is in the recommended panel by the said DPC, the recommendation*

of the said DPC in respect of the concerned executives, cannot be given effect to but, he will considered for promotion by the next DPC when it meets next.

(ii) However, if the 'Censure' is awarded to an executive before holding DPC meeting, there will not be any effect of 'Censure' and the executive concerned if recommended in the said DPC will be eligible to be promoted.

(iii) This is for your information".

5. In the instant case the writ petitioner cannot come under II as the 'Censure' was awarded to him after the commencement of the DPC. In fact, the two dates on which the DPC deliberated on the said issue cannot be considered two independent sittings for the purpose of interpreting the phrase "after holding of DPC" or the phrase "before holding the DPC meeting". The minor penalty by way of 'Censure' was available to the DPC after the first sitting was held and before the final recommendation was made by the DPC. It is thus clear that for the purpose of consideration of the case of the petitioner, it should be construed as a recommendation after holding of a DPC that had commenced on 31.7.2021 and hence the case of the petitioner comes within Clause I of the clarificatory circular.

6. Under such circumstances, we are unable to accept the submission on behalf of the writ petitioner that the said minor penalty should come within the purview of Clause 1 of the said circular.
7. In view thereof the appeal fails and accordingly dismissed.
8. However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)