

OD-10

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

WPO/1348/2023

DIBYAJYOTI GHOSH
VS
COAL INDIA LTD AND ORS

BEFORE:

The Hon'ble JUSTICE RAJASEKHAR MANTHA
Date : 5th March, 2024.

Appearance :
Mr. Partha Ghosh, Adv.
Mr. Amal Kumar Datta, Adv.
Ms. Simran Sureka, Adv.
Mr. Debashis Das, Adv.
... for the petitioner.

Mr. Varun Kedia, Adv.
Mr. Avee Jaiswal, Adv.
... for the respondent.

The Court : - 1. Affidavit-in-opposition and reply filed in Court are taken on record.

2. The petitioner challenges an order dated 16th November, 2022 passed by the CMD pursuant to the directions of a coordinate Bench in a judgment and order dated 27th September, 2022 passed in WPA/24815/2016.

3. The brief facts relevant in the case are that the writ petitioner was issued a charge sheet for acts of misconduct. The disciplinary authority imposed a punishment of withholding of increments. On an appeal being

preferred by the appellant, the appellate authority on 3rd February, 2023 reduced the punishment to 'censure'.

4. During the pendency of the disciplinary proceedings, there was a Departmental Promotion process (DPC) in 2013 conducted by the respondents for promotion from E-4 to E-5 Grade. The petitioner was allowed to participate in the said promotion process. He came to be recommended for promotion. However, the said promotion was kept on hold due to the pendency of disciplinary proceedings.

5. After conclusion of the disciplinary proceedings and in view of the penalty awarded albeit minor penalty(Censure), the promotion of the petitioner from E-4 to E-5 was declined. The petitioner was thereafter however promoted in the subsequent DPCs. He is presently holding the Grade of E-7.

6. By the impugned order, the promotion with retrospective effect from the year 2013 was denied to the petitioner on the ground that there was a penalty of 'Censure', imposed on him for the said period.

7. Mr. Partha Ghosh, learned Counsel appearing for the petitioner would argue by reference to the Conduct Discipline and Appeal Rules of Coal India Limited exemption of 1978 that minor penalties provided under Rule 27.1(i) are a) Censure, b) withholding of increments, c) withholding of promotion, d) recovery from pay of whole or part of pecuniary loss. It is argued by Mr. Ghosh that Censure being the lowest

grade of penalty and withholding of promotion being the third lowest grade i.e. higher than Censure, the writ petitioner should not be deprived of promotion as the same would amount to imposing two penalties on him i.e. Censure and withholding of promotion.

8. At first glance it would appear that there is substance in the arguments advanced.

9. However, it is now a well-settled proposition of service jurisprudence that a promotion process undertaken during pendency of the departmental proceedings would normally follow a sealed cover procedure i.e. the result of a promotion process is kept undisclosed to the employer as well as the employee by the DPC.

10. In the instant case the petitioner was found entitled to promotion subject to departmental proceedings.

11. Once a penalty albeit minor is imposed on an employee, the same is required to be taken into consideration by the DPC even ex post facto while deciding whether the candidate would be given the benefit of promotion or not.

12. Withholding of promotion as a penalty under Rule 27.1. (i) (supra) would imply in the peculiar facts and circumstances of the case that, either that the person would not be entitled to participate in the promotion process or a promotion already given could be recalled.

13. An employee against whom a disciplinary proceedings results in a

penalty of Censure, has a stigma on his career.

14. It may be noted herein that in the judgment dated 27th September, 2022 (supra) the coordinate Bench had not set aside the penalty of Censure.

15. It is equally well settled that a quantum of penalty imposed by an employer in a departmental proceedings is generally not interfered with unless the same is shockingly disproportionate to the charges proved against the concerned employee. Reference in this regard is made to the decision of the Supreme Court in the case of **Ranjit Thakur Vs. Union of India** reported in **(1987) 4 SCC 611** and the case **Union of India Vs. G. Ganayutham** reported in **(1993) 7 SCC 463** Applying the doctrine of proportionality, the Supreme Court had laid down the circumstances under which the penalty imposed by an employer in course of departmental proceedings can or should be interfered with.

16. In the backdrop of the above, except for commenting on the penalty imposed on the writ petitioner, the coordinate Bench in the judgment dated 27th September, 2022 has not disturbed the order of penalty of Censure imposed on the petitioner. The penalty even otherwise is the mildest of the minor penalties imposeable on an executive by the management of CIL. Such penalty could not have been interfered with.

17. In the backdrop of the above discussion, this Court is of the view

that the CIL cannot be faulted for depriving the petitioner of the benefit of promotion from E-4 to E-5 Grade in the year 2013 in view of the penalty of Censure imposed on him.

18. For the reasons stated herein above, the writ petition fails and is hereby dismissed.

19. Urgent certified website copy of this order, if applied for, be made available to the parties subject to compliance with the requisite formalities.

(RAJASEKHAR MANTHA, J.)