

10.03.2025
Court No.23
DL/Item No.-1
[Milan, A.R. (Ct.)]

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

WPA 8745 of 2024

**Prabir Kumar Sengupta
versus
Coal India Limited & Ors.**

Mr. Swapan Kr. Datta,
Mr. Sambuddha Dutta

....for the Petitioner

Ms. Amrita Pandey,
Mr. Ghanshyam Pandey,
Mr. Roma Singh

....for the Respondent Nos.1 to 3

Exception on behalf of the petitioner to the report in the form of an affidavit of the respondent nos.1 to 5 filed in Court today is taken on record.

It is the case of the petitioner that the petitioner was working as Chief Manager (Mining) in E-6 Grade on and from 19th August, 2010 in Central Coalfields Limited (in short, "CCL"), a subsidiary of Coal India Limited (in short, "CIL"). The petitioner, on being eligible for being considered to be promoted from E-6 Grade to Chief Manager (Mining 1st Class) to E-7 Grade, was considered for the promotion but was not given the promotion since a disciplinary proceedings initiated by issuance of a memorandum dated 12th November, 2020 containing articles of charge, although he was otherwise found fit for the same. The petitioner's promotion,

therefor, was kept on hold subject to the result of the disciplinary proceedings.

The promotion order dated 27th August, 2021, which appears at pages 31 to 35 of the writ petition, therefor, did not contain the name of the petitioner. By an order dated 13th June, 2022, the disciplinary proceedings was brought to a conclusion by issuing “caution” to the petitioner. This order is at page 69 of the writ petition and has been passed by the Chairman-cum-Managing Director and Disciplinary Authority of CCL.

It is also the case of the petitioner that “caution” was never any punishment or penal measure for which the petitioner can or could have been refused the promotion. However, CCL contended that even issuance of “caution” is a penal measure for which the petitioner is not entitled to get the promotion. Ultimately, this issue was set to rest by an order dated 15th March, 2023 passed by the Chief Manager, CIL wherein it has been clarified that “caution” is not a penalty under the Conduct, Discipline & Appeal Rules, 1978 (hereinafter referred to as, “said Rules”) of Coal India Limited and, as such, the appeal preferred by the petitioner does not come under the purview of Clause 38 of the said Rules.

The decision was duly communicated to the CCL which was in turn communicated to the petitioner. The petitioner says that on such clarification, therefor,

became entitled to be promoted with effect from 27th August, 2021 because his promotion was withheld only for the pending disciplinary proceedings in which he was exonerated on being issued “caution”. The petitioner was ultimately given promotion on 22nd December, 2022.

It is the further case of the petitioner that by granting promotion on 22nd December, 2022, the petitioner was placed even below his juniors in the original gradation list in E-6 Grade without any fault on his part. The promotion, which was granted to the petitioner by an order dated 22nd December, 2022, is also prospective in nature. The petitioner has referred to the original gradation list in E-6 Grade as on 1st September, 2021, which is annexed at page 37 and 38 of the writ petition and says that C. Dileep Kumar being the respondent no.6 in the writ petition on having been promoted under the promotion order dated 27th August, 2021 has become senior to him in E7 category though he was junior to him.

It is also the case of the petitioner that the petitioner should be placed at least above C. Dileep Kumar in the original gradation list of E-7 Grade since his promotion was deferred without any fault of his part when he was found not guilty in the disciplinary proceedings. The petitioner says that since he has not worked in the E-7 Grade until he was promoted by an

order dated 22nd December, 2022, he may not be given the salary and emoluments of E-7 Grade till he actually joined. Since, it is the promotion order of the petitioner is prospective from the date of joining at the promoted post but he should be given notional seniority as per the original gradation list in E-6 Grade and, as such, the petitioner should be placed above C. Dileep Kumar (respondent no.6) in the gradation list prepared for E-7 Grade, on the respondent no.6 having promoted by an order dated 27th August, 2021 for the purpose of giving him notional benefit of seniority.

The petitioner has relied upon a judgment reported in **2020 (5) SCC 230 [C. Jayachandran vs. State of Kerala & Ors.]**. By relying upon paragraph 35 of the said judgment, the petitioner submits that he should be given notional benefit for E-7 Grade from the date on which the respondent no.6 assumed charge in E-7 Grade on being promoted by an order dated 27th August, 2021 because there was no fault on the part of the petitioner which has been established on the petitioner being exonerated in the disciplinary proceedings and, as such, the petitioner should not be made to suffer.

On behalf of the respondent nos.1 to 3, it is submitted that the promotion granted to the petitioner on being exonerated, was prospective in nature and, as such, the petitioner is placed in the gradation list in

terms of the promotion order dated 22nd December, 2022. The petitioner has also not been deprived as he was promoted against the first vacancy available after the petitioner was examined. The petitioner cannot seek restoration of his seniority as per the original gradation list under E-6 Grade either actually or notionally, since, the petitioner was not promoted by an order dated 27th August, 2021 because of the pending proceedings.

There is, as such, no fault on the part of the respondents in placing the petitioner against serial no.8 in the promotion order dated 22nd December, 2022.

After hearing the parties and considering the materials on record, I find that CCL and CIL had correctly withheld the petitioner's promotion from E-6 Grade to E-7 Grade in view of the pending disciplinary proceedings which was initiated prior to the petitioner being considered for promotion for E-7 Grade, which culminated in the passing of the promotion order dated 27th August, 2021.

It is also correct that the petitioner, on being exonerated in the disciplinary proceedings by an order dated 13th June, 2022, became entitled to seek promotion as he had fulfilled all other criteria but was not given the promotion due to the pendency of the disciplinary proceedings. CCL and CIL ought to have promoted the petitioner immediately after 13th June, 2022 without waiting for passing the combined

promotion order dated 22nd December, 2022 wherein the juniors to the petitioner were considered for promotion. The petitioner, therefor, has become entitled to the seniority with effect from 13th June, 2022 instead of seniority as per the order dated 22nd December, 2022. The judgment in C.Jayachandran (supra) cited by the petitioner has no manner of application as the ratio laid down therein is based on totally different set of facts.

The petitioner, therefor, should be placed in the gradation list of E-7 Grade immediately after the last man in the promotion order dated 27th August, 2021 and shall be given notional benefit from the date on which the last man under the promotion order dated 27th August, 2021 had assumed charge in E-7 Grade.

The petitioner, however, shall be entitled to actual benefit including salary and emoluments of E-7 Grade from the date when the petitioner has actually joined under the said E7-Grade and not from the date on which he is being directed to be given the notional benefit.

Nothing further remains to be adjudicated in this writ petition. The same is accordingly disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Arindam Mukherjee, J.)