

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION**

Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

WPA 19989 of 2021

Uma Shankar Shukla and Ors.

Versus

Coal India Limited and Others

For the Petitioners : Mr. Soumya Majumder, Ld. Sr. Adv.
Ms. Sanjukta Dutta, Adv.
Mr. Barnamoy Basak, Adv.

For the Respondent Nos. 1 & 2 : Mr. Sakya Sen, Ld. Sr. Adv.
Mr. Varun Kedia, Adv.
Mr. Avey Jaioswal, Adv.

Heard on : 13.08.2025

Judgment on : 10.09.2025

Ajay Kumar Gupta, J:

1. Writ petitioners have approached this Court seeking direction upon the respondent authorities to restore the petitioners' seniority in E-4 grade notionally with effect from 30th September, 2014, i.e. the same date on which the other directly recruited executives at the entry level grade in Coal India Limited, had been granted notional seniority at E-4 grade and other consequential reliefs.
2. The petitioners' case is that they are directly recruited officers in the executive cadre of Coal India Limited (in short, 'CIL') and entered in service as Management Trainee (Mining) in E-1 Grade on 10th August, 2009 along with respondent nos. 3 and 4. The petitioners presently hold the posts of Manager (Mining) in E-5 grade after having channel of promotion.
3. The respondent nos. 3 and 4 were also directly recruited Management Trainees in E-1 Grade, and they entered the service of CIL on the same date as the petitioners in the year 2009. Whereas, the respondent nos. 5 and 6 were appointed initially in the non-Executive cadre in CIL. They were subsequently promoted and borne in the executive cadre, but after the petitioners had joined the executive cadre in E-1 Grade. The respondent nos. 5 and 6 had joined the executive cadre in E-2 grade on 12th August, 2010, when the petitioners had already reached in E-3 grade.

4. No relief is sought for in the instant petition by the petitioners against any of the private respondents. They have been impleaded as proforma respondents since they are proper parties in the present proceeding.
5. The promotion of executives of CIL up to E-6 grade is governed by the principle of seniority –cum- merit. From time to time, promotion policies have been amended by CIL, by reason of various anomalies that arose in the framing of policy thereof. In the Mining Discipline, acquiring 1st Class Mines Manager Certificate of Competency (in short, 'FCMMCC') is essential for holding the post of Mines Manager. As per the prevailing policy, the executive in the Mining Discipline is entitled to a vertical promotion up to E-3 grade on acquiring FCMMCC. On completion of the training period of one year, the petitioners and respondent nos. 3 and 4 were given confirmed positions with effect from 10th August, 2010. After a mandatory service period of one year in E-1 Grade, the petitioners were promoted to E-2 Grade vide order dated 16th January, 2012 and 20th December, 2011. The petitioners were deemed to have been appointed in E-2 grade on and from the date of their joining, and after completion of the one-year period, they were deemed to have been placed in E-3 Grade. The petitioners were deemed to have been appointed in E-2 Grade on 10th August, 2009 and in E-3 Grade on 10th August, 2010. The same would be the position of the respondent nos. 3 and 4.
6. The private respondent nos. 5 and 6 were appointed as non-executives and were subsequently appointed in the executive cadre in E-2 grade by order

dated 12th August, 2010. Further, they were promoted from E-2 to E-3 grade on 30th August, 2012 and 29th September, 2014 respectively. They were also promoted from E-3 to E-4 grade by orders dated 14th June, 2016 and 22nd May, 2018 respectively in the 1st Class Channel of Promotion.

- 7.** The petitioners and respondent nos. 3 and 4 were promoted to E-4 Grade with effect from 22nd May, 2015 vide orders dated 22nd May, 2015, 20th December, 2018 and 22nd June, 2015 respectively. All the petitioners and respondent nos. 3 and 4 were in E-4 grade in the 1st Class Channel and the respondent nos. 5 and 6 were in E-4 grade but junior to the petitioner, since they had been promoted on later dates. The gradation list of executives in E-4 grade as published on 1st November, 2019 will reveal the seniority position of the petitioners and the respondent nos. 3 to 6. The said list is set out herein below:-

Sl. No.	Name		Grade	Seniority in E4 1 st Class as on 01.11.19
1	Avinash Kumar Malakar	Petitioner No. 3	E4 1 st Class	174
2	Vivek Awasthi	Petitioner No. 2	E4 1 st Class	180
3	Sunny Rao	Respondent	E4 1 st Class	182

		No. 3		
4	Uma Shankar Shukla	Petitioner No. 1	E4 1 st Class	183
5	Naveen Thakur	Respondent No. 4	E4 1 st Class	184
6	Neelkanth Prabhu	Petitioner No. 4	E4 1 st Class	185
7	Ritesh Kumar Singh	Respondent No. 5	E4 1 st Class	362
8	Dinanath Tiwari	Respondent No. 6	E4 1 st Class	580

- 8.** It is further contention of the petitioners that the respondent nos. 5 and 6 were deemed to be placed in E-3 grade from 12th August, 2011. However, the petitioners were deemed to be in E-3 Grade from 10th August, 2010, one year prior to them. Subsequently, the provisional seniority list in E-4 Grade (First Class Channel) was published on 3rd December, 2019, wherein the respondent nos. 5 and 6 were shown in E-4 grade in the 1st Class channel with effect from 22nd May, 2015. Though they were departmentally promoted executives on 12th August, 2010, the petitioners, having become directly recruited executives on 10th August, 2009, came to acquire their respective positions in the seniority list in E-4 grade, wherein the respondent nos. 5 and 6, being promotees,

occupied higher positions. The directly recruited executives of the 2009 batch were junior to the departmentally promoted executives of the 2010 batch.

9. The apparent anomaly created by CIL in making the latter entrant departmental promotees senior to the earlier entered executives in the cadre of executive, was sought to be remedied by CIL through issuance of an order dated 19th December, 2020, whereby notional seniority was granted to the 2009 batch, i.e. directly recruited executives in E-4 Grade with effect from 30th September, 2014. However, the petitioners came to know that though they belonged to the 2009 batch of directly recruited executives and were similarly placed as the respondent nos. 3 and 4, they did not receive the benefit of restoration of notional seniority with effect from 30th September, 2014, even though the petitioners and respondent nos. 3 and 4 passed the FCMMCC in the same examination conducted by the DGMS in the same year.
10. Leaving the petitioners as a separate class, the seniority of respondent nos. 3 and 4 in E-4 Grade was given effect from 30th September, 2014, treating the petitioners as unequals. The effective date of passing FCMMCC of the petitioners and respondent nos. 3, 4 and 6 was the same i.e. 30.07.2013. If the notification dated 12th June, 2006 is considered in true meaning and purports, all the executives, who passed FCMMCC and E-3, E-4 and E-5 grades will be horizontally placed in the grade in the first class channel from the effective date i.e. 30.07.2013.

- 11.** The petitioners as well as the respondent nos. 3 and 4 have been promoted to the E-5 grade, whereas the respondent nos. 3 and 4 being the 2009 batch-mates of the petitioners, were granted notional seniority in E-5 grade from 20th January, 2020 and seniority above the 2010 batch of departmentally promoted executives vide order dated 12th May, 2021. The petitioners were granted promotion in E-5 grade from the current date, i.e. 12th May, 2021 and their seniority is kept below the 2010 batch, who are the departmentally promoted executives depriving the petitioners herein.
- 12.** The Petitioners have made representation before the respondent authorities for consideration of their seniority similar to Respondent No.3 and 4, but despite representation, they were not restored to their seniority in E grade from 30th September, 2014, contrary to the promotion policy of CIL. The respondent nos. 3 and 4 having been granted notional seniority in E-4 Grade with effect from 30th September, 2014, depriving the petitioners is arbitrary and unreasonable, particularly when the petitioners and respondent nos. 3 and 4 had the same promotion deemed date in E-4 grade i.e. 2nd May, 2015 as per the seniority list of December 2020. But subsequently, the date has been changed to 30th September, 2014 whereas the petitioners have been deprived of the same. Hence, this application.
- 13.** Respondent nos. 1 and 2 filed their affidavit-in-opposition, and the petitioners also filed their affidavit-in-reply to the affidavit-in-opposition thereto.

- 14.** Learned counsel appearing on behalf of the respondents submitted that under CIL policy, promotions are of two kinds. Firstly, vertical promotion, which denotes upward movement within the same cadre hierarchy (E-2 – E-3 - E-4 - E-5), based on service, experience and vacancies. Secondly, Horizontal promotion, which denotes movement across channels within the same grade, contingent upon special statutory qualifications. In this case, such movement from the Second Class to the First Class channel is permissible only on timely submission of the First Class Mine Manager's Certificate of Competency (FCMMCC). Vertical promotions are time-bound, whereas horizontal eligibility arises only if FCMMCC is submitted prior to the DPC cut-off date. The onus of timely submission lies entirely on the mine's executives. Petitioners failed to do so before the DPC dated 24.07.2014, unlike the private respondents.
- 15.** It was further submitted that the FCMMCC is issued by DGMS only upon fulfilment of statutory prerequisites, namely Gas Testing, First Aid, and requisite underground experience. Any delay was attributable to the petitioners' own failure to complete and submit such requirements, and they cannot shift the burden onto DGMS. The private respondents, having duly submitted their FCMMCC before the 2014 DPC, were considered for horizontal movement and granted notional seniority w.e.f. 30.09.2014. They have since discharged statutory duties as First-Class Managers. The Petitioners, not having attained horizontal eligibility at the relevant time, cannot claim parity. The principle for fixation of seniority is based on timely submission of

FCMMCC before the DPC cut-off, not merely the date of passing or the effective date of the certificate. Petitioners' claim for notional seniority from 30.09.2014 is, therefore, untenable. The petitioners, while accepting vertical promotions without demur, never undertook the horizontal responsibilities of First-Class Managers. Their attempt to equate themselves with private respondents, who have been discharging such duties since 2014, is inequitable and unsustainable. Therefore, there is no case for arbitrariness or discrimination made out by the writ petitioners in the writ petition. Therefore, the writ petition is liable to be dismissed with costs.

- 16.** The learned counsel also referred to annexure C, the report of the Committee on Horizontal movement of Mining executives from Second class to First class channel, where the effective date of FCMMCC is prior to the deemed date of the present grade. The committee has finally concluded and recommended the methodology to be adopted in the placement of first-class channel from second-class channel in the Mining discipline with respect to such cases where the date of FMMCC is prior to the date of promotion to second class.
- 17.** In reply, the learned counsel appearing on behalf of the petitioners submitted that the plea of the respondents is totally unsustainable because the delay in issuance of FCMMCC is entirely attributable to DGMS, despite the petitioners having completed all requirements in 2012 and 2013. There exists no statutory rule or promotion policy of CIL mandating submission of FCMMCC before the DPC cut-off. Therefore, the respondents' reliance on such contention is totally

misconceived. The private respondents, junior to the petitioners, being granted notional seniority with effect from 30.09.2014 by office order dated 19.12.2020 and denial of the same to petitioners, who are the direct recruits of 2009, is discriminatory and violative of Article 14. The issue concerns seniority fixation and not promotion. Vertical or horizontal distinction is irrelevant; seniority must be reckoned from the date of acquiring FCMMCC, not the date of DPC. Petitioners never waived their rights by accepting promotions. Constitutional entitlement to equality in seniority cannot be defeated by laches or estoppels. Petitioners are entitled to parity in notional seniority w.e.f. 30.09.2014 and consequential promotion to E-5 grade, at par with private respondents.

- 18.** Having heard the arguments advanced by the learned counsel appearing on behalf of the respective parties and upon perusal of the opposition and reply thereto, this Court finds that the Committee comprising of the then Director (Personnel) ECL, Director (Tech) BCCL and CGM (M/S&R) CIL, after detailed deliberation, recommended the methodology to be adopted in placement of First Class Channel from Second Class Channel in Mining Discipline in respect of such cases where the date of FCMMCC is prior to the date of promotion in second class channel. The recommendation of the committee has been set out below:-

S.N.	Grade	Method for replacement in First Class MMCC	Example

...	...	...	...
2.	E4 Grade cases (E3 to E-4 promotion)	If date of effectiveness of First-Class certificate is prior to the deemed date (i.e. date of promotion) in E4 grade, such Executives may be placed in first class channel from their present deemed date of E4 grade because from the 2015 DPCs all E3 Min executives who completed Second/First class Certificate prior to DPC date, they are promoted to respective channel along with promotion in E4 grade. Policy for E-2 grade for HM dated 12.6.2006 (as mentioned in para B1 hereinbefore), may also be applicable to E3 to E4 grade after pay revision 1.1.2007	Executive-B-Dy Manager (Min), E4 grade- Effective date of FMCC: 30.07.13 Deemed date in E4:30.09.14 May be placed in E4 grade first class channel from deemed date i.e. 30.09.14.

3.	E5 & E6 grade cases	In case of executives having FMCC effective date after 2006, Upon passing FCMMCC in E4/E5/E6 grade they are horizontally moved to first class channel from Effective date of FMCC as per policy dated 12.6.2006, hence those executives who are currently in E5 and E6 grade 2nd class channel and their First Class date is prior to present deemed date (i.e. date of current promotion in second class channel) may be placed in first class channel from effective date of FCMMCC and thereafter their next promotion date in E5/E6 grade must fall after completion of minimum 3 years in first class channel before next DPC	Eg: Executive-C- Sr Manager, Min, ES grade Effective date of FMCC: 03.07.2008 Deemed date In ES: 22-Sep-08 He may be placed in First class channel in E4 grade because as per Horizontal movement policy dt 12.6.2006 "The executives who pass 1st Class MMCC In E3, E4 and E5 grade will be horizontally placed in the same grade in 1st Class Channel from the effective date of 1st Class" i.e. from 3.07.2008 and then he is
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		cutoff date. In the above manner while doing such horizontal movement, the deemed date in current grade in First class channel of few executives may extend beyond present deemed date of second-class channel and in some cases promotion order in Second class channel may need to be cancelled since the executive concerned may not have completed the minimum three years on cutoff date in first class channel on such placement in first class channel. This may be understood with example given in next column.	eligible only after completion of three years in first class channel in the next DPC for cut off date 30.09.2011 at par with his batchmates in First class channel. He may be placed in E5 grade from 07.01.2013 from the date 2008 FMCC passed out got promotion in E5 grade. This will ensure that there is no further anomaly caused due to HM as proposed. Executive- D- Effective date of FMCC: 21.12.2015; Deemed date in E5: 01-Aug-17 He may be placed in First
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			class channel In E4 grade (in which he acquired FMCC) from effective date i.e. 21.12.2015 and then he is eligible only after three years in the subsequent DPC, Hence his promotion in E5 grade may be cancelled.
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- 19.** The examples are given hereinabove for the purpose of explaining the underlying logic and may be applied to similar situations. While arriving at the suggested placement, it has been kept in mind that the solution should not give rise to further problems, there is minimal supersession and disturbance in the seniority list and that the majority is benefitted.
- 20.** In order to avoid such problem in future the Committee recommends that when the results of DGMS First Class examination are declared, the executive concerned may be advised to apply to DGMS for Issue of the FCMMCC, along with the required statutory documents, for example, First aid, Gas testing, UG Experience etc within one month of declaration of results and an intimation of having passed FCMMCC should be submitted to the Personnel department through proper channel enclosing a copy of such application made to DGMS

along with enclosure, so that date of application for Issuance of FCMMCC can be tracked to discourage the willful non submission of FCMMCC by executives to avoid responsibilities.

- 21.** It was also suggested by the Committee that if there is any anomaly arising due to placement/non-placement in the first class channel, those cases may be dealt with, keeping in mind the above proposals to avoid major complications in mining discipline.
- 22.** However, no notification has been found in this regard or placed before this Court.
- 23.** Be that as it may, it would be very clear from the earlier office memorandum no.CIL/C-5A (CC)/MIN/093/81 dated 12th June, 2006 annexed with the writ petition as “Annexure-P-19” that in Sl. No.2 the executives who pass MMCC in E3, E4, & E5 grade will be horizontally placed in the same grade in the first class channel from the effective date of 1st class. This was recommended to be effective from 08.05.2006. In this memorandum, there is no such condition as pointed out by the respondent in Affidavit-in-opposition, that the FCMMCC is issued by DGMS only upon fulfilment of statutory prerequisites, namely Gas Testing, First Aid, and requisite underground experience. The condition imposed upon the petitioners is contrary to the office memorandum. The respondent Nos. 3 and 4 as well as the Petitioners have completed their FCMMCC in the same year. The fact that the similarly situated mine executives would be given notional benefits on and from 30th September, 2014, depriving

the Petitioners herein, is clearly contrary to their own office memorandum. No subsequent office memorandum/notification has been placed by the respondents before this court to show whether any subsequent recommendation made by the committee was published.

- 24.** All the petitioners have made representations before the General Manager (P)/EE, CIL, Kolkata, on 05.01.2021 and 14.06.2021, respectively, with a prayer to grant them notional seniority and notional fixation in E4 grade first class channel w.e.f. 30.09.2014 at par with other Executives, and the same has been considered and rejected by the respondent authorities as per the recommendations of the committee as stated above.
- 25.** Therefore, this Court directs the respondent authorities particularly, respondent no. 2 to consider the petitioners' representations afresh, strictly in accordance with law, after affording an opportunity of a hearing to all the necessary parties including the petitioners within a period of two months from the date of communication of a copy of this order and pass a reasoned order and communicate the same to all the necessary parties including the writ petitioners immediately thereafter.
- 26.** It is, however, made clear that all points are left open to be decided by the aforesaid respondent without being influenced by any observation whatsoever made herein above, at the time of consideration of the representation of the petitioners.

27. In the light of the above observation, **WPA 19989 of 2021** is disposed of without any order as to costs.
28. Connected applications, if any, are also thus, disposed of.
29. Interim order, if any, stands vacated.
30. All parties shall act on a server copy of this judgment uploaded from the official website of the High Court at Calcutta.
31. Urgent photostat certified copy of this judgment, if applied for, is to be given to the parties on a priority basis on compliance of all legal formalities.

(Ajay Kumar Gupta, J)

P.A.