

WPO/775/2024

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

SHASHI BHUSHAN PRAKASH
VERSUS
COAL INDIA LIMITED & ORS.

BEFORE:
The Hon'ble JUSTICE ARINDAM MUKHERJEE
Date: 4th March, 2025.

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

Mr. Pushpal Chakraborty, Adv.
Mr. Saptarshi Mukherjee, Adv.
Mr. Pratik Acharjee, Adv.
For the BCCL.

Mr. Varun Kedia, Adv.
Mr. Aavee Jaiswal, Adv.
For the respondent nos. 1 to 4.

The Court :- The report on behalf of Bharat Coking Coal Limited (in short, BCCL) and the petitioner's exception thereto filed in Court today are taken on record.

The petitioner while working at BCCL, a subsidiary of Coal India Limited (in short, CIL), was given a promotion by an order dated 13th January,

2024 from the post of Managers (E&M) in E5 grade to Senior Manager (E&M) in E6 grade and was simultaneously transferred to Eastern Coal Fields Limited (in short ECL) another subsidiary of CIL. The promotion order is at page 25 of the writ petition.

In the last paragraph of the said letter the following appears,

“As per extant policy, Executives transferred to new place of posting on promotion to E6 grade should be released to join promoted post in the respective Company within 60 days from the date of issuance of the Order. In the event of non-release, the Executives will be deemed to have been released on expiry of 60 days and must join accordingly. Non-joining on the promoted post within the stipulated time would lead to cancellation of the promotion Order and debarring of the Executive for one subsequent DPC for promotion to the post”.

It is the case of the petitioner that apart from the petitioner there were six other employees, who have been promoted and transferred by the same order dated 13th January, 2024. All of them were released by BCCL by a letter dated 30th January, 2024 but surprisingly, the petitioner was not granted the release order.

It is the case of the petitioner that in absence of the release order the petitioner could not join at ECL at the promoted post. Records reveal that on 23rd January, 2024, a charge-sheet was issued imputing the petitioner with four articles of charge and inquiry was directed to be held against the petitioner under

Rule 30.0 of the Conduct, Discipline and Appeal Rules, 1978 (as amended up to January, 2021) of CIL. The Memorandum of Articles of charges is at page 28 to 31 of the writ petition. The charge-sheet, therefore, was admittedly issued after issuance of the promotion-cum-transfer order. It is also an admitted position in respect of promotion granted to an officer in CIL that a vigilance clearance is obtained prior to promoting the said officer.

In the instant case there ought to be a vigilance clearance in favour of the petitioner without which the petitioner would not have been promoted. So, the promotion order remained outside the scope of the disciplinary proceedings which commenced with the issuance of the charge-sheet on 23rd January, 2024.

It is also settled position of law that issuance of charge-sheet does not affect the right of an employee until the charges are proved. As of now the disciplinary proceedings has not been brought into logical conclusion and as such it cannot be said that the charges have been proved as against the petitioner. Even after issuance of the charge-sheet, CIL did not take any steps as against the petitioner to revert him back to his original post at BCCL by cancelling the promotion order.

The petitioner says that due to non-issuance of the release order the petitioner has been compelled to work at BCCL in his original post and is not getting the benefit of his promotion without any specific reason.

On behalf of BCCL as also on behalf of CIL, it is submitted that even without the release order the petitioner would have presented himself and joined

at the promoted post but he did not follow such approach. In support of such contention, BCCL and CIL have relied upon a letter dated 25th January, 2024 written in context of the promotion order dated 13th January, 2024, wherein it has been held that, “the joining time of such Executives on their transferred place of posting is hereby extended till 31.05.2024. On expiry of the said extended timeline, the non-released transferred Executives shall be stand released with effect from 01.06.2024”.

BCCL has also relied upon the last paragraph of the transfer order dated 13th January, 2024 which is quoted hereinabove to contend that the petitioner was deemed to have been released on expiry of 60 days. Non-joining on the promoted post within the stipulated time would lead to cancellation of the promotion order and debarring of the petitioner for one subsequent DPC for promotion to the post. BCCL as also CIL submits that on a conjoint reading of the transfer order dated 13th January, 2024 and the letter dated 25th January, 2024, there was no embargo on the petitioner in joining ECL at the promoted post even without the release order.

After hearing the parties and considering the materials on record, I find that the submission of BCCL and CIL with reference to the last paragraph of the order dated 13th January, 2024 to the extent that non-joining to the transferred post within stipulated time would lead to cancellation of the promotion order and debarring of the Executive for one subsequent DPC for promotion to the post has no substance for the reasons enumerated hereinafter.

The subsequent letter dated 25th January, 2024 which is written in the context of the order dated 13th January, 2024, according to me has altered the last paragraph of the transfer order dated 13th January, 2024. The letter dated 25th January, 2024 although was issued within 60 days from the order of transfer but does not speak of cancellation of the transfer order though it says that the rest of contents of the said order remain unchanged. This more so, as the initial 60 days as indicated in the order dated 13th January, 2024 got extended beyond 60 days by the letter dated 25th January, 2024. This is more so because the cancellation as indicated in the order dated 13th January, 2024 was in the context of release of the officer to join the promoted post wherein the said officer has been transferred. The provision of cancellation of promotion for non-joining within 60 days has been, in my opinion, totally reframed by the inclusion of the paragraph in the letter dated 25th January, 2024 as quoted above. It is also a settled position in service jurisprudence that a release order is necessary to enable an employee to leave his office wherein he is serving to join at any place either on transfer or transfer on promotion. In respect of such a serious element of service jurisprudence, CIL and BCCL cannot have such a casual approach. It was the obligation of CIL to see that the officers who have been promoted and transferred is released in time from his present post to join at the transferred place on being promoted when CIL had provided for a stringent clause like that of cancellation of the promotion in the order dated 13th January, 2024. The deemed release clause as appears in letter dated 25th January, 2024

will also not lend any assistance to either BCCL or CIL as ECL could have easily refused to allow the petitioner to join thereat without a specific release order.

BCCL also could not have withheld the release order on the ground that a departmental proceeding is pending against the petitioner since the same is admittedly for a period subsequent to the issuance of the promotion order. In any event, on being promoted and transferred the petitioner would still remain an employee of Coal India Limited serving one of its subsidiaries i.e. ECL instead of BCCL. In such a situation, the disciplinary proceedings would not become infructuous and the petitioner even while working at ECL would remain obliged to attend the disciplinary proceedings initiated by BCCL.

After considering all these aspects, I am of view that the petitioner was prevented from joining the transferred post on receiving the promotion due to no fault attributable to the petitioner.

In the aforesaid facts and circumstances, I direct BCCL to issue a specific release order within seven days from the date of communication of a server copy of this order without insisting upon production of a certified copy thereof to enable the petitioner to join at the promotional post in ECL. CIL should ensure that BCCL, being one of its subsidiaries, should issue the release order. CIL should also ensure that the petitioner is able to join at ECL, also one of its subsidiaries, in terms of the promotion order dated 13th January, 2024.

It is, however, made clear that the petitioner shall receive the scale of pay of the promoted post on and from the date of actual joining but will get the notional benefits of the promotional post with effect from 13th January, 2024 till the date of his actual joining in ECL. It is further made clear that the petitioner shall be obliged to attend the disciplinary proceedings that has been initiated by BCCL as and when required and ECL should grant permission to the petitioner on the basis of the letters and directions from the disciplinary authority as and when necessary.

Nothing further remains to be adjudicated in this writ petition.

The writ petition is, accordingly, disposed of.

(ARINDAM MUKHERJEE, J.)