

OD-6

ORDER SHEET

WPO 916 of 2024
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

PRITHUJIT BISWAS
VS.
THE COAL INDIA LIMITED & ORS.

BEFORE:

The Hon'ble JUSTICE ARINDAM MUKHERJEE

Date: 25th March, 2025.

Mr. Partha Ghosh, Mr. Amal Kumar Datta, Ms. Simran
Sureka, Mr. Debashis Das, Mr. Bratin Suin, Advocates for the petitioner.

Mr. Tushar Sinha Mahapatra, Mr. Pranab Kumar Das,
Advocates for respondent ECL.

The Court : The petitioner is an employee of Coal India Limited (in short CIL) and is posted in E-5 grade in Eastern Coalfields Limited (in short ECL), one of the subsidiaries of CIL. The petitioner was considered for promotion from E-5 grade to E-6 grade by CIL. It is the procedure of CIL to obtain report from the subsidiary wherein a candidate who is being considered for promotion is working as to whether any vigilance issue or any disciplinary proceedings are pending against the said candidate. Only after considering such report the promotion order is effected. The petitioner was given promotion by an order dated 29th March, 2022 from E-5 to E-6 grade. With the order of promotion, the petitioner was transferred from ECL to Central Coalfields Limited (in short CCL), another subsidiary of CIL. The petitioner was neither released by ECL and as such could not joint ECL nor

was given promotion from E-5 grade to E-6 grade in ECL. The ground on which the petitioner was not released for giving effect to the promotion order dated 29th March, 2022 is a disciplinary proceedings being pending against the petitioner. Records reveal that the articles of charges were served on the petitioner on 12th April, 2022 i.e. subsequent to the promotion order. It is a settled position of law as held in AIR 2012 SC 2250 (Secretary, Ministry of Defence and Ors.Vs. Prabhash Chandra Mirdha) that issuance of a charge sheet does not affect the right of an employee. Similarly, it also does not confer any right on the employer to hold him delinquent save and except to proceed with the disciplinary proceedings on the basis of such charge sheet to come to a logical conclusion thereof unless the employee is put under suspension. The charge sheet issued on 12th April, 2022 is admittedly after the issuance of promotion order and as such did not confer any right on ECL to withhold the petitioner's release order or object to his promotion till the disciplinary proceedings on the basis of such charge sheet was brought to a logical conclusion. The petitioner was also not suspended prior to issuance of chargesheet or prior to the passing of the promotion order. It is also not the case of ECL that with the issuance of the charge sheet as prior thereto, the petitioner was suspended and was not allowed to work. It further appears from the memo dated 5th April, 2017 issued by CIL which is annexed to the writ petition that the date on which the clearance to be taken into account for effecting the promotion should be the date of promotion order from CIL. It is, therefore, explicit that the charge sheet issued on 12th April, 2022 shall not also be considered for the petitioner's promotion or has any impact on it as it is post the issuance of the

promotion order.

Although, ECL has strenuously argued that due to the petitioner's alleged habitual default and neglect, the petitioner has been subjected to several proceedings but the fact remains that the documents relied upon by ECL through its report in the form of an affidavit relate to a vigilance memorandum dated 4th January, 2022. In the said memorandum, the petitioner has not also been named.

It is submitted by ECL that the Central Vigilance Commission by issuing such memorandum has expressed suspicion regarding the conduct of proceedings in the area where the petitioner was posted. It is also submitted by ECL that while following the trail from the memorandum of the Central Vigilance Commission dated 4th January, 2022, the petitioner is found to be an offender, as a consequence whereof the articles of charges dated 12th April, 2022 were issued.

This argument of ECL is untenable. Firstly, there is no reference to the petitioner's name either in the memorandum of the Central Vigilance Commission dated 4th January, 2022 or in the subsequent documents referred to and relied upon by ECL through their reports. Even in a criminal case it is a settled doctrine that unless held guilty a person is considered to be innocent. So, the slate as to any pending vigilance issue or disciplinary proceedings against the petitioner was clean till upto 29th March, 2022 when the promotion order was issued. Secondly, prior to granting the promotion order necessary reports had been called for by CIL from ECL. There must have not been any mention of any such issue against the petitioner otherwise, the petitioner would not have been considered for

promotion by CIL. ECL had all the time to report against the petitioner to CIL prior to issuance of the promotion order, if ECL had found any involvement of the petitioner in any illegal and wrongful activity for which the petitioner is required to be proceeded with. If anything of such nature was to the knowledge of ECL, then ECL ought to have reported this, while it submitted the report before CIL when the petitioner's name was considered for promotion or even thereafter. There is no document to demonstrate this. Moreover, had there been any indication from the side of ECL in the report as against the petitioner, then the petitioner's case would not have been considered for promotion by CIL.

ECL has referred to a letter to CIL dated 18th January, 2024 to contend that the promotion of the petitioner has been withheld on the instruction of CIL. On a perusal of the said letter dated 18th January, 2024, it is apparent that the promotional order was not stayed, but the promotion was confirmed. However the petitioner was directed to be retained in ECL instead of being transferred to CCL. It also does not appear from the said letter that the promotion of the petitioner has either been withheld or cancelled.

In the aforesaid facts and circumstances, I do not find any merit in the contention of the respondents.

The petitioner has been granted promotion and should be allowed to enjoy the fruits of promotion. The delay between the promotion order dated 29th March, 2022 and this day (25.03.2025) has deprived the petitioner from getting the benefit of promotion on the same having been given effect to. The petitioner, therefore, should be promoted from E-5 grade to E-6 grade in

ECL with immediate effect i.e. 25.03.2025. The petitioner, for no fault on his part, has been deprived of the benefits of his promotion order from 29th March, 2022.

The writ petition is, therefore, allowed directing ECL to promote the petitioner to E-6 grade from E-5 grade with effect from 25.03.2025. CIL and ECL are directed to give notional benefit to the petitioner from 29th March, 2022 till date but will not get the salary or emoluments for this period as the petitioner did not actually work in E-6 grade.

CIL and ECL shall carry out the order on the basis of the communication made to it with a server copy of this order, without insisting upon production of the certified copy thereof.

With the above observations, WPO 916 of 2024 stands disposed of.

(ARINDAM MUKHERJEE, J.)