

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:-

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Prasenjit Biswas

MAT 1552 of 2019

Coal India Ltd.

Vs.

Sukhbinder Singh Saini & Ors.

For the Appellant	: Mr. Jayanta Kumar Mitra, Sr. Adv. Mr. Snehatosh Majumdar, Mr. Varun Kedia, Mr. Avey Jaiswal.
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For the Respondent Nos. 1 to 9	: Mr. Jaydeep Kar, Sr. Adv. Mr. Debdeep Sinha, Ms. A. Chakraborty.
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Judgment on	: March 17, 2026
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Madhuresh Prasad, J.:

1. Heard the learned senior advocates representing the parties. The appellant, Coal India Limited (CIL) was the respondent before the writ court and has challenged the order of the writ court, dated 09.09.2019, in the present proceeding.
2. A brief factual background to filing of the writ petition is that the writ petitioners were working in the CIL on a non-executive grade. They are diploma holders and were stagnating in a particular grade for more than a decade. They moved before the authority raising a grievance in this regard. A sub-committee was thus constituted by the CIL on 14.02.2008, to consider their grievance and examine

an issue regarding career growth of the writ petitioners. Pursuant to report of the Sub-Committee, the board of directors of the appellant in the 255th meeting took a decision to allow an option to the writ petitioners, who all were diploma holders stagnating for 15 years or more as non-executive staff, for availing benefit of upgradation to E-1 Grade.

3. Learned senior advocate for the CIL submits that the decision of the Board was a one-time measure to upgrade the post of the writ petitioners, so as to ameliorate the situation being faced by them on account of stagnation. It is submitted that such upgradation under such special consideration cannot be compared, or confused with a promotion. He submitted that nearly 2500 diploma holders similar to the writ petitioners were upgraded as Subordinate Engineers, in Executive Grade E-1, in 2010-11. The benefit of such decision was granted to those, including the petitioners who had submitted an option undertaking for the same, on a prescribed proforma.
4. The petitioners consciously availed such benefit. Subsequently they started raising a claim for benefits being granted to others who chose not to avail the benefit of upgradation, and continued to serve in the Non-Executive Cadre. The petitioners alleged that those who continued in the Non-Executive Cadre were getting a higher salary than petitioners who were placed in the Executive Cadre.
5. It is submitted by the learned senior advocate that the upgradation was granted to the writ petitioners pursuant to a policy decision taken by the appellant authority on the request and representation by the writ petitioners. The policy was for the benefit of the writ petitioners. He submitted that having availed such benefit, the writ petitioners were not in a position to raise any grievance.

However, CIL took note of the grievance raised by the writ petitioners. The authorities after making a comparative assessment, taking into consideration the cumulative benefits being given to the writ petitioners; and to those who continued in the Non-Executive Cadre, were of the view that petitioners were not at a financial loss. However, the authorities gave an option to the writ petitioners to return to the non-executive grade and opt for the same, if they were of the view that the same was providing a more beneficial salary. The writ petitioners chose not to avail the benefit of such decision.

6. In the above noted facts and circumstances, it is submitted that no case of any vested right is made out, to a particular scale and the petitioners' claim to parity with the non-executive grade is not sustainable. The submission is supported by a decision of the Apex Court in the case of ***State of Andhra Pradesh & Ors. vs. G. Sreenivasa Rao & Ors.*** reported in ***(1989) 2 SCC 290***.
7. It is submitted by the learned Senior Advocate for the CIL that the action of the appellant does not lack *bona fide* in any sense, but is an action taken by them for the benefit of the writ petitioners. The writ Court is normally expected to refrain from interfering with a *bona fide* policy decision, in exercise of jurisdiction under Article 226 of the Constitution of India. In support of such submission the learned senior advocate has relied upon two decisions of the Apex Court in the case of ***P.T.R. Exports (Madras) Pvt. Ltd. & Anr. vs. Union of India & Ors.*** reported in ***(1996) 5 SCC 268*** and ***Balco Employees' Union (Regd.) vs. Union of India & Ors.*** reported in ***(2002) 2 SCC 333***.
8. A third submission is advanced, by the learned Senior Advocate for the CIL that the petitioners' claim is barred by acquiescence, waiver and estoppel.

9. It is also submitted that the substantial relief claimed in the writ proceeding is extension of salary and emoluments being paid to the Non-Executive Cadre under the National Coal Wage Agreement (for short *NCWA*), which cannot be extended to the writ petitioners since it is an admitted position that they ceased to be non-executive employees, whereas the *NCWA* was applicable to Non-Executive employees.
10. Lastly, it is submitted that only the petitioner's posts were upgraded. They were never promoted to the Executive Level. The petitioners, therefore, cannot rely upon the various decisions taken pursuant to the meeting between the Coal Mines Officers Association of India ('*CMOAI*' for short) and the management. Therefore, the Hon'ble Single Judge has erred in passing a direction for considering the petitioner's claim based on a policy decision for removing pay anomaly of executives who were promoted from the non-executive grade. The order of the Single Bench is, therefore, fit to be set aside.
11. The learned senior advocate for the respondent on the other hand, submits that *NCWA-IX* came into effect, revising the pay of the Non-Executives, and placing them in a higher basic than the writ petitioners.
12. He has taken the Court through the various orders, Record Notes of Discussions and Resolutions dated 13.03.2014, 11.02.2015, 26.02.2016, 04.11.2017 and lastly an office memorandum dated 24.11.2017 (hereinafter collectively referred to as 'resolutions'). It is submitted that these decisions are outcome of deliberations and discussions between the *CMOAI* and the Management. It is submitted that the decisions being relied upon clearly reveals the fact that the management was well aware of the anomalous situation arising out of *NCWA-IX*,

prejudicial to the interest of the writ petitioners since, 01.07.2011.

13. Even after an option was given to the writ petitioners on 31.05.2013, to revert to the non-executive cadre, the authorities taking note of the anomalous situation, repeatedly assured the petitioners by the above noted decisions and resolutions, that they are going to take appropriate steps to remedy the anomalous situation. However, the same was not followed up by any action pursuant to the said decisions.
14. The resolutions are founded on the "*Common Coal Cadre of March 1978, and operation of executive establishment in Coal India Limited and its subsidiary companies*". The writ petitioners assert that their movement to the E-1 grade is a promotion. Thereafter, their services are covered by the Common Coal Cadre of March 1978; and the above noted various decisions, and office memoranda. The authorities were thus obliged to take steps pursuant to the resolutions, which they failed to do.
15. It is submitted that the petitioners were discriminated against and no remedial measures were taken by the CIL. The writ petitioners allege infraction of Articles 14 and 16 of the Constitution of India. Therefore, the submission advanced on behalf of the appellant that the petitioners have no enforceable right to agitate, is unsustainable.
16. With reference to the above noted Resolutions relied upon, it is submitted that the same were the decisions of authorities competent to take a policy decision, and are on the same pedestal as any other policy decision, and, therefore, enforceable in a writ proceeding. It is nobody's case that the above noted decisions were at any point of time withdrawn or recalled.

17. The learned senior advocate submitted that the decisions relied upon by the appellants are inapplicable to the facts and circumstances of this case. It is submitted that the decision in the case of ***P.T.R. Exports (Madras) Pvt. Ltd.*** (supra) is not applicable since in the instant case the writ petitioners did not raise an issue of any change in policy. The decision in the case of ***Balco Employees' Union (Regd)*** (supra) also has no application to the facts of the present case as the issue arising for consideration therein was different, whether the employees of Balco had any locus; or could claim an opportunity of hearing in compliance with natural justice, before a decision to disinvest was taken by the authorities.
18. The learned senior advocate submitted that the petitioners are entitled to a consideration of their claim based on the above noted consistent resolutions taken by the authorities. He referred to a decision of the Apex Court in the case of ***Haryana State Minor Irrigation Tubewells Corporation & Ors. vs. G.S. Uppal & Ors.*** reported in ***(2008) 7 SCC 375***. Specific reference is made to paragraph 21 of the judgment to submit that in a case like the present one where the anomalous situation is not founded on any rational or justifiable reason and is unreasonable, unjust and prejudicial, the writ court should interfere to set right the situation.
19. It is further submitted that the writ court has not given a specific direction for grant of any particular scale and has left it open to the authorities to take a decision. Therefore, there is no occasion for the authorities to assail the decision of the Hon'ble Single Judge.
20. Upon consideration of the rival submissions and on going through the record

including the relevant provision in the "*Common Coal Cadre of March 1978*". We find that the petitioners were actually upgraded under special consideration of their long standing stagnation for 15 years or more. Even if we accept that the writ petitioners were not promoted, but their post was upgraded, the objects sought to be achieved are one and the same. The authorities undertook an exercise to upgrade their post so as to give them an opportunity to overcome their stagnation. The upgradation was, therefore, with an underlying objective of granting benefits of a post/ pay, higher than the post/ pay in which the writ petitioners were admittedly stagnating for 15 years or more. Thus, they were upgraded to E-1 in the year 2010-2011 as Subordinate Engineers. Since the steps taken by the management/ appellant was aimed at granting a benefit, it would not lie in the mouth of the appellant to contend that as a result of such decision, the writ petitioners can be put to a disadvantage when it comes to pay with that being paid to others on the lower non-executive post, who did not opt for the benefit of upgradation of their posts.

21. If such a situation is allowed to continue, then it would entail lesser pay and emoluments being received by the writ petitioners after upgradation of their post, when compared with the pay and emoluments being paid to the others who did not avail the benefit of upgradation. Having availed an intended benefit under the 255th Resolution of the Board of Directors, the petitioners would actually be put to a disadvantage. Under the circumstances, in our opinion, payment of a basic pay to employees on an upgraded post, lesser than the basic pay of the employees on the un-upgraded post results in an anomalous situation. Such an anomalous circumstance cannot be countenanced in law.

22. We find that initially the management took a decision as contained in order

dated 31.05.2013 issued under the signature of the General Manager (Personnel). As per the order the management did not find any merit in the writ petitioner's grievance, since after taking into account all parameters, the management was of the view that the petitioners were not drawing lesser pay. The order takes note of the fact that after upgradation in executive grade the petitioners could not be granted any benefit as per the National Coal Wage Agreement (NCWA-IX). The order therefore, allows an option to the petitioners to revert back irrevocably to their substantive post in the Non-Executive Cadre. The petitioners did not opt for the reversion.

23. The authorities thereafter in a meeting between the management of CIL and representatives of CMOAI held on 13.03.2014 discussed an issue regarding the removal of anomaly in pay. The subsidiary companies were to be directed to examine and settle the anomaly as per provisions under the Common Coal Cadre of March 1978/ FR 22 (C) within three months.

24. The Management reiterated such intention to remedy the anomaly which is obvious from the record note of discussion of CMOAI with the Chairman-cum-Managing Director of the CIL held on 11.02.2015. The Management continued to reiterate its intention in subsequent record note of discussion of CMOAI held on 26.02.2016 at the CIL headquarter. At this discussion also, an assurance was given that the director (P & IR) would examine the matter and sort out the issue. The record note contains assurance that if there is any anomaly pay protection will be given.

25. On 04.11.2017 assurance was again recorded in an action plan, which was decided at the meeting of CMOAI representatives with executive establishment

department on 03.11.2017. The action plan is dated 04.11.2017.

26. We find that the intention of the management to stifle any anomalous situation is apparent from an office memorandum dated 24.11.2017 containing a policy decision of the government to be followed at the next round of wage negotiations for workmen in the Central Public Sector Enterprises (CPSEs). Clause IV, V and VI of the same has been recorded by the learned Single Judge in the order under appeal. These clauses require the management of the concerned CPSEs to ensure that as a result of negotiation the pay of the workman does not exceed the existing pay scale of executives/officers and non-unionized supervisors.

27. We, therefore, find that the management was aware of the anomalous situation, and having acknowledged the same, repeatedly assured the petitioner's and others similarly situated that they are going to remedy the situation. Finding such an anomalous situation to be unacceptable the management also considered it necessary to notify a policy decision to be followed while negotiating the pay of the workmen, below the writ petitioners, so that their pay does not exceed the pay scale of Executives/ Officers and non-unionized supervisors. However, despite repeated assurances no steps were taken to remove the anomalous situation.

28. Insofar as submission advanced on behalf of the appellants that the present case involves upgradation and not a promotion, we find that an issue was settled by decisions of the Apex Court in the case of ***Bishan Sarup Gupta v. Union of India & Ors.***, reported in (1973) 3 SCC 1, ***Rama Nand vs. State (NCT of Delhi)*** reported in (2020) 9 SCC 208 and a more recent judgment of the Apex Court in

the case of ***Punjab State Power Corporation Limited vs. Bal Krishan Sharma & Ors.*** reported in ***(2022) 1 SCC 322***. As per the judgments upgrading a post involves the transfer of a post from a lower grade to the higher grade and the promotion of the incumbent of that post to the upgraded post. The judgments further elucidated the concept when considered with reference to facts such as when there is a prescribed qualification for the upgraded post, whether the upgradation is to a higher post or pay only; and whether the upgradation involves assumption of duties in addition to the duties being discharged on the posts prior to its upgradation.

29. In the present case the communication dated 16.04.2010 issued by the CIL to all its subsidiaries contains the criteria for upgradation of posts for the diploma holders of engineering disciplines i.e. Mining E&M Excavation Civil and Industrial Engineering, Coal Preparation etc. who are stagnating in T & S Grade A/A-1 for more than 15 years, such as the writ petitioners. It contemplates upgradation of the post of such stagnating diploma holders who are promoted to T&S Grade A and who have also completed 15 years service in T&B Grade A/A-1 as on 31.03.2010. Upon upgradation to E-1 Grade the diploma holders were required to do their current job as well as job of the upgraded post. After upgradation the service conditions were to be *“governed by the provision of the CDA Rules 1978 (as amended up to date) and all other rules applicable to the executives of CIL.”* The upgradation was to be subject to regular departmental, vigilance and other clearances. On upgradation to E-1 Grade the employee was to be retained in the subsidiary.

30. The beneficiaries (writ petitioners), of the communication dated 16.04.2010 were required to submit an option/ undertaking in acceptance of the terms and

condition contained in the communication dated 16.04.2010. The office order/s upgrading the post/s to E-1 Grade clearly states that the beneficiaries of upgradation are entitled to allowances as admissible to the employees of the executive cadre. The employees have also been kept on a one-year period of probation. In case service of any of these persons is found unsatisfactory during the period of probation, including extension of the probation period, they were liable to be reverted to their non-executive post, held prior to such upgradation.

31. These facts, viewed in light of the decision/s of the Apex Court in the case of ***Bishan Sarup Gupta*** (Supra), ***Ramanand*** (Supra) and ***Punjab State Power Corporation Limited*** (Supra), the unambiguous position which emerges is that the posts held by the petitioner was transferred to the higher/ executive grade/ cadre resulting in a promotion of the incumbent (petitioner) to the higher grade/ cadre.

32. We, find such situation also apparent from plain reading of the order dated 31.05.2013, whereby and whereunder the petitioners were given an option to revert to their earlier substantive post in the non-executive cadre. For the purpose of denying the petitioners the basic pay granted to the workmen in the non-executive cadre, the authorities took a stand in this order dated 31.05.2013 *"...further, once their upgradation was effected in executive grade, under no provisions could they be granted any benefit as per NCWA-IX)..."*

33. Therefore, for all purposes the management itself has considered the upgradation to result in the petitioners being promoted from workman grade to executive grade.

34. In the Resolutions taken note of above also we find that the management has

assured about resolving the issue of anomaly with reference to the *Common Coal Cadre of March 1978*. We therefore find no force in the submission of the learned Sr. Counsel for the appellant that the present case does not involve a promotion. We also do not find any force in submission of the learned Senior Advocate for the appellant that the petitioners cannot derive any benefit from the above noted Resolutions.

35. Taking into consideration the context in which the petitioner's posts were upgraded, the terms and conditions explicit in the decision to upgrade the post and the various above noted decisions we are of the considered view that as a result of upgradation of the post/s the petitioners stood promoted to the executive cadre. Such promotion having granted to the petitioners, an anomalous situation, wherein the petitioners were receiving basic pay and emoluments less than the workman in the non-executive cadre, cannot be countenanced in law. The authorities also have acknowledged such impermissible anomaly and repeatedly assure that they will rectify the situation. The petitioners, therefore, have a legitimate expectation that the anomalous situation is rectified by appropriate revision of pay and emoluments of the writ petitioners.

36. Insofar as a submission advanced by the learned Senior Advocate for the appellant that petitioner's claim for removal of anomaly is barred by acquiescence, waiver and estoppel, since they did not accept an option to revert back to the non-executive cadre for availing the higher pay and emoluments, we find no force in such submission.

37. We have found the upgradation to result in a promotion to the writ petitioners.

Once promoted in executive cadre, a reversion to the non-executive/ workman cadre can only be by way of a punishment. The reversion entails a lowering in rank and status and, therefore, it cannot be expected by any stretch of imagination that a person serving in a higher grade/ cadre, who is faced with such anomalous situation, would opt to be reverted to the lower grade, rather than asserting his/ her right for removing the anomaly. The choice of reversion, therefore, was nothing but a *Hobson's choice*. Non acceptance of such an option cannot be held against the petitioners, so as to justify non-consideration of their claim for removal of pay and anomaly. More so, since after their refusal to opt for reversion as per communication dated 31.05.2013, the authorities vide the above noted decisions dated 13.03.2014, 11.02.2015, 26.02.2016, 04.11.2017 and office memorandum dated 24.11.2017 have repeatedly acknowledged such anomaly and assured the petitioners of taking remedial steps.

38. It is under such circumstance that the learned Single Judge issued the directions in the order dated 09.09.2019 under appeal. The reliance placed by the learned Senior Advocate for the appellant on the decision in the case of ***G. Sreenivasa Rao & Ors.*** (Supra) in our opinion is misplaced in the facts and circumstances of the present case. In the case of ***G. Sreenivasa Rao & Ors.*** (Supra) the copyist started drawing more salary than the Assistants. And on the basis of last pay drawn as Copyist, the Copyist's basic pay fixed in the promoted post of Assistant Section Officer was higher than those promoted to the same position from the cadre of Assistants. It is in this context that the Apex Court held that equal pay for equal work does not mean that all members of a cadre must receive the same pay packet irrespective of their salary. The Apex Court held that ordinarily grant of higher pay to a junior would *ex facie* to be arbitrary, unless there are

justifiable grounds for doing so. One such justifiable ground was considered to be fixation of pay done under valid statutory rules/ executive instructions. The Court in that case found the differentia in pay scale to be based on intelligible criteria having a rational nexus with an object sought to be achieved. The Apex Court thus did not find any good ground to sustain the judgment of the High Court allowing the writ petition and holding grant of higher pay to junior thereunder to be discriminatory. Such facts do not arise in the present case. In the present case we find that the anomaly is acknowledged and management repeatedly assured for removing the anomaly. It is nobody's case that the anomaly is justifiable. The anomaly is not founded on any intelligible criteria, for achieving any rival objective. Judgment in the case of **G. Sreenivasa Rao & Ors.** (Supra), therefore, has no application to the present case.

39. In this connection, we are of the view that the decision relied upon by Mr. Kar, learned Senior Advocate representing the writ petitioners requires consideration. He has relied upon the decision of the Apex Court in the case of **Haryana State Minor Irrigation Tubewells Corporation.** (supra) Para 21 of the judgment reads:

"21. There is no dispute nor can there be any to the principle as settled in the abovesaid decisions of this Court that fixation of pay and determination of parity in duties is the function of the executive and the scope of judicial review of administrative decision in this regard is very limited. However, it is also equally well settled that the courts should interfere with the administrative decisions pertaining to pay fixation and pay parity when they find such a decision to be unreasonable, unjust and prejudicial to a section of employees and taken in ignorance of material and relevant factors. (See K.T. Veerappa v. State of Karnataka [(2006) 9 SCC 406 : 2006 SCC (L&S) 1823] .)"

40. We find that the petitioners have been deprived of such legitimate expectation

for removal of pay anomaly, which results in violation of the writ petitioner's Fundamental Right under Article 14 and 16 of the Constitution of India. The petitioner's claim was, therefore, a claim enforceable by resorting to a writ proceeding. Our view in this regard is fortified by decision of the Apex Court in the case of ***Sivanandan C.T. and Others vs. High Court of Kerala and Others*** reported in ***(2024) 3 SCC 799***.

41. In view of consideration, as above, we find no justification for the management to resist consideration for removing the pay anomaly; and are of the view that such anomalous situation gives rise to an enforceable claim in favour of the writ petitioners and a corresponding obligation on the respondent authorities to take remedial action for removing the anomaly which they have failed to do despite repeated assurance for nearly 5 years. In view of such failure by the authorities to remedy the anomalous situation we find a situation exist for issuance of a direction by the learned Single Judge, upon the respondent authorities to take steps for removing the anomaly.

42. The direction of the learned Single Judge is founded in the above noted Resolutions for removal of anomaly. The learned Single Judge while issuing the direction has not directed in specific terms as to what basic pay/scale the petitioners were required to be placed in. He has left it to the discretion of the respondent authorities to take a decision within 14 days from the date of communication of the order of the writ Court. He has also allowed consequential benefits including arrears, as a result of such a decision to be taken by the authorities to be paid starting from before the 3rd October, 2019, even if it was to be paid in instalments.

43. The appellant has failed to make out a case for interference with the direction of the learned Single Judge in the order dated 09.09.2019 in ***W.P. No.4267 (W) of 2019.***

44. Considering pendency of the present appeal, we consider it necessary to modify only the time for consideration in compliance of the direction of the learned Single Judge to be within 14 days from communication of this order. The appeal is accordingly disposed of.

45. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Madhuresh Prasad, J.)

I agree.

(Prasenjit Biswas, J.)