

Annexure - II

ORDER SHEET
WP 283 OF 2018
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

SRI SHIVE KRISHNA SHRINGI & ORS.
Versus
COAL INDIA LIMITED & ORS.

BEFORE:

The Hon'ble JUSTICE RAJASEKHAR MANTHA

Date : 29th August, 2018.

For Petitioner : Mr. Bikash Ranjan Bhattacharya, Sr. Adv.
Mr. Partha Ghosh, Adv.
Mr. Subhojit Seal, Adv.

For Respondent No.1 : Mr. S. Majumder, Adv.
Mr. Partha Basu, Adv.

The Court : The instant application is with regard to the right of promotion of the writ petitioners. By an order dated 24th June, 2017, read with an order dated 1st July, 2017, certain order of promotion on the basis of notional seniority have been granted to other persons with retrospective effect. The concerned promotion is from Grade ^{E-7} VI to Grade ^{E-8} VII. Such promotion with retrospective effect has, according to the petitioners, is illegal and has affected their rights.

There is no scope for interim order except that Coal India Limited shall publish a notice in their website as regards the instant writ application with the summary of the same.

Let affidavit-in-opposition be filed within a period of six weeks from date. Reply, if any, thereto be filed within two weeks thereafter. Let the writ petition appear as "For Hearing" eight weeks hence.

All steps taken by the Respondents shall abide by the result of the writ application.

(RAJASEKHAR MANTHA, J.)

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IN THE HIGH COURT AT CALCUTTA
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ORIGINAL SIDE

SRI SHIVE KRISHNA SHRINGI & ORS.
Versus
COAL INDIA LIMITED & ORS.

BEFORE:

The Hon'ble JUSTICE RAJASEKHAR MANTHA

Date : 13th September, 2018.

For Petitioner : Mr. Bikash Ranjan Bhattacharya, Sr. Adv.
Mr. Partha Ghosh, Adv.
Mr. Subhojit Seal, Adv.

For Respondent No.1 : Mr. S. Majumder, Adv.
Mr. Partha Basu, Adv.

The Court : The order dated 29th August, 2018 has been mentioned for correction. In the fifth line on the first page of the order the phrase Grade VI to Grade VII should read as Grade E-7 to Grade E-8.

In the second page of the order in the first paragraph, it was directed that the Coal India shall publish a notice in their website as regards the pendency of the instant writ application. This was to enable similarly placed persons as the petitioner and those opposing the petitioner to be appropriately notified. Although, orally informed to the parties that a summary of the writ petition and

its prayers will be supplied by the writ petitioners to the Coal India, the same has not been done till date. Learned Counsel for the writ petitioners seek time for a week to supply such summary. The same is allowed. The order dated 29th August, 2018 be corrected as indicated hereinabove.

(RAJASEKHAR MANTHA, J.)

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Notice

Ref. No.:

Date:

In compliance of Order of Hon'ble High Court of Calcutta in W.P No.283 of 2018, dated 29th August, 2018 and 13th September, 2018, the desired notice alongwith summary of the Writ Petition is hereby published to enable similarly placed persons as the petitioner and those opposing the petitioner to be appropriately informed.

The views and prayers mentioned therein are those of the Petitioners and Coal India Limited does not subscribe to the views expressed therein as the matter is presently *sub-judice*.

General Manager (P/ EE)

CC to:

1. TS to Dir. (P & IR), CIL
2. GM (Legal), CIL
3. GM (E & T), CIL: May please arrange to upload the notice under the link Info Bank → Notices on CIL's website.

SUMMARY OF THE WRIT APPLICATION

R.E. W.P. NO. 283 OF 2018

SRI SHIV KRISHNA SHRINGI & ORS.

VERSUS

COAL INDIA LTD. AND OTHERS.

The aforesaid writ application has been filed before the Hon'ble High Court at Calcutta challenging the recommendation for promotion order dated 24.06.2017 read with order dated 01.07.2017 vide reference No.CIL/ C-5A(v)/ DPC/ E7-E8/ 2016/Mining/B-394 along with order dated 31.08.2017 vide reference No.CIL/C5A(CRC)/E7-E8 Mining/B-497 issued by the Coal India Ltd. The Challenge of the said writ application was based on the following facts and grounds inter alia -

- (a) The coal India had published the guidelines for the promotion of Executives from E7 to E8 grade vide Office Order No. CIL/C-5A(vi)/CCC/1585 dated 02.06.2011.
- (b) That in terms of the said Office Order No. CIL/C-5A(vi)/CCC/1585 dated 02.06.2011, the promotion shall be on merit cum seniority and the eligibility for the promotion is minimum 3 years experience in E7 grade.

- (c) That in terms of the said Office Order No. CIL/C-5A(vi)/CCC/1585 dated 02.06.2011, the total marks for DPC is 100 and out of that for interview is 30 when the allocation of more than 15% of the total marks for the oral interview would be arbitrary and unreasonable and would be liable to be struck down as constitutionally invalid.
- (d) That the selection cum DPC (Board II) met on 23rd December, 2016 at SECL (HQ), 6th February, 2017 at CIL (HQ), 5th March, 2017 at CIL (HQ) Kolkata, 21st & 22nd April, 2017 at CIL (HQ) Kolkata, 10th to 13th May, 2017 at CIL (HQ) Kolkata, 27th & 28th May, 2017 at CIL (HQ) Kolkata, 22nd & 23rd June, 2017 at CIL (HQ), Kolkata to consider the cases of promotion of executives from E-7 to E-8 grade in Mining 1st Class Discipline, for cut-off date : 30th September, 2016.
- (e) Accordingly the process of holding DPC starts in December, 2016 with the first DPC meeting held at Bilaspur on 23.12.2016. For nearly after 6 months of the first DPC Meeting, as many as 51 candidates were given notional seniority vide order dated 01.06.2017. By no stretch of imagination these 51 candidates and others (some out of 80 candidates promoted vide

order dated 01.09.2016) could not have been included midway during the process of DPC which started almost 6 month ago in December, 2016. Such process is unknown to service jurisprudence and procedure whereby not only eligible candidates were added on after the process of promotion has been initiated and DPC already convened, but also their candidature had been considered even though they have not even entered the figure cadre, i.e. E-7 Grade at the time when DPC proceedings were started. Thus the entire process of conduct of proceedings for promotion from E-7 to E-8 Mining First Class Grade stands vitiated.

- (f) That the Coal India passed the promotion order dated 01.07.2017 vide memo no. CIL/C5A(v)/DPC/ E7-E8/2016/Mining/B-394 in which your Petitioners were not considered.
- (g) That in the said promotion order dated 01.07.2017, much lower ranked junior executive have been given preference over senior executive.

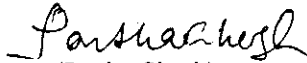
- (h) That the respondent authority passed the impuned order dated 31.08.2017 which was bad in law and unconstitutional.
- (i) That the Coal India Ltd. categorically stated inter alia that one Anil Kumar Karmakar was horizontally moved to first class channel vide order no. CIL/C5A(V)/DPC/E7/Hoz.mov./Mining 1st/B-327 dated 01.06.2017 w.e.f. 06.07.2009 but the actual work experience of 3 years is lacking.
- (j) That in the said order the stand of the respondent authority is absolutely incorrect and the respondent authority failed to consider that any order passed by any Court giving benefit to any person of notional seniority does not ipso facto granted them to treat as experienced.
- (k) That in the said order the respondent authority also categorically stated inter alia that there being no vacancies available in mining in 2013, 2014 and 2015 which is incorrect.
- (l) That as per the law of land, the Coal India Ltd. are under obligation to consider your Petitioners for promotion to E7 to E8.

- (m) That the act of the act of the Coal India considering junior executive superseding your Petitioners is arbitrary and vitiated by non-application of mind.
- (n) The Coal India Ltd. have violated the fundamental rights of your Petitioners, and exceeded their jurisdiction in relation to the issue in question and accordingly the writ application is very much maintainable on its facts and circumstances.
- (m) It is a fact that vide order dated 1st September, 2016 131 executives of Mining 1st Class discipline were promoted from E6 to E7 grade however out of them, notional seniority was awarded to 52 executives pursuant to the judgement of Hon'ble Calcutta High Court dated 10.09.2013 in W.P. No.386 of 2009 (Kumar Narendra & Ors. -Vs.- CIL & Ors.) & W.P.No.164 of 2009 (Pancham Rao Khadipure & Ors. Vs. CIL & Ors.) and CAN 5238/2017 ; MAT 899/2017 arising out of W.P. No.3073 (W) of 2017 – CIL & Ors. Vs. Uditya Singh & Ors. In compliance of the said order notional seniority was granted w.e.f. 28.09.2009 in E7 grade. Consequent upon such grant of Notional seniority in E7 grade w.e.f. 28.07.2009, these executives became eligible for consideration for E8 grade in the ongoing DPC of Mining

discipline for the 30th September, 2016 cut off date. Not to grant the actual benefits of seniority including in the matter of promotion, the company would have been guilty of bye-passing the judgement and order dated 10.09.2013 of the Hon'ble High Court, Calcutta. So it is absolutely incorrect stand as any order passed by any Court giving benefit to any person of notional seniority does not ipso facto granted them to treat as experienced, which is a condition precedent as per the policy dated 02.06.2011.

- (n) The identity of the said corrupt officers is not clear to the petitioners, who, for which, pray for enquiry and/or investigation by the CBI or such appropriate agency. The coal is the central subject so the investigation by CBI easier then state subject.

Drafted by me:



(Partha Ghosh)
Advocate
Date:17.09.2018