
(2013) 07 BOM CK 0092

In the Bombay High Court

Case No : Writ Petition No. 5349 of 2012

Bingumalla Venkata Ramanaiah

APPELLANT

Vs

Coal India Limited, General Manager (Personal) and Western
Coalfields Limited

RESPONDENT

Date of Decision : 04-07-2013

Acts Referred:

Citation : (2013) 5 MhLj 239

Hon'ble Judges : Z.A. Haq, J;Anoop V. Mohta, J

Bench : Division Bench

**Advocate : Rohit Deo, for the Appellant; S.C. Mehadia, Counsel, for the
Respondent**

Final Decision : Dismissed

Judgement

Anoop V. Mohta, J.—RULE. Rule made returnable forthwith. Petition is heard finally with the consent of the learned counsel for parties. The petitioner has challenged the action of respondents of not issuing the relieving order though the petitioner is in the list of employees who are promoted.

2. The right of promotion, as settled, always has a foundation of service terms and conditions and the material available with respondents to consider the case of employees especially when the criteria is of merit-cum-seniority. The concept and purpose of assessing the material with regard to the merit of the employees is within the purview and the power of the employer. It does not mean that the employees have no say in a case where inspite of his merit, the employer fails to consider the same and/or denies the right to be considered for promotion.

3. The learned advocates appearing for the parties have relied on the Office Memorandums dated 12.09.2002 issued by Coal India Limited and the dated 28.03.2002 issued by Government of India, Central Vigilance Commission, New Delhi. The relevant extract of the aforesaid Office Memorandums is as under:

I) Government of India, Central Vigilance Commission Letter No. 3S/DSP/1,

dated 28th of March, 2002.

2. Para 12.1 to 12.14 of Chapter V and Para 6.1 to 6.2 of Chapter III of the Vigilance Manual Vol-I deals exhaustively with the information required to be placed before the Departmental Promotion Committee to enable the DPC to follow the sealed cover procedure in specified cases. Cases of officials falling in the specified categories alongwith those of officers who are undergoing a penalty when the clearance is sought, are the ones which require vigilance clearance to be withheld.

3. It may be observed that the circumstances mentioned in these paras are:-

(a) Govt. servants under suspension.

(b) Govt. servants in respect of whom disciplinary proceedings are pending or a decision has been taken to initiate disciplinary proceedings.

(c) Govt. servants in respect of whom prosecution for a criminal charge is pending or sanction for prosecution has been issued or a decision has been taken to accord sanction for prosecution.

(d) Govt. servants against whom an investigation, serious allegation of corruption, bribery or similar grave misconduct is in progress either by the CBI or by any other agency, departments or otherwise.

4. ...

5.

6.

II) Coal India Limited Office Memorandum Ref. No. CIL/C-5A(vi)/CCC/50729/137, dated 12 th of September, 2002.

Consequent upon withdrawal of CIL's O.M. No. CIL/C-5A(vi)/CCC/50729/33 dated 14.5.2002 vide CIL's O.M. No. CIL/C-5A(vi)/CCC/50729/118 dated 23.3.2002 and in terms of the decisions of the Hon"ble Supreme Court of India in the matter of Union of India Vs. K.V. Jankiraman, etc. etc., which is conformity with OM dated 14th September, 1992 issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, Govt. of India, as communicated by OSD, CC, Govt. of India vide letter dated 14th June 2002, the Vigilance Clearance will be withhold in case of promotion under the following circumstances:

a) When an officer is under suspension.

b) When an officer in respect of whom a charge sheet has been issued and disciplinary proceedings are pending; and

c) In case of a regular case, the competent authority has decided to accord sanction for prosecution of the Officer in Court.

4. We have to take into consideration, apart from the judgment so cited, the circumstances enumerated in both the circulars for withholding the case of promotion. Even otherwise, facts of the case always goes to the root of the matter.

5. The learned advocate appearing for the petitioner has cited judgments in cases of Coal India Ltd. and Others Vs. Saroj Kumar Mishra, , Union of India (UOI) and Others Vs. Sangram Keshari Nayak, and Union of India Vs. K.V. Jankiraman, etc. etc., to support his contention that as the charge-sheet is received by the petitioner after crystallization of his right of promotion, that should not be the hurdle for respondents to relieve the petitioner for joining on the promotional post. The submission is made by the learned advocate appearing for the petitioner in view of the above position that respondents are wrongly stopping his promotion and/or relieving order.

6. We are inclined to observe that the facts and circumstances are always necessary foundation for consideration of the case of the employee, who is insisting for promotion in view of his alleged entitlement. But, admitted position on record shows that though the petitioner's name was included in the list of officers who had been granted promotion on 11.11.2011, he was served with charge-sheet on 07.12.2011 on the basis of an Office Memorandum issued by Central Vigilance Commission, New Delhi dated 09.11.2011 advising the initiation of major penalty proceedings against the petitioner. It is not in dispute that the memorandum issued by Central Vigilance Commission is of dated 09.11.2011 and the name of the petitioner was included in the list of promoted employees on 11.11.2011. The late receipt of charge-sheet on 07.12.2011, in our view, cannot be treated as an exempted situation as provided in both the circulars relied upon by the parties. We are inclined to observe in the present case that since the memorandum was issued by Central Vigilance Commission, New Delhi on 09.11.2011, late receipt of the same could not have been overlooked by the respondents at this stage, though the petitioner is in the list of promoted officers. The action of withholding promotion/relieving order just cannot be stated as impermissible and/or bad in law.

7. Though the judgments of the Supreme Court, cited by the learned advocate appearing for the petitioner, which have interpreted the provisions of the circulars, yet we are not inclined to accept the submission of the advocate appearing for the petitioner that those circulars are not applicable to the facts and circumstances of the present case. The judgments cited supra in no way declare that merely because an employee is in the list of promoted employees, he is entitled to join the promotional post without relieving order and/or order directing him to join the promoted post.

8. We are inclined to observe that as the case is made out and even though employee is in the list of promotion, his name can be withheld and an appropriate action can be taken. There is no total bar. Respondents have withhold the promotion/relieving order in view of the memorandum issued by

Central Vigilance Commission and the related charges, which need to be adjudicated by giving an opportunity of hearing to the petitioner. In this background, if respondents take action of withholding the promotion, it is difficult for the Court to hold that the action is bad in law, impermissible and/or without jurisdiction. We are inclined to hold that there is no illegality in the impugned action of respondents-employer.

9. It is made clear that we are not deciding any right and/or entitlement of the petitioner based upon the list of promoted employees. All points raised in the petition are kept open. The petition is dismissed. No costs.