

(2008) 10 JH CK 0050
In the Jharkhand High Court

Employers in relation to the Management of Dhansar Colliery	APPELLANT
Vs	
Their Workmen	RESPONDENT

Date of Decision : 22-10-2008

Acts Referred:

Citation : (2009) 1 JCR 80

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.G.R. Patnaik, J.—In this writ application the petitioner has prayed for quashing the award dated 24.8.2004 (Annexure 4) passed by the Central Government Industrial Tribunal No. 2 Dhanbad, in Reference case no. 145 of 1999, whereby the Tribunal has answered the reference in favour of the respondent Union directing the petitioner Management to consider the case of promotion of the workmen for Excavation Grade A.

2. The facts of the case in brief are as under:

3. A dispute raised by the respondent Mines Mazdoor Union in respect of two workmen over non grant of promotion to them in Grade A was referred to the Tribunal for adjudication by the following terms of reference:

Whether the action of the Management of Kusunda Area of M/s Bharat Coking Coal Limited creates discrimination in not promoting Md Abbas, Prem Singh, Auto electrician of Dhansar/KOCP in Gr B to Excavation Gr. A although they have promoted 11 persons in 1991 from Gr. B to Gr A. If so, whether Md Abbas and Prem Singh are eligible for promotion to grade A?

Earlier in 1991, an industrial dispute was raised by the sponsoring Union in respect of one Madusudan Tiwary and ten others who were employed as Welders in the Excavation Section demanding promotion from Grade B to Grade A. The grounds advanced was that whereas their counterparts in the E&M discipline in

category VI were eligible to get promotion as Assistant Foreman/Foreman in Grade A, such promotion was denied to these workmen on the ground that there was no promotional avenue beyond Gr. B to the workmen employed in the Excavation section.

4. A Joint Committee comprising representatives of the management and the Union, was constituted for resolving the dispute. The Committee had observed that there was no promotional channel for Welders in the Excavation Section beyond Gr. B and as a consequence thereof, such workmen were stagnating in the same scale whereas the Welders in the E&M Discipline in category VI had the privilege of promotion from Gr. B to Grade A. The Joint Committee, by its resolution, had recommended that the 11 EP Welders whose dispute was sponsored by the Union, be given promotion to the post of Foremen Technical and Supervisory Gr B (notionally w.e.f. 1.8.1990) and the notional pay fixation in the scale of Technical & Supervisory Grade B from the said date to be given to them. However, the financial benefits were to accrue to them w.e.f. 1.7.1991. The recommendation of the joint Committee was approved by the Director (P) of the Management and the same was implemented in favour of the concerned workmen. On the same principle, one Sri Vijay Bahadur Singh, Turner employed in Dhansar colliery was also granted promotion in Excavation Gr. B to Foreman in Technical & Supervisory Gr. A with effect from the same date as applicable to the Welders in pursuance of the settlement arrived at before the ALC (Central) Dhanbad.

5. The demand of the respondent Union in the present case was that the Management should consider all the cases in different groups for the sake of unanimity in the matter of promotion of the Excavation personnel including the EP Turner and EP Auto electrician, who were in the same pay scales and were guided by the same service conditions and to grant promotion to the workmen who were employed as EP Auto Electrician on the basis of the same privilege as extended to the EP Welders employed in Excavation section.

6. The petitioner Management contested the claim of the respondent before the Tribunal on the ground that the concerned workmen are permanent employees as Auto electrician in Dhansar colliery under Kusunda Area. Their initial appointment was made in the Excavation grade C, and they were promoted in Excavation Gr. B from 20.3.1994 and 11.11.1996 respectively. As per the approved cadre scheme of the Company in respect of the workmen employed in the Excavation section, there is no promotional avenue for Auto electrician beyond Excavation Gr B and therefore the said two workmen are not eligible for further promotion. It was further contended that no Auto Electrician was promoted to Gr A, which was supervisory grade, in the year 1991, therefore, there was no question of discrimination to the two workmen represented by the Union in this case. It is further asserted that the concerned workmen never worked at any time in technical and supervisory grade B and therefore the workmen are not entitled to any relief.

7. After considering the rival pleadings and the evidence adduced by the parties, the Tribunal answered the reference in favour of the concerned workmen in terms of its award as follows:

The action of the Management of Kusunda Area of M/s BCCL creates discrimination in not promoting Md Abbas and Prem Singh, Auto Electrician of Dhansar/KOCP in Gr. B to Excavation Gr A, although they have promoted 11 persons in 1991 from Gr B to Gr A is not justified. Consequently, Management is directed to consider their case in view of the observation made in the body of the Award.

On considering the evidence adduced, the Tribunal had observed "considering NCWA it is a fact that the maximum promotional scope of EP electrician is up to Excavation Gr B. Similarly, promotion channel of EP Welders also ended in Gr B. it is clear that the EP welders, EP turners and auto-electrician comes under Excavation discipline and the workmen of that discipline do not have the promotional avenues beyond Excavation Gr B. It is an admitted fact that there is no promotion avenue of EP Welders of Excavation discipline beyond Excavation Gr B.

The Tribunal proceeded to observe further as follows:

11. workmen of that category raised an industrial dispute which ultimately ended in settlement on the basis of joint Committee report submitted by the representative of the Union and the Management. Therefore it is clear that though there was no promotional avenue, the Management considered the promotion of 11 workmen designated as EP Welders under excavation discipline to the post of foremen in Technical & Supervisory Gr B. The submission of the Management appears to be contradictory and discriminative.

8. Assailing the impugned award, Mr. A.K. Mehta, learned Counsel for the petitioner explains that in the coal industry, apart from Excavation cadre, there are several other cadres formulated by the Committee under the NCWA, such as ministerial cadre, mechanical cadre, Telecommunication cadre, mining, EDP cadre, accounts cadre, quality control etc. Auto electricians are employed in the Excavation cadre, whereas Welders and turners fall under electrical and mechanical discipline; both the cadres are therefore distinct and different. The workers in different cadres are guided according to the cadre scheme and career group available to them in their respective cadres. In the cadre scheme of the workmen employed in the Excavation discipline/section, there is no promotional avenue for promoting auto electrician beyond Excavation Gr B. Further more, in the cadre scheme pertaining to other cadres where promotional avenue is available beyond the above Gr B, the essential pre requisite is that the workmen must have worked for the prescribed number of years in technical and supervisory Gr B which the two workmen under reference have not undergone and hence they are not entitled to any promotion beyond Gr B.

Learned Counsel submits that the Tribunal has erred in comparing the workmen

working in E&M discipline with Auto electricians working in Excavation cadre.

Refereeing to the resolution of the joint Committee on the basis of which the joint Committee had recommended for notional promotion to the welders, learned Counsel explains that the 11 Welders, whose case was sponsored by the Union, were originally appointed to E&M discipline. Later, on account of exigencies of the company's work, they were deputed to work in the Excavation section. The co-workers of such workers who continued in the E&M discipline did have the benefit of promotion to Assistant foreman (Technical and Supervisory) Grade C and later, to the post of Foreman Technical and supervisory Gr B in accordance with their cadre scheme, whereas the 11 EP Welders who were deputed to Excavation Section and were not promoted to higher grade while working in Excavation section. Although their pay scale in Excavation Gr B was more or less equivalent to Foremen Technical and Supervisory Gr B, the EP Welders deputed in Excavation Section raised their grievance leading to an industrial dispute which was referred for conciliation on the ground that they have to work under the supervision of Assistant Foreman and Foreman of the E&M discipline who are less qualified and were also junior in service. Learned Counsel explains that it was under such circumstance and considering the fact that 11 workmen who were originally appointed in E& M category Section and later deputed to work in Excavation Section that it was decided by the Committee that the 11 EP welders also deserved to be treated at par with their counterparts who continued to remain in E& M section. Learned Counsel explains further that since the recommendation of the joint Committee was made in special circumstances in favour of 11 EP welders, the same recommendation cannot be extended to the Auto electricians whose initial appointment was made in the Excavation Section in their own cadre in which the highest promotional avenue is limited to Gr B only.

9. Countering the stand take by the petitioner, Mr. M.B. Lal representing the respondent submits that admittedly the 11 EP Welders who were granted promotion to Gr A were employed in Excavation section. Even though in the cadre scheme of the workmen employed in Excavation cadre, the highest promotional avenue available to the workers is upto Gr B only, the Management had made an exception to the rule by promoting the welders employed in the Section from Gr B to Gr. A. Since the Auto electricians also belong to Excavation cadre, the Management cannot make distinction between the Auto Welders, turners and EP welders and by denying the benefit to the Auto electricians, the Management has made an arbitrary discrimination against Auto electricians.

10. From the rival submissions, the following facts emerge:

- (i) Excavation Section comprises totally of distinct and separate cadre;
- (ii) under the cadre scheme of the Excavation cadre the promotional avenue is limited upto Gr B, though in other cadres, it extends upto Gr A.
- (iii) 11 workmen who were employed as EP Welders in Excavation cadre in whose

favour the joint Committee had recommended their promotion to Gr A, were initially appointed in the E & M cadre and on account of exigencies of the company's work, they were deputed to work in the Excavation section.

(iv) counterparts of 11 EP Welders employed in E& M discipline had the privilege of their promotion to Gr A. Such privilege was denied to the 11 EP Welders on the ground that in the Excavation cadre the promotional avenue was limited upto Gr B;

(v) The joint Committee had considered these anomalous aspects and observed that had the 11 EP Welders not been deputed to the Excavation Section and had continued in their original cadre in E & M discipline, they too would have enjoyed the privilege of promotion to Gr A in the cadre scheme. The joint Committee in the above background, had recommended that the 11 EP Welders be given promotion to Foremen (Technical and Supervisory Gr B), notionally w.e.f. 1.8.90 and financial benefit from 1.7.1991. The Management had accepted the recommendation of the joint Committee for promotion of EP Welders to Gr A although they continued to work in Excavation cadre.

11. It is apparent from the above that the promotion granted to 11 EP Welders to Gr A, though they were deputed to work in the Excavation Section under exceptional circumstance, considering the fact that they were initially appointed in E&M Section where promotional avenue extended was upto Gr A and their counter parts who continued to work in E& M Section were entitled to benefit of such promotion in their own cadre.

12. On perusal of the impugned award, it appears that the Tribunal had taken note of the minutes of the joint Committee and its resolution, but had failed to consider the fact that the resolution adopted in favour of 11 workmen was in the background of the special circumstance in which the 11 EP Welders were placed. Such exceptional circumstance did not apply to those workmen whose initial appointment was made in the Excavation Section and who were to be guided in accordance with their own cadre scheme in which the highest promotional avenue was limited to Gr B. Auto electricians, therefore, cannot claim any benefit of promotion to Gr A merely on the ground that 11 EP Welders deputed to work in Excavation Section were granted such promotion. The Tribunal did not consider these aspects brought in evidence . The findings recorded by it in its Award are apparently without considering the materials on record and is therefore perverse and liable to interference in this writ petition.

In view of the above discussion, I find merit in this writ petition. Accordingly, this writ petition is allowed and the impugned award of the Tribunal is hereby quashed.