(1997) 09 PAT CK 0070

In the Patna High Court

Case No : C.W.J.C. No. 682 of 1990 (R)

Md. Ashfaque Alam and Others APPELLANT

Vs

The Chairman-cum-Managing Director, Central Coalfields Ltd. and Others RESPONDENT

Date of Decision : 17-09-1997

Acts Referred:
Constitution of India, 1950 — Article 14, 19

Citation : (1997) 2 PLJR 885

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Tapen Sen, for the Appellant; Suresh Prasad, for the Respondent

Judgement

M.Y. Eqbal, J.—The Petitioners in this writ petition seek issuance of appropriate Writ directing the Respondents to immediately and forthwith issue necessary orders promoting the Petitioners to the post of Accountants and further prayer has also been made for quashing Annexures 3 and 11 whereby and whereunder promotion of the Petitioners were cancelled, which action is arbitrary and discriminatory as also violative of principles of natural justice.

2. The Petitioners and Ors. were working in the post of Senior Accounts Clerk in various departments of the Respondents. By order dated 3.1.1986 Petitioners 1 and 4 were temporarily promoted to officiate as accountants and they were directed to be posted from Ranchi to Barkakhana. Similarly, by order dated 15/16.5.1986 Petitioners 3, 7, 9, 10 and 11 were also promoted temporarily to officiate as Accountants and were posted in different places. The Petitioners state that on account of personal difficulties they were unable to join their places of posting and accordingly they filed representation before the authorities concerned. The Respondents did not pass any order on their representation and all of a sudden by order dated 8.8.1986 cancelled the promotion of the Petitioners and Ors. on the ground that they did not join their respective place of posting. The Petitioners'' case is that some of the persons who were promoted

along with the Petitioners have been given undue favour as the Respondents by order dated 16.9.1986 purporting to be in partial modification of the order dated 8/11.8.1986 allowed those persons to assume charges in their respective promoted posts at their existing place of postings. Similarly, by orders dated 30.9.1986 and 18.10.1986 one E. Barla and S.A. Ahmad were allowed to assume charge in their promoted posts at their existing place of postings. Copies of these orders have been annexed as Annexures 5 and 6 to this writ petition. However, by order dated 24.11.1986 Petitioners No. 8 was promoted to officiate as Accountant provisionally and was posted from Ranchi to Bachhra. The Petitioners state that in November, 1986, the Petitioners filed representation in the office of Respondent No. 3 alleging discriminatory action of the Respondents and representing that their cases may also be considered and they may be promoted like other persons. The Petitioners further state that again on 21/23.3.1987 some of those persons who have not joined were again shown undue favour and were allowed to assume charge in the post of Accountant at their existing place of postings, although their orders of promotions had also been cancelled. Similarly, by order dated 29.9.1987 Q.A. Ansari and N.K. Prasad were allowed to assume charge, although their orders of promotion had also been cancelled earlier. Copies of these orders have been annexed as Annexures, 9 and 10 to this writ petition. It is further stated that by order dated 18.12.1987 in partial modification of the orders of cancellation, the promotees were again allowed to assume charge on their promoted posts and they were allowed to stay in their respective existing place of postings. The Petitioners thereafter again filed representations on 22.4.1988 before the Director, Finance praying the Respondents to review the case of the Petitioners and also allow them to join in their promoted posts as has been done in the cases of other persons, but nothing has been done and the Respondents did not pay any heed to the representations of the Petitioners.

It is further stated that all those Sr. Accounts Clerks who had initially not joined and whose promotion orders had been cancelled, both at Ranchi and Calcutta, have been shown undue favour as they have subsequently not only been promoted, but allowed to remain at their existing place of postings. The Petitioners, therefore, challenged the action of the Respondents as being violative of Articles 14 and 19 of the Constitution.

3. The Respondents justified their action by filing counter affidavit stating therein, inter alia, that after the promotion orders were cancelled, some of the Sr. Accounts Clerks expressed their willingness to join on the post of Accountants at their new place of postings and the management considered their cases and allowed them to join on the post of Accountants at their new place of postings. The Petitioners did not come forward with offer to join at their new place of postings and hence their cases could not be considered. The Respondents have denied that undue favour was shown to any of the employees. It is further stated that the case of E. Barla was reconsidered by the management on the ground that the husband and wife were working at the same station and as such he was

allowed to assume charge of the post of Accountant on promotion at his existing place of posting. The said decision was taken by the management as per the Government of India, Ministry of Social Welfare, New Delhi''s office memo dated 28.2.1976. Similarly S.A. Ahmad, Sr. Accounts Clerk, who was working at Regional Sales Office, CIL Patna, was promoted as Accountant and posted at Accounts Office, Giridih, but as there was none to look after the accounts work at Regional Sales Office, Patna, he was allowed to remain at his existing place of posting on promotion as Accountant on the request of Sr. Mining Engineer (P and A) CIL, Calcutta, vide his letter dt. 5.8.1986. It is further stated that vide order dated 24.11.1986, 14 Sr. Accounts Clerks were promoted to the posts of Accountant and posted at different places, including Petitioner No. 8. But they did not join in their new place of posting and consequently their promotion orders were cancelled by the management. It is further stated that by office order dated 21/23.3.1987 the cases of two senior accounts clerks were further considered and they were allowed to remain at their existing place of postings on promotion as Accountants due to the fact that the husband and wives were working at the same station.

Lastly, it was contended that the management has considered the cases of 16 Senior Accounts Clerks who were promoted as Accountants and later on their promotions were cancelled. For promoting them and allowing them to be posted at the same places, decision was taken by the management in consultation with recognised Union and following the norms adopted for retention of Senior Accounts Clerks on promotion as Accountants at their existing place of postings. The norms adopted were that the employees who have attained 50 years of age or five years field experience or husband and wife are working at the same station shall be retained at the same place on promotion as Accountants. The management has denied to have adopted any pick and choose policy.

4. It appears that after the counter affidavit was filed in this case, the Respondents considered the case of the Petitioners and issued office order dated 7/8 March, 1991 promoting all the Petitioners along with others on the post of Accountants with effect from the date they would actually assume charge of the said post in their respective place of postings. This order was issued with the clause that the joining of the persons concerned shall be accepted with the condition that if this writ petition is dismissed they shall be liable to be demoted and the excess salary drawn by them as Accountant will be recovered.

The Petitioners thereafter filed amendment petition challenging the aforesaid order of promotion a copy of which has been annexed as Annexure 19 to the amendment petition. In the amendment petition, the Petitioners have prayed for quashing the condition imposed by the Respondents that in the event of dismissal of the writ petition, they shall be liable to be demoted. The Petitioners made additional prayer for directing the Respondents to promote them retrospectively, i.e. from the date on which their juniors were promoted. It appears that the amendment petition was allowed by order dated 21.7.1992.

5. I have heard Mr. Tapen Sen, learned Counsel for the Petitioners, and also Mr. Suresh Prasad, learned Counsel for the Respondents. The only question which falls for consideration is as to whether the action of the Respondents in promoting some of the Sr. Accounts Clerks in partial modification of the cancellation order and denying promotion to these Petitioners is arbitrary, discriminatory and violative of principles of natural justice. As noticed above, the Respondents in their counter affidavit have justified that the subsequent orders of promotion issued by the Respondents are neither discriminatory nor arbitrary. Persons who were subsequently promoted were retained in the same place on cogent reasons and on valid grounds. This fact has not been disputed by the Petitioners.

From perusal of the representations filed by the Petitioners, it is evident that the Petitioners always wanted posting at their present place of postings/workings. The Petitioners have never shown their eagerness or willingness to join at their place of postings. It is well settled that an employee cannot as a matter of right claim promotion. At best, an employee has right to be considered for promotion. It is equally well settled that transfer is an incident of service and no person can claim that the he should be posted in particular place or he should be retained in particular place even after promotion. However, there is no necessity to go into further detail in this matter as because the Petitioners have earlier been promoted to the post of Accountant by virtue of the office order, Annexure 19 to the amendment petition. As notice above, those persons who have subsequently been promoted in the year 1986/87 and were retained in the same place of postings have made representations and shown their satisfactory explanation and cogent reasons for allowing them to continue on the same place of postings, even after transfer. The action of the Respondents, therefore, cannot be said to be discriminatory or arbitrary.

6. It has not been contended on behalf of the Petitioners that in 1986-87 they were entitled to be promoted under any rule/policy of the Respondent. In that view of the matter, question of granting promotion with retrospective effect from the date when their juniors were promoted does not arise.

7. Having regard to the facts and circumstances of the case, I am of the opinion that in view of the issuance of the order of promotion, promoting the Petitioners also to the post of Accountants no further relief could be granted to the Petitioners. However, it is made clear that the condition imposed with the said order of promotion is illegal and against the law.

8. For the reasons aforesaid, this writ petition is allowed in part and the condition contained in the promotion order (Annexure 19 to the amendment petition) to the effect that in the event the writ petition is dismissed, the Petitioner shall be demoted and the excess salary drawn by them as Accountant will be recovered is hereby quashed.

