

(2008) 02 JH CK 0136
In the Jharkhand High Court

Pandey Singh

APPELLANT

Vs

Central Coalfields Ltd. and Others

RESPONDENT

Date of Decision : 01-02-2008

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2008) 2 JCR 700

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Amareshwar Sahay, J.—Heard the learned Counsel for the parties.

2. The petitioner, who is presently working as Pump Khalasi in Hendigir Project of the Central Coalfields Limited, has filed this writ petition challenging the order contained in Annexure-5 to this writ application, passed by the General Manager (S) Sayal Area dated 30th October, 2001, whereby the representation of the petitioner for giving him pay protection has been rejected, and has prayed for direction to the respondents to give him the benefit of pay protection, or alternatively adjust him in the equivalent post of Loader.

3. The facts, in short, are that the petitioner was initially appointed on 4.1.1967 as Loader. In the year 1988 due to compression fracture of both lumbar vertebra spine, he was declared medically unfit for the work of Loader since he suffered from permanent disability. The petitioner was medically examined by the Medical Board constituted by the Central Coalfields Limited and the Medical Board observed that in view of the permanent nature of disability and having no hope for recovery a Sedentary job on permanent basis is approved and, thereafter, on the basis of the report of the Medical Board, the petitioner was adjusted against the post of Pump Khalasi since 1988.

4. The petitioner made a representation to fix his pay not lesser than what he was drawing earlier. By issue of an office order dated 10.9.1990, contained in

Annexure-1, the petitioner as well as 33 others was regularized as a General Mazdoor category-1.

5. The grievance of the petitioner is that after regularization of his service on 1.1.1990 he is being paid much lesser amount than what he was being paid earlier as Loader. It is stated by the petitioner that the present post was offered to him by the Management itself consequent upon his being declared medically unfit for the post of Loader and, therefore, at least his pay should have been protected.

6. From the impugned order as contained in Annexure-5 it appears that in para 5 of the said order it has been mentioned that the order by which the petitioner's service was regularized in Time Rated category, it was mentioned that the petitioner would not be granted the benefit of pay protection as he had opted for Time Rated job at his own.

7. The same very stand has been taken in the counter-affidavit. Along with the counter-affidavit an application, said to have been submitted by the petitioner, has also been annexed, wherein the petitioner had himself requested the Project Officer that since he has been declared unfit by the Medical Board and, therefore, he should be provided work in the Pump and he was ready to receive the admissible salary.

8. Mrs. Pal, learned Counsel appearing for the petitioner relying on a decision in the case of Narendra Kumar Chandla Vs. State of Haryana and others, , has submitted that in a similar case where such employee, who was found medically unfit for the post in which he was initially appointed was directed to be adjusted against the post suitable to him with protection of pay.

9. In the aforesaid case, the Supreme Court held that Article 21 protects the right to livelihood as an integral facet of right to life. When an employee is afflicted with unfortunate disease due to which, when he is unable to perform the duties of the posts he was holding, the employer must make every endeavour to adjust him in a post in which the employee would be suitable to discharge the duties.

10. In the present case, the Medical Board found the petitioner unfit for the post of Loader and, thereafter, the Management employer adjusted the petitioner against the post of Pump Khalasi, which was suitable to him and which the petitioner himself wanted as it appears from Annexure-A to the counter-affidavit. No doubt, after regularization the petitioner is getting lesser amount than what he was getting earlier but as noticed earlier, the petitioner himself offered to do the job of Pump Khalasi and he volunteered to accept the salary of the said post.

11. From the facts and circumstances stated above, it is clear that after being declared medically unfit, the petitioner requested the Management employer to provide him work as Pump Khalasi and he himself offered that he was ready to have the salary of the Pump Khalasi. The Management employer on

consideration of his request allowed him to hold the post of Pump Khalasi with certain conditions in the year 1988 which the petitioner accepted and joined as Pump Khalasi.

12. Therefore, it appears that the action of the Management giving a suitable post to the petitioner after he was declared medically unfit as Loader is in consonance with the decision of the Supreme Court noticed above.

13. In view of the discussions and findings above, I hold that the petitioner is not entitled to the relief claimed by him in this writ petition. Accordingly, it is dismissed but without cost.