
(1999) 08 MP CK 0086
In the Madhya Pradesh High Court
Case No : Writ Petition No. 450/99

Ramlakhan Rai

APPELLANT

Vs

Chairman, Coal India Ltd. and Others

RESPONDENT

Date of Decision : 09-08-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 2 MPHT 469 : (2000) 1 MPLJ 215

Hon'ble Judges : C.K. Prasad, J

Bench : Single Bench

Advocate : Rohit Arya, for the Appellant; N.S. Kale and Harminder Singh, for the Respondent

Final Decision : Allowed

Judgement

C.K. Prasad, J.

By this Writ Petition, filed under Article 226 of the Constitution of India, petitioner prays for issuance of a writ in the nature of Mandamus or any other appropriate writ, order or direction, commanding the respondents to promote him to M-3 Grade in Mining Department w.e.f. 3-3-1998 with all consequential benefits.

According to the petitioner, Departmental Promotion Committee met in December, 1996, for empanelment of officers for promotion to M-3 Grade. Petitioner, who was working in M-2 Grade, his case for promotion to M-3 Grade was considered and he was empanelled for such a promotion in March, 1997. It is the stand of the petitioner that in the panel, his name was placed above G.L. Verma and below Abhiram Sharma. It is the case of the petitioner that persons who were below him in the panel have already been promoted to M-3 Grade by order dated 3rd March, 1998 (Annexure P-5). When petitioner was not promoted to M-3 Grade, he filed representation and in answer thereto, by letter dated 16-4-1999 (Annexure P-2), he was informed that although he was empanelled

for promotion to M-3 Grade but "Order could not be issued due to pendency of two charge-sheets against you in connection with some cases related to your tenure at BCCL. You may get benefit of above empanelment provided you are exonerated from the charges against the charge-sheets dated 21-4-1995 and 31-5-1995." Respondents by letter dated 10th May, 1998 (Annexure P-3) communicated to the petitioner about inadvertent error which has crept in the communication dated 16th April, 1998, as regards to the dates of the charge-sheets. It has been stated that the charge-sheets should be read as dated 31-5-95 and 29-6-95. By letter dated 8th December, 1998 (Annexure P-4), petitioner was communicated that he has been exonerated from the charges levelled against him in charge-sheets dated 31-5-1995 and 29-6-1995. It is the stand of the petitioner that his promotion to M-3 Grade was being denied on the ground that enquiries in relation to charge-sheets dated 31-5-1995 and 29-6-1995 are pending and although he has been exonerated from the aforesaid charges, still respondents have not issued the order promoting him.

Return has been filed on behalf of the respondents. It is their stand that according to the service rules governing the petitioner, Vigilance and Safety Clearance are to be obtained before issuing promotion order. It has been stated that a departmental enquiry is contemplated against the petitioner in a case relating to over reporting of Coal despatches, but no charge-sheet has been issued. As regards the Safety Clearance, it has been stated that cases in relation to accidents in the Mines are pending in the Court of Judicial Magistrate, Dudhi, as also Judicial Magistrate, Waidhan.

Respondents have further stated that by office memorandum dated 4th July, 1988, a procedure for obtaining Safety Clearance for promotion was simplified and it was decided as follows :--

"It was decided that in respect of executives of Mining and Engineering disciplines, Safety Clearance should be obtained before issuing promotion order. Safety Clearance will be issued by the CGMs (Safety) of the concerned subsidiary companies."

It has also been stated that Clause 4.13 (b) of the Common Coal Cadre provides for Clearance from the Vigilance Department before issuing promotion orders. It is the stand of the respondents that petitioner having not been given the Safety Clearance as also the Vigilance Clearance on account of pendency of two criminal cases, one in the Court of Judicial Magistrate, Waidhan, Distt. Sidhi and another in the Court of Judicial Magistrate, Dudhi, Distt. Sonebhadra, and decision to initiate departmental enquiry respectively, he is not entitled to be promoted to M-3 Grade.

Rejoinder to the return has been filed in which it has been stated that the case pending before Waidhan Court related to an accident at Amroli Project on 13-4-1969 in which one Balhari Singh died. It has been further stated by the petitioner in the rejoinder that an enquiry was held in relation to the said

accident by the respondents but nobody including the petitioner, who was the General Manager of the Mine at that time or Deputy General Manager Shri N.K. Agrawal or any other person was found responsible for the accident. In fact, respondents declined to accord permission for their prosecution. Thereafter, it has been stated that the Director General of Mines Safety filed complaint in Waidhan Court against the petitioner, the aforesaid N.K. Agrawal and Shift Incharge under the Mines Act. It has been further stated that the aforesaid N.K. Agrawal against whom complaint was filed in the month of September, 1996, at Waidhan Court, was promoted as Chief Mining Engineer in December, 1996.

As regards the second criminal case pending in Dudhi Court, it is the stand of the petitioner that the same related to an accident in Khadiya Mine on 30-11-1997 where the petitioner was posted as the General Manager. It is the stand of the petitioner that on the said date he was on leave and in relation to the accident, an enquiry was held by respondents but neither the petitioner nor Shri R.M. Rastogi, Deputy General Manager were held responsible. However, the Director General of Mines Safety filed complaint in Dudhi Court against 5 persons which included the petitioner and R.M. Rastogi. It is the stand of the petitioner that the aforesaid Rastogi has been promoted to the post of Chief Mining Engineer during the pendency of criminal case against him. It is further stand of the petitioner that pendency of criminal case at the instance of Director General of Mines Safety never stood in his way for grant of Safety Clearance Certificate. According to him, this will be evident from the fact that aforesaid N.K. Agrawal and R.M. Rastogi have been promoted during the pendency of the criminal case. This according to the petitioner clearly shows that pendency of criminal cases at the instance of the Director General of Mines Safety do not stand in the way of grant of Safety Clearance. It has been further stated by the petitioner that in fact, he has been granted the Safety Clearance by order dated 6-5-1998 (Annexure P-11).

From the pleadings of the parties what is evident is that the petitioner was empanelled for promotion to M-3 Grade in March, 1997. Persons empanelled with him have been promoted by order dated 3rd March, 1998. At the first instance respondents sought to deny the promotion on the ground of pendency of departmental enquiry in relation to charge-sheets dated 31-5-1996 and 29-6-1995. Petitioner has been exonerated of the two charges by order dated 28-11-1998 by the Chairman-cum-Managing Director and the said order was communicated to him by letter dated 8th December, 1998. In the absence of any reply to the rejoinder filed by the petitioner, in spite of opportunity being given to the respondents, assertion made by the petitioner that N.K. Agrawal as also R.M. Rastogi were promoted; notwithstanding the fact that they were also facing prosecution alongwith the petitioner in the criminal cases has to be accepted. Further, a departmental enquiry is contemplated against the petitioner and such decision was taken on 29-1-1999.

From the pleadings of the parties, it is further evident that in the earlier communication dated 16th April, 1998, as modified by communication dated

10th May, 1998, petitioner was informed that his order for promotion to M-3 Grade could not be issued because of the pendency of the two charge-sheets in the departmental enquiry, which as stated earlier has also been dropped.

Mr. Rohit Arya, appears on behalf of the petitioner. He submits that only impediment in the way of the petitioner for promotion to M-3 Grade was pendency of departmental enquiry in relation to the two charge-sheets which would be evident from the communication of the respondents themselves dated 16th April, 1998, denial of promotion on the other grounds, i.e., absence of Safety and Vigilance Clearance clearly show that respondents are not acting bona fide.

Mr. Kale, however, appearing on behalf of the respondents submits that obtaining Vigilance and Safety Clearance for promotion are sine qua non under the Service Rules and notwithstanding the fact that in the earlier communication, petitioner was informed that his order of promotion could not be issued because of Departmental Enquiry in relation to the two charge-sheets and although petitioner has been exonerated in them, still petitioner has to fulfil the requirement prescribed under the Rules.

Having appreciated the rival submission, I have no difficulty in accepting the submission of Shri Kale that notwithstanding respondents earlier communication that petitioner will get the benefit of empanelment, provided he is exonerated from the charges, still petitioner is to fulfil other conditions of service, required for promotion. But here the question is as to the decision to initiate disciplinary action on 29-1-1999 will entitle the respondents to deny the promotion to the petitioner. It is relevant here to state that till date charge-sheet has not been issued.

Mr. Arya contends that merely decision to initiate a departmental enquiry, in the absence of any charge-sheet being submitted, petitioner cannot be declined Vigilance Clearance and consequently denied promotion on this ground. In support of his submission, he has placed reliance on a Judgment of the Supreme Court in the case of Union of India Vs. K.V. Jankiraman, etc. etc., , and my attention has been drawn to the following paragraph of the said Judgment :--

"17. There is no doubt that there is a seeming contradiction between the two conclusions. But read harmoniously, and that is what the Full Bench has intended, the two conclusions can be reconciled with each other. The conclusion No. 1 should be read to mean that the promotion etc., cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee. Thus, read, there is no consistency in the two conclusions."

Another decision on which Shri Arya has placed reliance is the Judgment of the Supreme Court in the case of Union of India and Ors. v. Dr. (Smt.) Sudha Salhan 1998 (2) (SC) 265, AISLJ, and my attention has been drawn to paragraph 4 of

the said Judgment :--

"4. The question, however, stands concluded by a Three Judge decision of this Court in Union of India Vs. K.V. Jankiraman, etc. etc., , in which the same view has been taken. We are in respectful agreement with the above decision. We are also of the opinion that if on the date on which the name of a person is considered by the Departmental Promotion Committee for promotion to the higher post, such person is neither under suspension nor has any departmental proceedings been initiated against him, his name, if he is found meritorious and suitable, has to be brought on the select list and the "sealed cover" procedure cannot be adopted. The recommendation of the Departmental Promotion Committee can be placed in a "sealed cover" only if on the date of consideration of the name for promotion, the departmental proceedings had been initiated or were pending or on its conclusion, final orders had not been passed by the appropriate authority. It is obvious that if the officer, against whom the departmental proceedings were initiated, is ultimately exonerated, the sealed cover containing the recommendation of the Departmental Promotion Committee would be opened, and the recommendation would be given effect to."

While elaborating his submission, Mr. Arya contends that when the employer is not permitted even to resort to the sealed cover procedure in a case in which charge-sheet has not been filed, by no stretch of imagination decision to initiate the departmental enquiry can stand in the way of promotion of the petitioner. He submits that the passage reproduced above from K. V. Jankiraman (supra) clearly supports his submission.

Mr. Kale, however, submits that in view of clear stipulation in the Service Rules that before promotion one is required to obtain the Vigilance Certificate, it is required to be seen as to whether any departmental enquiry is pending on the date of promotion.

Having appreciated the rival submissions, I am of the opinion that the respondents cannot deny promotion to the petitioner on the ground that they have taken a decision to initiate the departmental enquiry, although no charge-sheet has been filed. It is worthwhile mentioning here that case of the petitioner for empanelment was considered in December, 1996 and he was empanelled in March, 1997. Persons empanelled alongwith the petitioner were promoted by order dated 3rd March, 1998. From the communication of the respondents dated 22-12-1998 it is clear that the disciplinary authority had decided to initiate disciplinary action but no charge-sheet has been submitted against the petitioner. Had the petitioner been granted promotion alongwith other persons empanelled on 3rd March, 1998, the purported decision to initiate disciplinary action against the petitioner later than the aforesaid date, ought not to have come in the petitioner's way. In my opinion, the respondents cannot be allowed to take the plea of initiation of disciplinary action against the petitioner, in which, no charge-sheet has been submitted. Not only this, the decision to initiate the disciplinary action was also taken later than the date on which persons empanelled alongwith

the petitioner and shown below him were promoted. I am of the opinion that the respondents are not justified in denying promotion to the petitioner on this ground. The view which I have taken finds support from the Judgment of the Supreme Court in the case of Bank of India and Another Vs. Degala Suryanarayana, , wherein it has been held as follows :--

"14. However, the matter as to promotion stands on a different footing and the judgments of the High Court have to be sustained. The sealed cover procedure is now a well established concept in service jurisprudence. The procedure is adopted when an employee is due for promotion, increment, etc., but disciplinary/ criminal proceedings are pending against him and hence the findings as to his entitlement to the service benefit of promotion, increment etc., are kept in a sealed cover to be opened after the proceedings in question are over (see Union of India Vs. K.V. Jankiraman, etc. etc., . As on 1-1-1986 the only proceedings pending against the respondent were the criminal proceedings which ended into acquittal of the respondent wiping out with retrospective effect the adverse consequences, if any, flowing from the pendency thereof. The departmental enquiry proceedings were initiated with the delivery of the charge-sheet on 3-12-1991. In the year 1986-87 when the respondent became due for promotion and when the promotion committee held its proceedings, there were no departmental enquiry proceedings pending against the respondent. The sealed cover procedure could not have been resorted to nor could the promotion in the year 1986-87 withheld for the D.E. proceedings initiated at the fag end of the year 1991. The High Court was therefore right in directing the promotion to be given effect to which the respondent was found entitled as on 1-1-1986. In the facts and circumstances of the case, the order of punishment made in the year 1995 cannot deprive the respondent of the benefit of the promotion earned on 1-1-1986."

Respondents can very well proceed against the petitioner in the departmental enquiry and punish him in accordance with law, even after he is promoted.

Now, I advert to the another ground which has been projected by Shri Kale to deny promotion to the petitioner. He submits that in view of pendency of two criminal case against the petitioner in relation to the accident in Mines, he was not given the Safety Clearance and this disentitles him the promotion. Petitioner controverts this stand of the respondents on facts and states that in fact Safety Clearance was issued by the General Manager (Annexure P-11). From a perusal of the communication dated 6-5-1998 it seems that the General Manager has stated that as per record available in the Safety Department, there is no safety case pending or contemplated against the petitioner and other officers mentioned in the said document. It is relevant here to state that the petitioner has clearly stated that Safety Clearance was issued to him on 6-5-1998 (Annexure P-11). This assertion made by the petitioner has not been controverted by the respondents. However, Mr. Kale submits that the petitioner having not denied that the two criminal cases are pending against him, same disentitles the

petitioner for grant of Safety Clearance and in that view of the matter, the Safety Clearance dated 6-5-1998 is of no consequence. In this connection, stand of Shri Arya is that Safety Clearance is denied only in a case in which criminal prosecution is at the instance of the respondents or with their approval, but in a case in which prosecution is launched by the Director General of Mines Safety without the approval of the respondents, Safety Clearance is not declined and in support of his stand, he has pointed out that N.K. Agrawal and R.M. Rastogi who were facing the criminal cases alongwith the petitioner was promoted during the pendency of the case. This according to Shri Arya re-enforces his submission that for grant of Safety Clearance prosecution by the Director General of Mines Safety without the approval of the respondents never stands in the way of the promotion. In answer thereto, Mr. Kale submits that in case aforesaid N.K. Agrawal and Rastogi have been given promotion illegally, petitioner cannot claim the same relief and this Court is not competent to direct commission of any illegal act to avoid discrimination.

I have given my serious thought to the submission made by the learned counsels. It is trite that if somebody has been given benefit illegally, same cannot be directed to be given to other persons applying the principle of equality. However, in the present case, stand of the petitioner is that in fact, he was given Safety Clearance and pendency of prosecution by the Director General of Mines without the approval of the respondents never stand in the way of grant of Safety Clearance and in support of this stand, he has referred to the cases of N.K. Agrawal and R.M. Rastogi. Respondents have not pleaded that N.K. Agrawal and R.M. Rastogi were granted promotion illegally. Petitioner's assertion that pendency of criminal case at the instance of Director General of Mines Safety never stands in the way of grant of Safety Clearance, has also not been denied. Taking into circumstance the facts enumerated above, I am of the opinion that respondents are not justified in denying the petitioner promotion on the ground of absence of Safety Clearance.

In the result, writ petition is allowed. Respondents are directed to consider the case of the petitioner for promotion w.e.f. 3-3-1998 in accordance with law, bearing in mind the observation made above. In the facts and circumstances of the case, there shall be no order as to cost.