
(2002) 09 JH CK 0099
In the Jharkhand High Court
Case No : C.W.J.C. No. 2441 of 1994 (R)

Steel Authority of India Ltd.

APPELLANT

Vs

Sukant Kumar Roy and Others

RESPONDENT

Date of Decision : 11-09-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(2A)

Citation : (2003) 1 JCR 263 : (2003) 96 FLR 1125 : (2003) 1 JCR 263

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

Bench : Single Bench

Advocate : K.K. Jha "Kamal", for the Appellant; T.K. Das, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—The petitioner M/s. Steel Authority of India Limited has Challenged the Award dated 29.1.1994 passed by the Presiding Officer, Industrial Tribunal, Ranchi in Reference Case No. 9/1990 whereby he answered the reference in favour of the concerned workmen is entitled to be treated as Micro-Film Assistant from the date on which Shri A.K. Roy joined the post of Micro-Film Assistant and further held that the workmen shall be deemed to have been promoted to the higher post on all stages with all consequential benefits.

2. It appears that the Government of Bihar in exercise of power conferred by Subsection (2-A) of Section 10 of the said Act referred the following dispute to the tribunal for adjudication.

"Whether to show Shri Sukanl Kumar Ray, M.F. Assistant, Staff No. 325792, Junior to directly appointed workmen in the Seniority order in the cadre of promoted and directly appointed M.F. Assistants in the same transaction by the management of Bokaro Steel Plant is justified? if not, what relief the workmen Sri Roy is entitled to?"

The case of the workmen inter alia is that pursuant to the advertisement made by the management in the newspaper in 1974 for appointment on the post of

Junior X-Ray Technician, he applied for the said post and the management called the workmen for interview for the post of Senior X-Ray Assistant/X-Ray Assistant respectively. It is alleged that the management took the interview of the concerned workmen for the post of Senior X-Ray Assistant in the pay scale of Rs. 290-410/-and he succeeded in the said interview but the management again with malqfide intention issued the offer of appointment for the post of X-Ray Assistant in the scale of Rs. 225-327/-. The concerned workmen having to the unemployment problem said to have no alternative but to accept the offer of appointment for the post of X-Ray Assistant. Further case of the workmen is that one Shri P. Sengupta was appointed in the year 1972 as an X-Ray Assistant and he was interviewed alongwith external candidates for the post which was advertised in the newspaper but he was given appointment in the post of Sr. X-Ray Assistant in the year 1974. It is alleged that not only the seniority of the above named Sri P. Sengupta being the internal candidate in 1974 was protected but he was given promotion to the higher grade whereas in the case of the concerned workman the same has not been done. It is alleged that in 1976 the concerned workman was posted as an X-Ray Assistant which post was occupied by Sri P. Sengupta. It is further alleged that the management issued internal circular dated 16.1.1978 inviting internal candidates to appear in interview for the post of Jr. Micrographist and Micro-Film Assistant. The said Circular was however, cancelled and another circular dated 20.12.1978 was issued for the post of Micro-Film Assistant. In 1979 i.e. on 20.1.1979 the management issued further advertisement for the post of Micro-Film Assistant inviting application for external candidates. The concerned workman was also interviewed along with other candidates and a joint seniority list of internal and external candidates was prepared by the management in which the concerned workman was No. 1 but the offer of appointment was issued to the concerned workman on 14/19.11.1979, whereas the offer of appointment to Sri A.K. Ray and Sri R.K. Mani was issued on 27/28.7.1979. It is stated by the concerned workman that he should not be treated as an external candidate because he was already in the service in the same company and every promotion either through D.P.C. or trade test cannot be said to be fresh appointment. In this way, the concerned workman was given promotion but Sri A.K. Ray and others were promoted before him.

4. Management"s case on the other hand is that the reference itself was bad in law and it was made by the Government without applying its mind and on the basis of wrong information supplied by the Union. It is stated that the reference has been made by the Government after long lapse of time. Further case of the management is that the concerned workman was appointed to the post of X-Ray Assistant on 29.8.1974. The concerned workman was promoted to the post of Sr. X-Ray Assistant. In 1977 he assumed charge on 8.10.1977. It is stated that the management issued internal Circular dated 20.12.1979 for the post of Micro-Film Assistant but the workman did not against the said circular rather he applied on 16.2.1979 against the fresh advertisement and that he was not promoted but appointed as Micro-Film Assistant along with few others and he resumed charge

on 27.11.1979. It is further stated that the workman has been rightly given seniority according to his date of joining and no injustice in any manner has been done to him. Further case of the Management is that the union wrote a letter dated 18.4.1983 to the management regarding the workman and the facts were explained to the union justifying the action of the management. Further case of the management is that the workman has been promoted to the post of Operative vide order dated 2.7.1990. He joined the said post on 2.7.1990.

5. On the basis of the pleadings of the parties the tribunal formulated the following points for consideration :

(I) Whether the above noted reference is bad in law as well as on facts and the same is not maintainable?

(II) Whether this Tribunal has got jurisdiction to adjudicate upon the matters involved in the present reference?

(III) Whether the concerned workman Sri Sukant Kumar Ray is entitled to get promotional benefits of Junior Micrographist and an Operative respectively w.e.f. 14.10.1982 and 31.12.1988 with all consequential benefits?

6. So far point No. 1 is concerned, the tribunal held that the point was not pressed before me not the tribunal found any material on the record indicating that the reference is bad in law. As regards point No. 2, the tribunal held that this Court has jurisdiction to adjudicate upon the matters which was subject matter of the reference.

7. As regards point No. 3, the tribunal after considering the evidence adduced by the parties held that the concerned workman is entitled to be treated as Micro-Film Assistant atleast from the date on which Sri A.K. Ray joined the said post of Micro-Film Assistant and further held that the concerned workman shall be deemed to have been promoted to higher post on all stage with consequential benefits.

8. Mr. K.K. Jha Kamal, learned counsel appearing for the management assailed the impugned award as being illegal and wholly without jurisdiction. Learned counsel submitted that the award of the tribunal is perverse in law in as much as on the facts admitted of the parties no case was made out by the concerned workman for answering the reference in his favour. Learned counsel further submitted that in view of the admitted facts the conclusion arrived at by the tribunal is perverse in law. Learned counsel submitted that time to time promotion orders were issued in favour of the petitioner mentioning that he will not be governed by the Standing Order and pursuant to those promotion orders the concerned workman after accepting the terms and conditions joined the promoted post. Learned counsel submitted that in the award the tribunal erroneously held that the workman would be entitled to be treated as Micro-Film Assistant from the date when Sri A.K. Ray joined the post. Learned counsel submitted that the tribunal proceeded on the basis that the concerned workman

was placed at Sl. No. 1 in the seniority list without there being any pleading from the side of the workman and in absence of any evidence.

9. On the other hand, Mr. T.K. Das, learned counsel appearing for the concerned workman firstly submitted that the concerned workman was initially appointed on the post of X-Ray Assistant in 1974 and later on he was internally selected for the post of Micro-Film Assistant and again appointed in 1979. The workman joined the post of Micro-Film Assistant on 27.11.1979. Learned counsel further submitted that on 29.3.1979 the management called for interview the applicants and other external candidates. While the said selection process was going on the concerned workman was transferred to another unit of SAIL at Bhawanathpur and accordingly he joined. On 24.3.1979, the, concerned workman received the interview letter and attended the interview on 29.3.1979. He reported to his duty on 27.11.1979. Learned counsel submitted that the tribunal has rightly answered the reference in favour of the workman.

10. From perusal of the Award, it appears that the tribunal proceeded on the basis of the facts admitted by both the parties :

(i) That Sri P. Sengupta was appointed as X-Ray Assistant by the management company in the year 1972.

(ii) That press advertisement was made by the management company for appointment on the post of junior X-Ray Technical in the pay scale of Rs. 320-15-560.

(iii) That the interview letter was issued for the post of Sr. X-Ray Assistant/X-Ray Assistant.

(iv) That Sri P. Sengupta, X-Ray Assistant was appointed as X-Ray Assistant in the year 1974 and the vacancy of X-Ray Assistant which had occurred as a result of appointment of Sri P. Sengupta as Sr. X-Ray Assistant, Sr. S.K. Ray was appointed as X-Ray Assistant in the year 1974.

(v) That internal circular was issued on 20.12.1978 for the post of Micro-Film Assistant.

(vi) That the press advertisement was made inviting applications for the appointment on the post of Micro-Film Assistant.

(vii) That 7 candidates including the concerned workman were selected for their appointment on the post of Micro-Film Assistant.

(viii) That Sri A.K. Ray and R.K. Mani joined the post of Micro-Film Assistant respectively on 13.8.1979 and 20.8.1979 whereas Sri S.K. Ray joined on the post of Micro-Film Assistant on 17.12.1979.

(ix) That Sri A.K. Ray and R.K. Mani were promoted to the post of Junior Micrographist and Operative respectively w.e.f. 14.10.1982 and 31.12.1980.

(x) That Sri S.K. Ray joined the post of Junior Micrographist and Operative

respectively on 1.6.1985 and 2.7.1990. (xi) That in the management company the seniority on a post is determined from the date of joining on a particular post.

11. The tribunal mainly based the award on the basis of submission made before him from the side of the workman. The relevant portion of the award is reproduced herein below :

"It has been urged before me by Sri S.K. Ray, the learned representative of the workman that although the workman has been asserting from the very beginning that his name was mentioned against Sl. No. 1 of the panel of successful candidates for the post of Micro-Film Assistant prepared by the selection committee and the materials available on the record show that the concerned panel of successful candidates for the post of Micro- Film Assistant has been called for on behalf of the concerned workman from the management but the management did not file the said panel and as such an adverse inference may be drawn against the stand of the management to the effect that the name of the concerned workman was mentioned against Sl. No. 7 of the panel of successful candidates for the post of Micro-Film Assistant which was prepared by the selection committee. It has further been urged before me by Sri Ray, the learned representative of the concerned workman that if the concerned workman would have been given the offer of appointment for the post of Micro-Film Assistant. Ext. W-8 has been filed to show that the name of the concerned workman has been shown against Sl. No. 6. It has further been urged that a perusal of Ext. W-3 shows that the concerned workman was appointed as Micro-Film Assistant from X- Ray Assistant through internal circular. I would like to mention here that when Sri H. Dey and Sri S. Manjhi were appointed as Micro-Film Assistant through internal circular why the concerned workman was not appointed as Micro-Film Assistant through internal circular and that also in the circumstance when admittedly the concerned workman was working as Sr. X-Ray Assistant on the date when Sri H. Dey and Sri S. Manjhi were appointed as Micro-Film Assistant and that Sri H. Dey and Sri S. Manjhi were working in Archive department as duplicating machine operator on the date when they were appointed as Micro-Film Assistant. Not only this, the failure on the part of the management to produce the panel of seven successful candidates for the post of Micro-Film Assistant which was prepared by the selection committee can be paid to be a strong circumstances to indicate the genuineness of the stand taken by the concerned workman that his name was mentioned against Sl. No. 1 of the panel of seven successful candidates for the post of Micro-Film Assistant which was prepared by the selection committee."

12. From perusal of the record, it appears that the demand made by the Union on behalf of the concerned workman to the effect that the case of the workman was that his seniority and consequent promotions were affected because of the fact that the petitioner Company deliberately and willfully allowed him to join the post of Micro-Film Assistant later than the other workman but before the tribunal the workman made out a different case and led evidence that his name in the

selection list of Micro-Film Assistant was at the top of the list at Sl. No. 1, whereas the names of other workmen were below him still they were allowed to join earlier than him on the post of Micro-Film Assistant. Since there was no pleading from the side of the workman that in spite of his position at Sl. No. 1 in the selection list, he was not allowed to join before the other workmen, adverse inference ought not to have been drawn up by the tribunal for non production of panel of Select List by the Company. Most surprising fact which I find is that although the terms of the reference was "whether by showing the workman junior to the directly appointed workman in the seniority order by the management was justified", but the tribunal not only granted deemed promotion to the workman from the date of his initial appointment but also awarded consequential benefits throughout. The tribunal failed to take into consideration the admitted facts that the seniority of candidates has to be determined on the basis of date of joining on a particular post. Admittedly, the concerned workman joined the post after Sri A.K. Ray joined the post of Micro-Film Assistant and in such circumstances the question of bringing his seniority at par with Sri A.K. Roy and others can not be raised as per the rules of the petitioner-Company.

13. Besides the above, although the concerned workman claimed his seniority against Sri A.K. Ray and others who have admittedly joined the post of Micro-Film Assistant as well as on different posts subsequently held by him declaring him senior to the other person, but the Tribunal without affording those persons the opportunity of hearing passed the impugned award giving the concerned workman seniority throughout. Such an award in my opinion can not be held to be in accordance with law. In any view of the matter, if the tribunal was satisfied with the case made out by the workman he should have directed the petitioner-Management to consider his case and to give him benefits instead of giving an award to the effect that the workman would be treated as such and shall be deemed to have been promoted to the higher post at all stages and would be entitled to all consequential benefits. The tribunal therefore, exceeded in his jurisdiction in passing the impugned order and giving relief to the concerned workman retrospectively.

14. For the aforesaid reasons, the impugned order passed by the Tribunal is perverse in law and also against the settled principle of the law with regard to seniority and promotion. The writ application is therefore, allowed and the impugned order is set aside. However, there shall be no order as to costs.