

(2018) 05 JH CK 0003

In the Jharkhand High Court

Case No : Writ Petition (S) No. 1176 of 2010

Surajdeo Prasad Chouhan Son Of Late Jattu Pd. Chouhan, Ex-
Armed/Security Guard

APPELLANT

Vs

Central Coalfield Limited

RESPONDENT

Date of Decision : 07-05-2018

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2018) 05 JH CK 0003

Hon'ble Judges : PRAMATH PATNAIK, J

Bench : Single Bench

Advocate : M.M. Pal, Mahua Palit, . Amit Kumar Das

Final Decision : Disposed Of

Judgement

Â 1.Â The instant writ application has been filed by the petitioner for grant of the following reliefs:

(A) The respondents be directed to give effect to the promotion order dated 30.12.2006 so far the petitioner is concerned and to give all consequential

benefits thereon.

(B) The respondents be directed to give the scale of pay of Rs.5962-

149-3644 grade of NCWA VII meant for the post of Security Guard w.e.f. 30.12.2006 i.e the date of his promotion and to pay his

retirement dues on that basis.

(C) The respondents be directed to extend the benefit of SLU to the petitioner w.e.f. 01.01.2001 on and from the date when his juniors were given the

benefits of SLU.

(D) The respondents be directed to not discriminate the petitioner and to extend

the same benefit of SLU w.e.f. 01.01.2001 at par with the same and similarly situated persons.

2. The brief facts of the case, is that petitioner was initially appointed as Security Guard in the year 1973 by the competent authority. After rendering satisfactory and meritorious service, the petitioner was promoted as Arm Guard in the year 1992. While continuing in the promoted post, to his ill

fortune, respondent no.4 issued charge sheet/suspension order holding him liable for misconduct, willful insubordination and disobedience and wilful

neglect of work, as evident from Annexure-1 to the writ petition. The charges levelled against the petitioner was enquired into by the enquiry officer

and ultimately in the year 2005 the enquiry officer submitted report opining that charges levelled against the petitioner are not proved. On the basis of

the enquiry report, the respondent authorities passed order of punishment of warning and denial of remuneration for the period of suspension i.e.

01.01.2002 to 08.02.2002, as per Annexure-2 to the writ petition. Being aggrieved by the order of punishment, the petitioner preferred appeal praying

for recall of the order of punishment, but no order seems to have been passed on the appeal till filing of the writ petition. In the year 2001 Special

Upgradation List was published from the office of the project Manager (SG) Sirka, CCL which was prepared in accordance with provision laid down

in I.I. No.53 dated 27.09.2001, the M/Rated and T/Rated employee of the Sirka Colliery for the employees those who have remained in the same

grade/category for a period of 8 years or more in service as on 01.01.2001. The said list did not contain the name of the petitioner as evident from

Annexure-4 to the writ petition. It has been averred that the petitioner submitted series of representation for extending the benefit of service linked

upgradation (in short referred to as 'SLU') with effect from 12.12.2001 at par with other same and similar situated person but of no effect. It

has further been contended in the writ application that on the date of upgradation no charge sheet/departmental proceeding was pending against the

petitioner rather the charge memo was issued against him on 03.01.2002. It has further been averred that by a promotion order dated 30.12.2006

several Armed Guards have been promoted to the post of Head Security Guard but the case of this petitioner has not been considered. So far as

promotion from the post of Armed Guard to Head Security Guard is concerned, a

list dated 30.12.2006 was published by the respondents wherein the name of the petitioner was mentioned, but, his joining on promotional post was not accepted on the ground of issuance of charge sheet. Though, the charge memo dated 10.03.2007 was issued by the Superintendent of Mines Manager, Sirka on the allegation of misconduct for unauthorized construction and the petitioner was directed to submit his reply to the said charge sheet, the order of suspension which is passed on 10.03.2007 in view of fresh charge sheet, was revoked with effect from 22.03.2007. The petitioner submitted his reply to the charge sheet repudiating all the charges, the copy of the charge sheet has been annexed as Annexure-5 to the writ petition. Though, the petitioner submitted his joining in the promotional post on 12/20.12.2006 but the same was not accepted. The petitioner submitted representation on 23.05.2007 before the concerned authority to give effect to his promotion order, and retired on 31.12.2008 on attaining the age of superannuation. Being aggrieved by the order of punishment as well as non-grant of upgradation, the petitioner has been constrained to invoke the extraordinary jurisdiction under Article 226 of the Constitution of India for redressal of his grievance.

3. Supplementary affidavit has been filed on behalf of the petitioner wherein vide order dated 30.12.2006, vide Annexure-7, the petitioner along with other eligible candidates have been promoted. The name of the petitioner has found place at serial no.90.

4. Learned senior counsel for the petitioner has submitted with vehemence that the respondents have denied the grant of SLU with effect from

01.01.2001 on extraneous ground, though the same benefit has been extended to the junior and other similarly placed employees. The action of the

respondents amounts to arbitrary and discriminatory exercise of power, being violative of Article 14 and 16 of the Constitution of India. Learned senior

counsel further submits that even in spite of promotion order dated 30.12.2006, the same was not given effect, nor the petitioner was allowed to join

the promotional post purportedly on the ground that the departmental proceeding was pending, but as a matter of fact no proceeding was pending on

the date of promotion and by virtue of the action of the respondents, the promotion order dated 30.12.2006, vide Annexure-7 to the supplementary

affidavit could not see the light of the day till the date of retirement of the

petitioner i.e. 31.12.2008 and, therefore, the petitioner has sought for direction for extending the benefits of promotion and for grant of SLU with effect from 01.01.2001. During course of hearing, learned senior counsel for the petitioner in order to buttress her submission, has referred to the decision of the Honâ??ble Apex Court reported in 2013 (4) JBCJ 18 (Raja Ram Singh vs. State of Jharkhand & Anr.) only to demonstrate that the writ petition was entertained after long years of retirement. Learned senior counsel further submits that the reason for submission of joining in the promotional post is due to the fact that since the petitioner was under suspension from 10.03.2007 to 22.03.2007, vide Annexure-6 to the writ petition, therefore, there could not have been any impediment on the part of the respondents not to accept the joining of the petitioner on the promotional post of Head Security Guard.

5. Controverting the averments made in the writ application, a counter affidavit has been filed by the respondents. In the counter affidavit, it has been inter alia submitted that the petitioner retired on attaining the age of superannuation on 31.12.2008 and the writ petition was filed in the year 2010 and

there was delay and laches on the part of the petitioner and hence the writ petition is liable to be dismissed on that score. Apart from that, it has been

submitted that the petitioner being a workman could have raised his grievance under the Industrial Disputes Act, 1947 and since the petitioner has not

availed the alternative remedy, on that ground also the writ petition is not maintainable. In the counter affidavit it has been submitted that the petitioner

was issued charge sheet dated 30.01.2002 for disobedience of the order of the superior and in the said charge sheet the petitioner after a departmental

enquiry was awarded punishment of warning and confirmation of suspension punishment by an order dated 31.05.2005, vide Annexure-C and D to the

counter affidavit. Again the petitioner was issued charge sheet dated 10.03.2007 for unauthorized construction and in the said charge sheet after a

departmental enquiry he has been exonerated from the charges vide order dated 09.09.2008, as per Annexure-E and F to the counter affidavit. Again

the petitioner was issued charge sheet on 17.07.2007 for negligence of duty and the said charge sheet did not reach to its logical end and in the

meantime, the petitioner retired on attaining the age of superannuation, has been marked as Annexure-G to the counter affidavit. With regard to

promotion of the petitioner dated 30.12.2006 to the post of Arm Guard to Head Security Guard, it has been submitted that petitioner pursuant to promotion order submitted his joining to the elevated post on 26.05.2007 as per Annexure-H to the counter affidavit. In view of the pendency of the departmental proceeding, the petitioner was not allowed to join on the promoted post i.e. the Head Security Guard. It has further been submitted that after being exonerated from the charge, arising out of charge sheet dated 10.03.2007, the petitioner submitted his joining to the promoted post of Head Security Guard on 10.09.2008 and by that time a period of one year nine months has elapsed and that precluded the management of that period of time at the unit level to allow the petitioner on the promoted post and the joining of the petitioner has been annexed as Annexure-I to the said affidavit. With regard to claim of grant of SLU at par with other employees who were given the said benefit, vide order dated 12.12.2001 as per Annexure-4 to the writ petition, it has been submitted that the grievance of the petitioner is highly belated.

6. Learned counsel for the respondents apart from referring to the averments made in the counter affidavit, has vociferously submitted that allowing the petitioner to join the promoted post in pursuance to promotion order dated 30.12.2006 would have amounted to revocation of the suspension order dated 10.03.2007 passed in pursuance to the charge sheet dated 10.03.2007. Learned counsel for the respondents further submits that the action of the respondents cannot be construed to be illegal, in view of the chequered career of the petitioner.

7. After having heard the learned counsel for the respective parties and on perusal of the record, this Court is of the considered view to accede to the prayer of the petitioner for the grant of SLU and for consideration of benefit flowing from the promotion dated 30.12.2006.

8. From perusal of the pleadings, it is quite apparent that the order of SLU was issued on 12.12.2001, but the benefit of SLU was denied to the petitioner purportedly on the ground of charge sheet issued to the petitioner on 03.01.2002 and, therefore, the petitioner ought to have extended the benefit of SLU and the charge sheet was issued posterior to the grant of SLU. So far as promotion of the petitioner to the post of Head Security

Guard is concerned, the joining of the petitioner dated 26.05.2007 was not accepted on the ground of charge sheet with suspension order dated

10.03.2007, but it appears that the petitioner has been exonerated from the said charge sheet vide order dated 09.09.2008, as per Annexure-F to the counter affidavit. Further, it transpires from the counter affidavit that the petitioner submitted his joining on the promoted post of Head Security Guard on 10.09.2008 but because of delay perhaps the same was not accepted by the management while on the date of exoneration from the proceeding, the petitioner was in service. The respondents ought to have considered the case of the petitioner at least after his exoneration from the charge memo dated 10.03.2007, therefore, the petitioner has been denied the benefit of promotion on the post of Head Security Guard vide order dated 30.12.2006.

9. In view of the reasons stated in the foregoing paragraph, the writ petition is disposed of with direction to the respondents to consider the case of the petitioner for grant of SLU with effect from 01.01.2001 and pass an appropriate orders for benefit of grant of promotion, which has been effected vide order dated 30.12.2006 and entire exercise be completed within a period of 12 weeks from the date of communication/receipt of the order.Â

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