

(2003) 07 JH CK 0042

In the Jharkhand High Court

Case No : Writ Petition (S) No's. 4815 and 4838 of 2001 and 1336 of 2002

Tej Narayan Pandey and Others, Shiv Kumar Sinha @ S.K.
Sinha and Krishna Kumar Singh and Others

APPELLANT

Vs

Coal India Ltd. and Others

RESPONDENT

Date of Decision : 14-07-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 51 BLJR 1802 : (2003) 4 JCR 81

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : R.S. Mazumdar and Atanu Banerjee, for the Appellant; A.K. Mehta, for the Respondent

Judgement

S.J. Mukhopadhaya, J.—As all these cases relate to upgradation of Senior Foremen/Senior Overmen to higher E-I Grade, common order dated 30th June, 2001 passed by the Director (Personnel), Bharat Coking Coal Ltd., Dhanbad (for short B.C.C.L.) is under challenge and common question of law raised, they were heard together and are being disposed of by this common judgment.

2. The petitioners who were incharge Foremen, some of them moved before this Court in CWJC No. 1715 of 2001 (Tej Narayan Pandey and Ors. v. Coal India Ltd. and Ors.) for direction on the respondents to implement the circular No. D(P) Secy./FS/25 dated 20th February, 1987, whereby the policy decision taken in the meeting of the Chairman-cum-Managing Directors of Subsidiary Coal Companies of Coal India Ltd. (for short CIL), including B.C.C.L. for upgradation of Senior Foremen/Senior Overmen with seven years experience to the executive level of E-1 post on the basis of A.C.Rs. and interviews were communicated.

3. This Court vide order dated 27th April, 2001 disposed of the aforesaid writ application, without going into the merits of the case by directing the respondents to consider the representations of those petitioners and dispose them of by speaking order.

4. The Director (Personnel) of M/s. B.C.C.L. Dhanbad thereafter issued impugned order dated 30th June, 2001 and held that requirement of written test is essential for promotion in E&M Cadre. The petitioners and others were called: for written test on 17th January, 1999 for their selection to the executive cadre, but they having boycotted the written test, the representations of petitioners for upgradation/ promotion to the executive post were rejected.

5. One of the petitioners, namely, Shiv Kumar Sinha @ S.K. Sinha of WP (S) No. 1336 of 2002 has challenged the Wireless Message No. BCCL; PA-V; DIP & CON-DIP: 2002 No. 1073-81 dated 16th February, 2002 issued by the Chief Personnel Manager, B.C.C.L., Dhanbad, whereby and whereunder, it was intimated that the written test for selection from non-executive to Executive Cadre in E & M and Excavation Discipline will be held on 24th February, 2002. In the said case, a Bench of this Court vide order dated 21st February, 2002 ordered that the examinations shall be subject to the result of those writ petitions.

6. The main question involved in these cases is :

"Whether the policy decision as recommended and accepted in the meeting of CMDs held on 27th January, 1987, circulated vide Ref. No. D(P) Secy./ FS/25 dated 20th February, 1987 for upgradation of Senior Foremen/Senior Overmen to the executive level of E-1 post envisages written test; apart from evaluation of ACRs and interview or not."

7. According to the petitioners as per the Scheme for upgradation circulated vide letter dated 20th February, 1987, the Selection Committee is supposed to evaluate the merit on the basis of ACRs and interview and not the written test.

8. On the other hand, according to the respondents, as for promotion to the E-1 post, "Common Coal Cadre Guidelines" is applicable, the written test is mandatory for evaluation of merit as per Para 4.10.1(b) of the said guidelines.

Reliance was placed on paragraphs 4.10.1(b) of the "Common Coal Cadre Guidelines", letters Nos. BCCL:FA-V:Prom: Executive:87 : 478 dated 4th April, 1987; D(P)/PS/87/508 dated 13th April, 1987; CIL:C-5A(ii) : 51823/187 dated 28th April, 1987; and CIL/C- 5/D(P)/FLS/65 dated 30th April, 1987.

9. There is a compilation of guidelines relating to service conditions issued by the respondents known as "Common Coal Cadre", under Paragraph 4.10.1 of Chapter V, the "Cadre Scheme and Promotion Procedures" have been prescribed for promotion from non-executive to Executive Cadre including E-1 Grade posts, as quoted hereunder :

"From Non-executives to Executive Cadre

(a) The quota reserved for departmental promotion to grade E-1 or E-2, as the case may be, in various discipline will be as follows :

Accounts and finance 10% of the post to be filled in a financial year.

Materials management 1/3rd -do-

Engineering (non-mini-ng) 1/3rd -do-

Personnel & administration illegible % -do-

Sales & marketing illegible % -do-

Other miscellaneous illegible % -do-

Survey illegible % -do-

b) All promotions from the senior most non-executive grade to the executive grade to fill in the departmental quota as indicated in (a) above will be on the basis of selection of test and interview on the basis of merit. The syllabi and the methodology for conducting the test will be as laid down by the Apex Training Board and Coal India head- quarter.

(c) Promotion of non-executives to the executive entry grade in the disciplines where there is no established channel of promotion will be only on the basis of the recommendation of the Selection Committee against advertisement/ notification of vacancies which will be centrally controlled by Coal India HQs."

10. There is a separate guidelines issued for improvement in the qualify of Firstline Supervision, vide Reference No. D(P) Secy./FS/25 dated 20th February, 1987, wherein provision has been made for upgradation of Sr. Foremen/Sr. Overmen from Non- executive to Executive Level E-I Grade, as quoted hereunder :

"COPY

COAL INDIA LIMITED 10, Netaji Subhas Road. Calcutta-700004

Ref : No. D(P)/Secy/FS/25 Date : 20.2.1987

Director(P)

ECI BCCL CCL WCL SECL NECL Sub : Improvement in the quality of Firstline Supervision.

Dear Sir, The group constituted by the CMDs to examine the problem of firstline supervisions in mines with a view to improvement in the quality of supervision and improve the morale had submitted its report to the CMDs at the meeting held on 22nd October, 1986. Based on this report specific recommendations were put up at the CMDs meeting held on 27th January, 1987. These recommendations have been accepted and have to be implemented. A copy of those recommendations is enclosed herewith and you are requested to draw up an action plan for implementation.

In accordance with, Item No. 5 you may take up the question of up-grading of Sr. Foremen Sr. Overmen with 7 years experience to the executive level of E-1 post on ACRs and interviews. It may be noted that the Supervisors will continue

to do the same job but the post would be upgraded to E-1 level.

Yours faithfully, Sd/- (A.V. Brahma) Director (Personnel & IR)"

"RECOMMENDATIONS

1. X X X 2. x x x 3. x x x 4. x x x 5. Sr. Foremen/Sr. Overmen with 7 (seven) years experience should be considered for promotion to executive level E-1 on basis of ACR and interview subject to minimum educational qualifications. These promotions should be based on suitability and the supervisory post in the non-executive cadre would be upgraded to executive level E-1 if the supervisor is selected for, promotion."

11. From the guidelines aforesaid, it will be evident that there are two different procedures prescribed for promotion to Executive Cadre E-I Grade posts and for upgradation to executive E-I Level posts.

For example, while promotion under "Common Coal Cadre" can be given only against vacant E-I Cadre posts fixed for promotion, for upgradation to E-I Level, the Quota posts/Cadre posts are not to be filled up but the non-executive posts to be upgraded to Executive E-I Grade.

Similarly, while the suitability for promotion to E-I posts as per "Common Coal Cadre" to be tested on the basis of written test and interview, for upgradation of posts, and the incumbent, to Executive Level E-I grade, suitability is required to be considered on the basis of A.C.R. and interview. That means, for promotion while ACR has no greater role to play, for upgradation, ACR of the employees is the most essential document for consideration, apart from interview.

12. The decision for upgradation having been taken in the meeting of the CMDs of Subsidiary Companies including CMD of BCCL, as communicated vide Ref. No.D (P)/Secy/FS/25 dated 20th February, 1987, it cannot be interpreted in any other manner nor can be clarified by one or other Subordinate Officer, there being no ambiguity and the language being clear.

13. Written test having not been stipulated for upgradation of nonexecutives to Executive E-I Level as per Scheme dated 20th February, 1987, the respondents cannot ask any incumbent to appear in any "Written Test" for promotion/upgradation and the Selection Committee is required to consider the cases of eligible candidates on the basis of "ACRs" and "Interview", subject to minimum educational qualification as is required.

15. For the reasons aforesaid, the letter dated 30th June, 2001 being contrary to the guidelines dated 20th February, 1987, it is set aside. The case is remitted to the competent authority with direction to consider the cases of eligible Sr. Foremen/ Sr. Overmen who have seven years of experience of upgradation from Non-executive to Executive E-1 level on the basis of "ACRs" and "Interview" subject to minimum educational qualifications of individual candidates and issue appropriate Notification in respect to suitable candidates from the date

upgradation was due to one or other.

16. It may be mentioned that this Court has not determined the question whether one or other petitioner is eligible for upgradation to E-1 Level/Grade or not, as it is required to be determined by the Selection Committee.

17. All the writ petitions stand disposed of with the aforesaid observations and directions. However, there shall be no order, as to costs. Petition disposed off .