

ORISSA HIGH COURT, CUTTACK

W.P.(Civil) NO. 16294 of 2008

In the matter of an application under Articles 226 and 227 of the Constitution of India.

Biswabash Behuria Petitioner

Versus

Chairman, Coal India Ltd. and others Opp. Parties

For petitioner - M/s. S.P. Mishra, Sashikanta Mishra,
S.K. Mishra

For opp.party No.3- M/s. R. Sharma, S.R. Suingh Samata,
P.R. Pattnaik, B.K. Tripathy,

PRESENT:-

THE HON'BLE DR. JUSTICE B.R. SARANGI

Date of hearing: 11.09.2014 : Date of judgment : 26.09.2014

DR. B.R. SARANGI, J. The petitioner seeks direction to opposite parties to restore his seniority as per All India Merit List for Welfare Officer (Trainees) fixing a deemed date of his entry into E-2 Grade as 24.06.1996 and further direction to promote him to the E-4 Grade with effect from the date his immediate juniors in E-3 Grade, were so promoted, i.e. from 22.09.2008, with all consequential benefits due to him.

2. The petitioner being successful in recruitment tests conducted by Coal India Limited was selected for appointment as Welfare Officer (Trainee) w.e.f. 11.06.1994. Initially he was placed under training for a period of two years as per terms and conditions of the appointment and on successful training his service was confirmed. Accordingly he was appointed as Personnel Officer in E-2 Grade, vide Office order dated 10.04.1997. Petitioner's service was placed under the South Eastern Coal Fields Limited, a subsidiary Company of Coal India Limited, but his seniority was being maintained all through as per the Common Coal Cadre of the parent company. The petitioner was promoted as Senior Personnel Officer in E-3 Grade w.e.f. 02.03.2000 pursuant to his joining against said post and he discharged duties at the Headquarters of Mahanadi Coal Field Limited at Sambalpur. While he was so continuing around second week of June, 2007, he came across a copy of a purported Global Seniority List of Executive Cadre employees of the company in E-3 grade showing his Seniority as on 22.01.2006 and to his dismay he found that his name was placed much below some of his immediate juniors without any reasons. Therefore, he applied for information under the Right to Information Act on 21.08.2007 with regard to merit list of Welfare Officer (Trainees) recruited in 1994, Global Seniority Lists of E-1, E-2 and E-3 Grades of 1994 batch, his appointment letter dated 11.06.1994 along with terms and conditions and other enclosures besides other relevant documents. The same were supplied to him on 12.12.2007. So far as supply of Global Seniority Lists

of E-1, E-2 and E-3 Grades of 1994 batch is concerned, the same has not been supplied. Upon perusal of the All India Merit List of Welfare Officer (Trainees) of 1994 batch, it appears that the some of the persons placed ahead of the petitioner in the Global Seniority List were actually below him in the All India Merit List of Welfare Officer (Trainees). Being aggrieved by such erroneous fixation of seniority, the petitioner submitted representation to opposite party no.1 on 31.12.2007 which was duly forwarded to the controlling authority by letter dated 2/3.01.2008. But the representation of the petitioner was rejected as communicated to him by letter dated 13.02.2008, Annexure-9. It was stated that on examination of the representation, the same was found to bear no merit so far as deemed date of entry in E-2 Grade of the petitioner recorded as 1.8.1996; whereas for the rest of his batch mates with whom he compared his seniority, the same was 24.06.1996 and the sonority has been fixed as per norms and conditions of the Global Seniority List in EIS Data base. In the meantime, opposite party nos. 5 to 59 have been promoted to E-4 Grade on 22.09.2008. Hence this writ petition.

3. In the counter affidavit filed by opposite party no.4 it is specifically admitted that after completion of training period of two years, the petitioner was appointed as Personnel Officer, E-2 Grade on 10.04.1997. Consequentially, his service was placed under E-2 grade w.e.f. 01.08.1996. As per the norms of the Coal India Ltd. the promotion of Personnel Officers from E-2 Grade to E-3 Grade is a

cluster promotion. So far as promotion from E-3 to E-4 grade is concerned, depending upon the vacancies in E-4 grade, such consideration is made subject to seniority, C.C.R. and Internal Vigilance clearance, etc. In the gradation list of E-3 grade, the petitioner stood lower in the serial list than opposite party nos. 6 to 59. Therefore, he could not be promoted to E-4 grade taking into consideration the vacancy position in E-4 grade. It is further urged that Annexure-2 was issued on 10.04.1997 but the petitioner had filed this application challenging the same in 2008 after lapse of more than 10 years. Therefore, the writ petition suffers from delay and laches. Accordingly, the same should be dismissed. The grievance made by the petitioner by filing a representation on 13.02.2008 with regard to fixation of seniority, vide Annexure-9, was considered in proper perspective and the same was rejected in conformity with the provisions of law. Therefore, this Court may not interfere with the same.

4. It appears from the extract of the report of the Committee constituted by the Chairman, Coal India to go into the issue relating to determination of the inter se seniority of the Executives, circulated to all subsidiary companies, vide letter No.C5A/52106(2)/538 dated 19.05.1980, Clause-17 deals with deemed date of entry into a Grade, which is quoted below:

“ 17 Deemed Date of Entry into a Grade-

17.1 The Committee recommends that a common deemed date of entry into a grade shall be determined for new recruits appointed in a batch on a particular date, in a company. This deemed date may be fixed in

reference to the date of joining of the first person from the same batch. The said deemed date will be applicable only in respect of direct recruits whose training period is not extended from any reason."

5. On perusal of the above mentioned provisions, the deemed date of entry into initial grade after confirmation is of great importance inasmuch as all subsequent promotions are to be effected with reference to the same on the principle of seniority-cum-merit. As it appears, the petitioner along with his batch-mates had joined the service on 11.06.1994 and on successful completion of training; order of confirmation was issued in Annexure-2. Therefore, applying Clause 17.1, the deemed date of entry into E-2 grade ought to have been 11.06.1996 after completion of two years of service taking into account the initial deemed date of entry as 11.06.1994. But without assigning any reasons the deemed date of entry into E-2 Grade of the petitioner's batch was fixed to 24.06.1996. No plausible explanation has been made with regard fixation of such date and as it appears from the gradation list, while the deemed date of entry of batch-mates of the petitioner has been shown as 24.06.1996, surprisingly the petitioner's deemed date of entry has been shown as 01.18.1996 without any reason. For fixation of such deemed date of entry of the petitioner, neither any reason has been assigned nor has any opportunity been given to him to have his say. The opposite parties have candidly admitted in their counter affidavit stating that Clause-3.1 of Annexure-1 indicates that the petitioner would go for training for a period of two years. He joined the training as Welfare Officer (Trainee) on 11.07.1994 and while on

training, he went for 21 days' leave without pay. Regarding his leave without pay, the petitioner had made a representation, vide Annexure-11 requesting the concerned authority that the said period of leave being within the permissible period, his inter se seniority in the concerned Grade may not be changed to his detriment. After completion of 2 years of training, the petitioner was appointed as Personnel Officer, E-2 Grade on 10.04.1997, vide Annexure-2. On perusal of Annexure-2 it reveals that, the deemed date of entry of the petitioner in E-2 grade has been shown as 01.08.1996.

6. It is the further admitted case that the gradation list dated 22.11.2006 was prepared and circulated, though the same was never communicated to any person including the petitioner. So far as his representation vide Annexure-9 is concerned, the same was rejected mechanically without consideration or application of mind.

7. It is alleged that though the draft gradation list was prepared on 22.11.2006, vide Annexure-5, and circulated, the petitioner came to know about such illegal and arbitrary fixation of inter se seniority only in 2008, whereafter he approached this Court. Therefore, the contention raised by the petitioner that he approached this Court at a belated stage consequent upon which the writ application suffers from delay and laches cannot be sustained. No materials has been produced before this Court to indicate that the gradation list, vide Annexure-5 was been circulated amongst the officers. Since such gradation list was

not communicated to anybody, there was no occasion on the part of the petitioner to know that the same had already been prepared but the fact having come to his knowledge in 2008 he preferred this writ petition from which this Court considers that no delay or laches can be attributable to the petitioner if the gradation list was not prepared or circulated, he having no occasion to know that he was placed below his juniors.

8. The reliance placed on clause-1(c) of Schedule-2 of the agreement which deals with leave and other benefits available to the trainees. Clause(ii)(c) deals with extended leave. Contention was raised that the petitioner having availed of leave there was disturbance in fixation of seniority by recording the deemed date of entry into service. This contention is thoroughly not sustainable in the eye of law and the contention such raised is belied by the own document of the opposite parties which the petitioner obtained under Right to Information Act under Annexure-16 (Series) dated 18/19.05.2008 which specifically stated "moreover there is no such record in the service file of Shri Behuria that his training period was ever extended. This is for your kind information and further needful action in the matter. The office order vide which his training period was closed is enclosed herewith". If it is admitted case that the petitioner's training period was not extended, there is no valid or justifiable reasons available to the authority to fix another date, i.e. 01.08.1996, as deemed date of entry instead of

24.06.1996, which was the date of entry of his batch-mates. Due to erroneous recording of entry date, the petitioner is grossly prejudiced.

9. In that view of the matter, the impugned order rejecting the representation (Annexure-9) is hereby quashed. The opposite parties are directed to record the deemed date of entry of the petitioner in service in E-2 Grade as 24.06.1996 instead of 01.08.1996 as per Clause-17.1 of the Agreement and extend all the benefits as due and admissible to him in conformity with the provisions of law within a period of three months hence.

10. With the above observation and direction the writ petition is disposed of.

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Dr.B.R. Sarangi, J.

Orissa High Court, Cuttack
The 26th September, 2014, **PKSahoo/Ajaya**