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Court : Jharkhand

Decided On : Oct-10-2017

Appellant : Arvind Kumar Singh and Ors

Respondent : Steel Authority of India Limited Through Its Chairman and Ors

Judgement :

-1- IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S) No. 1720 of 2017 Debasis Patra & Others --- Petitioners Versus Steel Authority of India Limited (SAIL), New Delhi & Others --- Respondents With W.P.(S) No. 2386 of 2017 Arvind Kumar Singh & Others --- Petitioners Versus Steel Authority of India Limited (SAIL), New Delhi & Others --- Respondents --- CORAM : HON'BLE MR. JUSTICE APARESH KUMAR SINGH HON'BLE MR. JUSTICE B.B. MANGALMURTI For the Petitioners : Mr. Sumeet Gadodia, Adv. For the Respondents : Mr. Indrajit Sinha, Adv. 06/10.10.2017 Petitioners in both the writ petitions alongwith few others represented before the Director (R.M.& L), SAIL for grant of promotion to executive cadre in E-1/E-0 claiming that they are holders of 1st /2nd Class Manager's Certificate of Competency under Coal Mines Regulation,1957 (for short CMR) issued by Director General of Mines Safety (for short DGMS), Dhanbad serving under the respondents as Mining Supervisors/Surveyors and/or other equivalent posts for over 06 and 13 years. Earlier they faced the E-O exams held in the year 2008 and 2010 however

unsuccessfully. They cited instances of previous years under the promotion policy of IISCO whereupon 2nd class Manager's Certificate holders were promoted to E-1/E-0 in executive cadre. According to them, as per present E-0 promotion policy there are provisions of promotion from non-executive cadre at every alternate year i.e. after every 02 years but no steps have been taken by SAIL since 2010. Their representations were answered by order No.PD/209/2013/1562 dated 23.12.2013 (Annexure-11 to W.P.(S) No.2386 of 2017). As per the reasons stated therein, promotion to the post of Junior Officer/E-0 in the years 2008 and 2010 from non-executive cadre were done as per selection with reference to suitability, based on written test, interview and other criteria, as per Company's Policy. Employees having 1st/2nd Class Mine Manager's Certificate have been promoted to the executive cadre on the basis of such selection. Presently, the statutory position of 2 nd Class Managers in collieries are well managed. Some shortages are there, which are being taken care of by authorization of persons as per DGMS rules/regulation. The Management adheres to the laid down policy for selection of non-executive employees to executive cadre through the Junior Officer/E-0 route. There is no such provision in the policy for automatic selection to executive cadre on acquiring 2 nd Class Mines Manager's Certificate of Competency from DGMS. At sub-para-v of the -2- letter it is stated To fulfill the mandatory statutory obligations of Mines Act, 1952 and Coal Mines Regulation, 1957, statutorily qualified employees are authorized to act as Asstt. Manager, on obtaining 2nd Class Mines Manager's Certificate of Competency from DGMS, depending upon exigency. The letter at Annexure-11 effectively declined the request for promotion. Petitioners thereafter approached the learned Central Administrative Tribunal, Patna Bench at Ranchi inter-alia seeking two main reliefs - (i) For a direction upon the respondents to consider and grant regular promotion to the petitioners on the post of Assistant Manager (Mining); (ii) For grant of pay scale and other monetary benefits attached to the post of Assistant Manager (Mining) with effect from the date from which the petitioners are discharging their duties on the post of Assistant Manager (Mining). The respondents in their reply before the learned Tribunal in para-15 made statement that the contention of the applicants at para-4.2 that they were directed to work as Assistant Managers or were authorized to act as Assistant Managers to fulfill statutory provision is denied. The learned Tribunal did

not accede to both the prayers by impugned judgment dated 3rd January, 2017 and 7th April, 2017 (Annexure-18 to W.P.(S) No.2386 of 2017). Petitioners approached this Court being aggrieved in the present writ petitions. The respondents, on being called, have filed counter affidavits in both the cases. For convenience sake, the stand of the respondents in W.P.(S) No.2386 of 2017 is being noticed as material for addressing the issue in controversy at the present. At paragraph-14 of their affidavit they once again deny the assertion of the petitioners that they were directed to work as Assistant Managers or were authorized to act as Assistant Manager to fulfill statutory provision. They further state therein that such authorization was only for the sake to gain the required experience to make them eligible for attaining 1 st Class Mine Manager Certificate of competency. There was no shortage of Assistant Manager and hence authorization of the applicant was not at all required to comply any provision of the CMR nor of Mines Act. However, a totally contradictory statement is made at para-16 of the same affidavit where they say that the authorization letter is addressed to DGMS, Dhanbad. This appointment was only to comply the provisions under Coal Mines Regulation, 1957 which is statutory in nature. At this stage, therefore, it is pertinent to observe that the respondents have been taking shifting stands from what was reflected in the order rejecting representation (Annexure-11) and thereafter before the learned Tribunal and in the -3- present writ petitions. During the course of argument, learned counsel for the petitioners have laid more emphasis to the prayer for grant of pay scale and other monetary benefits attached to the post of Assistant Manager (Mining) since they have been made to work on that post from the substantive post of Overman which they are holding, over a period of 5 to 7 years in individual cases. They are still working as Assistant Manager (Mining) under the authorizations given by the respondent-management. It is also pertinent to take note of the stand of the respondent as reflected from the information provided under RTI enclosed to the rejoinder affidavit of the petitioners in W.P.(S) No.1720 of 2017 dated 22.08.2017 i.e. REF. No. RTI/CD/2017/450 dated 28.04.2017. The enclosures thereto contains a list of Assistant Managers at N/Jitpur Colliery which shows that some of the persons named therein are working as Assistant Managers in executive cadre while petitioners are shown as non-executive working under authorization. The petitioners have laboured hard to

impress that the contention of the respondents that there is no post of Assistant Manager as per the cadre structure is therefore untenable on facts. The petitioners, however, are conscious of the fact that as per the cadre structure they presently stand at S-11 Grade that is the highest grade in the non-executive cadre. They are also aware that promotion to the executive cadre is as per the cadre rules upon fulfilling not only the experience and eligibility criteria but also on passing the written test which they have not yet passed. We may also take notice from the CMR enclosed as Annexure-D to the supplementary counter affidavit of respondents dated 01.09.2017 in W.P.(S) No.1720 of 2017 that the post of Overman, Undermanager or Assistant Manager are well defined at Regulation 2(22) and 2(33) respectively. Chapter IV contains the provisions relating to Inspector and Mine Officials; Regulation 31 deals with qualifications and appointment of Managers; Sub-regulation (7)(a) thereof deals with the exigencies when the Manager, Owner or Agent can authorize in writing a person to act as a Manager of mines provided that such person holds a Manager's or Overman's Certificate. However, such authorization shall not have effect for a period over 30 days except with the previous consent in writing of the Chief Inspector; Regulation 32 provides for appointment of Undermanagers or Assistant Managers in every mines where the average output exceeds 7000 tonnes to assist the Manager. The Chief Inspector may, by order in writing and subject to such conditions as he may specify therein, permit or require the appointment of Undermanagers or Assistant Managers in variation with the instant provisions; Chapter-V deals with the duties and responsibilities of the workmen, competent persons and officials. The duties and responsibilities of persons employed in mines are delineated at -4- Regulation 38 to 40; The duties and responsibilities of Manager are defined at Regulation 41; The duties and responsibilities of Undermanager and Assistant Manager are defined under Regulation 42; The duties and responsibilities of Overman are similarly defined under Regulation 43; Regulation 44 defines the duties and responsibilities of Sirdar; Similar provisions have been made under this Chapter relating to duties and responsibilities of Shortfirers, Mechanical Ventilators, Engineers etc. The regulation is statutory in nature framed under the provisions of Section 57 of the Mines Act, 1952. Every designated official and competent person is assigned with specific duties and responsibilities. At times, in the absence of

Managers, it is the Undermanager or the Assistant Manager who is to discharge the duties of Manager as well as per Regulation 42(4) which includes supervising the work of person under his charge. We have considered the rival submissions of the parties in some detail and appreciated the broad conspectus of facts in the light of the statutory regulation and the cadre structure prevalent in the respondent SAIL. It would not be out of place to mention here that though a person holding the post of Overman in the non-executive cadre at a particular level may not straightway be entitled to be promoted to the executive cadre without requisite qualification, experience and passing of written test but the statutory scheme under the regulation provides authorization of persons holding the post of Overman to discharge the duties of Assistant Manager or Undermanager by the Owner, Agent or Manager of the colliery. It is also evident that for such discharge of duties of a higher post for any length of time in order to comply with the legal requirements, with due notice to the Chief Inspector of Mines, neither the regulation nor the cadre rules provide for any officiating pay or additional pay to such person discharging higher responsibilities. It is useful to quote the definition of Under Manager or Assistant Manager under Regulation 2, sub- clause 33 hereunder to make good the point :- 2(33) Undermanager or assistant manager means a person possessing a Manager's Certificate, who is appointed in writing by the owner, agent or manager or assist the manager in the control, management and direction of the mine or part thereof, and who takes rank immediately below the manager, and is thus superior to an overman and a sirdar. As an upshot of the aforesaid discussions, it appears that the respondents have been evading an answer to a serious grievance raised by their employees who are being made to work on higher post to meet legal obligations and fulfill statutory requirements in terms of the Mines Act and the Coal Mines Regulation. Learned counsel for the petitioners has relied upon the principles laid down in the case of -5- State of Punjab and Others vs. Jagjit Singh and Others reported in (2017) 1 SCC148(para 58 to 60). It is therefore obvious that adequate provision has not been made for laying down the pay and allowances of an employee made to discharge higher responsibilities of Assistant Manager or Undermanager under the respondents in terms of the CMR. We direct them to come out with a specific decision in that regard. The respondents are also required to answer as to why a contradictory

stand, which has a tendency to mislead the Court, has been taken in the affidavits filed by them before this Court. As prayed for by the counsel for the respondents, we post this matter after six weeks to be listed in the week of 27th November, 2017. (Aparesh Kumar Singh, J.) (B.B. Mangalmurti, J.) Birendra/R.S.

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