

Dilip Kumar Chatterjee Vs. Coal India Limited and ors.

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Court : Kolkata

Decided On : Feb-20-2002

Reported in : (2003)1CALLT405(HC)

Judge : Gorachand De, J.

Acts : [Constitution of India](#) - Articles 12 and 226

Appeal No. : Matter No. 524 of 1993

Appellant : Dilip Kumar Chatterjee

Respondent : Coal India Limited and ors.

Disposition : Petition allowed

Judgement :

Gorachand De, J.

1. The writ petitioner, Shri Dilip Kumar Chatterjee, a senior Technical Inspector, Grade A at the Regional Sales Office, Coal India Limited filed this application under Article 226 of the [Constitution of India](#) praying for the following reliefs:--

'(a) A writ in the nature of Mandamus commanding the respondents and each one of them to cancel, rescind and/or withdraw the Memo as in annexure 'F', annexure 'H' and annexure 'J' to the petition, in the alternative not to give effect to the results

of the same;

(b) A writ in the nature of Mandamus commanding the respondents and each one of them to give effect to the results of the qualifying examination held on 4th January, 1987 for promotion from non-Executive to Executive Cadre (non-Technical);

(c) A writ in the nature of certiorari conducting the respondents and each one of them to produce before this Hon'ble Court all records and files relating to the instant case in particular the file relating to promotion so that conscionable justice can be administered by going through the same;

(d) A writ in the nature of prohibition prohibiting the respondents and each one of them from holding any further qualifying examination for promotion from non-executive to executive cadre (non- technical) and further prohibiting them from giving any effect and/or further effect to the qualifying examination held in the year 1989, 1990 and 1991 on the basis of the Memos as in annexure 'F', 'H' and 'J' to this writ petition;

(e) Rule NISI in terms of prayer (a), (b), (c) and (d) as above;

(f) An interim order restraining the respondents and each one of them from further holding any examination without giving promotion to the petitioner on the basis of the qualifying examination held on 4.1.97.

(g) An ad-interim order directing the respondents and each one of them to promote the petitioner to E2 and E3 in the existing vacancy with retrospective effect from 1987, i.e., the date when the petitioner had qualified for promotion to executive cadre and pay all arrear salaries and allowances to the petitioner calculated on the basis of the promoted post within a period of a week from date;

(h) Pass such other order or orders, direction or directions as to Your Lordship may deem fit and proper.'

2. The grievance of the writ petitioner as made out in the writ petition and the supplementary affidavits sworn on 5th December 2000 and 21st June 2001 in a

nutshell is that in terms of a Circular issued on December 5, 1986 he duly appeared in the qualifying examination for promotion from non-executive to executive cadre (non-technical) on 4th January 1987. Having passed the qualifying written examination, the writ petitioner was asked to appear before the Selection-cum-Departmental Promotion Committee (Board III) on 19th August 1987 and he was asked to report to the Deputy Chief Personnel Manager on that day at 11.30A.M. On August 14, 1987 the petitioner was also asked to bring the original certificates in support of academic/professional qualification etc. and to produce the same to the respondent No. 6 on that day, that is on 19.8.1987. The writ petitioner duly produced the certificates asked for and also appeared before the Selection-cum-Departmental Promotion Committee on 19th August, 1987. After the completion of the interview, a panel was prepared for the candidates according to the availability of the posts.

3. But without offering promotion to the writ petitioner on the basis of the said panel, the Personnel Manager by Memo dated 13 December, 1988 intimated all eligible candidates including the writ petitioner to appear in the next qualifying examination for promotion from non-executive to executive cadre to be held on 3rd January, 1989. In the said Memo, the writ petitioner along with another eligible candidate namely Shri Biman Bose was advised to contact the Superintendent (Mines) HRD Division, CIMI, Calcutta for further information. The writ petitioner duly contacted the Superintendent (Mines), HRD Division, CIMI, Calcutta when he was informed that he had already passed the examination in 1987 for which he was not required to appear again for the qualifying examination. The said Superintendent also made his remark at the bottom of the said Memo dated 13.12.1988 to the effect 'Shri Dilip Chatterjee already passed the examination in 1987 securing 80 marks' (annexure 'F' to the writ petition). It is alleged that the writ petitioner as well as Shri Biman Bose, accordingly, did not appear in the qualifying examination held on 3rd January, 1989 and the writ petitioner by a letter dated 30th December, 1989, informed the Personnel Manager (AW) CIL, Calcutta about the endorsement made by the Superintendent (Mines), HRD Division, CIMI, Calcutta. But without giving promotion to the writ petitioner, another Memo dated 13th January, 1990 was issued informing the writ petitioner that the qualifying examination for promotion to the executive cadre would be held on 3rd February

1990 and in the said Memo, though the name of the writ petitioner appeared, the names of Shri Biman Bose and Shri B.K. Pal did not appear. The writ petitioner by a letter dated 16th January 1990 informed the Senior Personnel Manager (AW), CIL, Calcutta that since the writ petitioner has already appeared in the written examination and passed the same, his further appearance in the written examination would be redundant. Accordingly, the writ petitioner did not appear in the said qualifying test.

4. But again by a Memo dated 30th May, 1990 the eligible candidates were asked to appear before a supplementary test scheduled to be held on 23rd June 1990 for promotion from non-executive to executive cadre. In the list, the name of the writ petitioner appeared along with the names of Shri Atindra N. Chakraborty, Shri Arun Kr. Sarkar and Shri R.B. Pramanik, but the names of Shri B.K. Pal and Shri Biman Bose did not appear. The writ petitioner sent a reply on 23rd May 1990 pointing out that he had already passed the examination securing 80 marks and was not required to appear again. In the said letter the writ petitioner also pointed out that his other colleagues working in other subsidiaries who joined with him and passed the examination in 1987 had been promoted 2-3 years back. It is also indicated that transfer order was issued against promotional post and such transfer orders were being made from subsidiary companies to the regional sales office/stockyard in the E2 grade and thereby blocking the career of the writ petitioner. It is also alleged that by an order dated 6th June 1989, the General Manager (P), Coal India Limited issued transfer orders of various persons, mainly Junior Executive Trainees, from Sales and Marketing Discipline to the regional sales office and seven promotional posts in the regional sales office/stockyard were filled up.

5. It is also alleged that the Deputy Chief Sales Manager intimated the authority concerned that the Senior Technical Inspectors, Grade A posted at regional sales office did not receive any promotion for number of years at a stretch to the next grade although they passed required qualifying examination and their colleagues of the same cadre of subsidiary company received promotion to the executive cadre. It was also pointed out that there had been a chain effect in the promotional avenue and the Technical Inspectors Grade B were stagnating in their post for

number of years. By a letter dated 25.9.92, the Regional Sales Manager furnished the names of the Technical Officers who were waiting for promotion and in the said list, the writ petitioner was shown at the top being the seniormost having joined as the Senior Technical Inspector, Grade A on 15th December, 1982. It was also indicated in that letter that the writ petitioner along with other four shown against serial Nos. 1 to 5 had appeared in the examination for promotion from non-executive cadre to executive cadre and that they have completed more than 5 years of service in their grade/post. After referring to the recommendations of the Kumarmangalam Committee as accepted by the Coal India Limited he necessity of giving promotion and filling up the different E2/E3 posts were also highlighted. The writ petitioner accordingly submitted a representation/demand of justice by a letter dated 11.1.1993 and it was strongly recommend by the Regional Sales Manager. Since the respondents did not give any reply to the representation submitted by the writ petitioner and no steps have been taken for promotion in spite of becoming so qualified, the instant writ petition has been filed praying for the reliefs hereinabove mentioned.

6. All the nine respondents contested the writ petition after using an affidavit sworn by shri Ashis Kumar Ghosh, Personnel Manager (EB), Coal India Limited on 12th April 1993. In the said affidavit, it is submitted that the writ petitioner was expanelled for the promotion/appointment from non-executive to executive cadre in the year 1987. But he could not be promoted due to non-availability of clear vacancy since 1987 in the respective discipline. Accordingly, he was asked to appear in the qualifying examination in the years 1989 and 1990. It is also stated that panels are prepared on the basis of merit after qualifying examination and interview and thereafter, promotion orders are passed as per available vacancy in the organisational set-up of Coal India Limited as well as its subsidiary companies. But the validity of the said panel is for one year from the date of approval by the competent authority. Since the writ petitioner was not absorbed In any promotional post within the period of the validity of that panel, he was required to appear in the selection test and interview in the subsequent years.

7. Shri Biswanath Das, Personnel Manager, Coal India Limited also affirmed three other affidavits--two on 27th July 2001 and one on 17th August 2001 virtually

reiterating the case as made out in the original affidavit-in-opposition.

8. Mr. Ukil, appearing on behalf of the writ petitioner, argued at length pointing out that the writ petitioner on the basis of the written tests and oral interview was found to be fit for promotion and was duly included in the panel in the year 1987. But without giving him the promotion, the respondents arbitrarily and unjustly asked him to appear in the subsequent tests that were actually held on 3.1.1989 and 2.1.1990. Mr. Ukil further pointing out the annexure 'X' to the affidavit-in-opposition contended that there was no indication that the validity of each panel was for one year. On the other hand, it is indicated therein that the validity of the period of the panel could be extended by the competent authority. It is also argued that the said circular was issued on December 1990, that is long after the empanelment of the writ petitioner on the basis of the qualifying written test and interview held on 4.1.1987 and 19.8.1987.

9. Mr. Ukil also referring to the different annexure pointed out that Shri Biman Bose and Shri B.K. Pal who appeared in the qualifying test of 1987 were not required to appear in the subsequent qualification test and they were promoted on the basis of the empanelment done in 1987 even after two years. Also referring to the annexures to the supplementary affidavits, it was argued that without appearing in any further qualifying test 1987, Shri Arun Kumar Sarkar, Shri A.N. Chakraborty and Shri R.B. Pramanik and Shri D.C. Majumdar were also promoted to E2 grade. It is also indicated that subsequent promotion was also given to the above-named persons arbitrarily denying the promotion to the writ petitioner. Of course, it was pointed out that Shri A.N. Chakraborty was given promotion on the basis of an order dated 14.9.1990 passed by this Court in Matter No. 1029 of 1990. A copy of the said judgment was produced to show that promotion was denied to Shri A.N. Chakraborty on the basis of the qualifying examination held in 1987 and this Court came to a conclusion that there were interpolations in the marks obtained by Shri Chakraborty and that the Departmental Promotion Committee arbitrarily did not select him for the promotion. Accordingly, a mandate was issued upon the respondents directing them to treat that petitioner qualified for empanelment to E2 grade, and to give him promotion.

10. Mr. Ukil also drew the attention of this Court to the blocking of the promotional avenue by bringing the non-executive cadre to executive cadre, grade E2. So after pointing out all these irregularities, a forceful argument was made that a mandate is required to be issued upon the respondents directing them to treat the writ petitioner to be qualified for empanelment to E2 grade from 1987.

11. Mr. Gorai appearing on behalf of the respondents, however, argued that the application under Article 226 of the [Constitution of India](#) is not maintainable inasmuch as it is a settled principle of law that promotion cannot be claimed as of right, specially when the writ petitioner has failed to establish the violation of any legal right accrued to him. Mr. Gorai also argued that the Superintendent (Mines), HRD Division who is stated to have made the endorsement about securing of 80 marks by the writ petitioner on annexure 'F' to the writ petition having not been made a party, no reliance should be placed on that endorsement, as no opportunity was given to the said respondent to traverse this allegation. It is also argued that in terms of prayer (a) if the annexure 'F' is cancelled, the endorsement also goes automatically for which the allegation of passing the qualifying examination also fails. Mr. Gorai further argued that if the annexures 'H' and 'J' are also cancelled or rescinded or withdrawn in terms of the prayer (a) to the writ petition, the persons named in those annexures will be seriously affected and without making them as party, the relief cannot be claimed in the manner as made in the writ petition. It is also argued that the writ petition having not been filed within three years from the date of completion of the interview on 19.8.1987, the claim of the writ petitioner is to be treated as time barred.

12. Lastly, it has been argued that mere recommendation of the names in panel of promotion does not give any right of promotion. On this score Mr. Gorai placed reliance on the decisions of the Apex Court reported in : AIR 1984 SC1850 (Jatinder Kumar & Ors. v. State of Punjab & Ors.) and : [2001]2SCR1183 (All India SC & ST Employees Association v. A. Arthurjeen & Ors.). It is argued that there is no proof that the juniors to the writ petitioner were given promotion on the basis of the said qualifying examination held in 1987 and there is also no indication that the panel was extended beyond one year or that the respondents acted malafide or with malice. It is also argued following the decision reported in : (1974)ILLJ301SC

(State of Mysore v. C.R. Seshadri & Ors.) that order of promotion cannot be passed by a Court of law.

13. Finally, it is argued that no vacancy was available in the promotional discipline of the writ petitioner and accordingly, he cannot be transposed and fitted into a different discipline of service and on this score, Mr. Gorai placed reliance on another decision of the Apex Court reported in : [1997]2SCR594 (H.R. Ramchandraiah & Anr. v. State of Karnataka).

14. Admittedly, the respondent Coal India Limited is a State within the meaning of Article 12 of the [Constitution of India](#) and as such, the writ petitioner is competent to file this application under Article 226 of the [Constitution of India](#) against the respondents. It is also a settled principle of law that the application under Article 226 of the [Constitution of India](#) not being a suit nor an application to which the Limitations Act applies, the provision of that Act cannot be invoked in a proceeding under Article 226. In fact, no limitation is provided for such proceeding. Moreover, it is to be noted from the materials on record that by an order dated 30th May, 1990 the respondents requested the present writ petitioner to appear in a supplementary written test to be held on 23rd June 1990. From the annexure 'L' to the writ petition, it further transpires that the name of the writ petitioner was also sent to the Deputy Chief Sales Manager (respondent No. 9) on 25.9.1992 for filling up the vacancies in the E2 posts by giving promotion in terms of the recommendations of Kumarmangalam Committee as accepted by Coal India Limited. The writ petition was actually filed on 6.2.1993. So judging from this factual aspect also, it cannot be said that the claim of the writ petitioner is barred by limitation. It is pertinent to mention that before filing of the writ petition the writ petitioner also sent a letter dated 11.1.1993 demanding justice. So the plea of limitation as argued on behalf of the respondents is not applicable in this case.

15. It is admitted by the respondents in the affidavit-in-opposition in paragraphs 3 and 4 of the affidavits-in-opposition filed on 27th July, 2001 that on the basis of availability and requirement of posts a panel is prepared on the basis of a departmental written test as interview taken by the Selection-cum-Departmental Promotion Committee and the promotion is made from the said panel. This

statement is sufficient to indicate that at the time of preparation of the panel in 1987, there were availability and requirement of candidates in different promotional posts and the panel was prepared on the basis of the written test as well as the interview by the Selection-cum-Departmental Promotion Committee. It is also admitted by the respondents that the writ petitioner was successful in the selection process and his name was recommended for promotion. But in course of argument, as is indicated above, it is pointed out by Mr. Gorai that no promotional post in the discipline of the writ petitioner was available in 1987. Surprisingly enough, though everything is within their special knowledge, no paper has been produced in support of this claim. On the other hand, the promotional posts were filled up in 1989 by transferring the junior executive trainees and others as can be ascertained from the supplementary affidavits. It is also difficult to believe, since details are not supplied by the respondents, that from 1986 till the issuance of the order dated 30th May 1990 no promotional post was available for giving promotion to the recommended candidates like the writ petitioner.

16. It is undoubtedly a settled law that promotion to next grade cannot be claimed as a matter of right and a Court should not issue order of promotion [State of Mysore v. C.R. Seshadri & Ors. (supra)]. But in the said cited decision the Apex Court also observed that promotion on the basis of seniority-cum-merit is always problematic, and that if there is any positive proof of violation of the relevant Service Rules, the Court should interfere. In the instant case, as is indicated hereinabove, the respondents have admitted that on the basis of availability of promotional posts, the panel is prepared and this statement is sufficient to indicate that at the time of preparation of the panel, there were available posts for promotion. The departmental rule is that promotion can only be given from the panel prepared by the Selection Committee and that being the position, it has not been clarified or demonstrated as to why the promotion was denied to the writ petitioner.

17. In H.R. Ramchandraiah & Anr. v. State of Karnataka (supra) it was viewed by the Apex Court that one category of employee cannot be transposed and fitted into altogether a different category of service. But it has not been shown by the respondents that no promotional avenue in the discipline of the writ petitioner was vacant during the period from 1986 to 1990 or thereafter. On the other hand, there

are indications that promotional channels were being clogged by bringing the Junior Trainee Executives and other persons. Moreover, the respondents failed to explain as to how the recommendations made by the Kumarmangalam Committee as regards keeping sufficient Senior Executives at different areas of the Coal India Limited were duly considered for the purpose of giving promotion to the successful candidates empaneled on the basis of departmental tests,

18. The principle adopted in Jatinder Kumar's case (supra) is not applicable in the present case inasmuch as in the cited decision, the Service Selection Board/Public Service Commission after taking examination of the candidates recommended the names for appointment in different posts. But the State Government reduced the vacancies after the selection process was over and accordingly, the Apex Court took the view that no selected candidates had any right to be appointed. In the present case the panel was prepared on the basis of availability of the promotional posts and no reason was assigned as to why the promotion to the writ petitioner was denied after including him in that Panel of Promotion. Even the panel prepared by the respondents has not been produced to show how the promotions were given to the persons included in the panel of 1987.

Similarly, the principles adopted in : [2001]2SCR1183 (supra) is not applicable in the present facts and circumstances of the case.

19. It is already indicated above that the respondents' case is that the panel in which the name of the writ petitioner was appearing was valid for one year. But the existence of such a rule during the year 1986-87 has not been established. On the other hand, in annexure 'X' to the affidavit sworn on behalf of the respondent on 12th April 1993, there is an indication that the validity period of the panel could be extended by the competent authority. Of course, the said annexure is dated 10.10.1990. But the relevant orders as regards selection of the candidates on the basis of the interview etc. and the period of the validity of the panel have not been produced by the respondents. On the other hand, it has been rightly pointed out by Mr. Ukil that though Shri B.K. Pal and Shri Biman Bose appeared with the writ petitioner in the selection test in 1987 and though Shri Biman Bose was again asked to sit for the qualifying examination to be held on 3rd January 1989

(annexure 'F' to the writ petition) and though none of them sat for any further qualifying examination, they were given promotion towards 1990. This is sufficient to indicate that the panel which was prepared in 1987 was valid for more than one year and hence, no valid reason has been assigned as to why the writ petitioner whose name is claimed to be in the top of the panel should not be considered for promotion on the basis of the qualifying test held in 1987. It is also pointed out that Shri B.K. Pal, Shri Biman Bose, Shri Arun Kr. Sarkar, Shri A.N. Chakraborty and Shri R.N.Pramanik were also promoted to E2 grade. Shri D.C. Majumdar was also given promotion from E2 to E3 grade in November 1988 and was given further promotion later on. So all these promotions are sufficient to indicate that the panel prepared in 1987 did not become invalid and the denial of promotion to the writ petitioner cannot be justified. True it is that the writ petitioner has not been able to show that any of his juniors has been given promotion to E2 grade, but the fact remains that the batch-mates of the writ petitioner have already been given promotion to E2 grade and thereafter to 3 grade and so on. So it is rightly argued that the act of denial of promotion to the writ petitioner should be construed as arbitrary and unreasonable. In fact, there is no reason to deny the promotion to the writ petitioner on the basis of the panel prepared in 1987.

20. It is also pertinent to mention that in annexure 'F' to the writ petition, the Superintendent (Mines), HRD Division, CIMI, Calcutta made the specific endorsement that the writ petitioner had already passed the examination in 1987 securing 80 marks. In the said letter dated 13.12.1988, the different eligible members of the staff including the writ petitioner were asked to sit for the qualifying examination to be held on 3rd January 1989 and for further information, they were directed to contact the Superintendent (Mines), HRD Division CIMI, Calcutta. So, on the basis of such a direction when the writ petitioner contacted the said Superintendent, it was clarified that the writ petitioner was not required to sit for any further qualifying examination as he had already passed the examination in 1987. True it is that the said Superintendent (Mines), HRD Division is not made a party to the writ petition, but the letter sent to the said Superintendent by the Personnel Manager (AW) figures as the respondent No. 5 in this writ petition. This endorsement was also brought to the notice of the authorities by several letters pointing out that there was no necessity on the part of

the writ petitioner to appear in any further qualifying test. But the authority remained silent on the point and even did not act or react on the basis of the recommendations made by the Regional Sales Manager (respondent No. 7) to the Chief Sales Manager.

21. So in view of the facts and circumstances explained hereinabove, I am of the view that the respondents did not act fairly and there was no reason to deny the promotion to the writ petitioner on the basis of the panel prepared in the year 1987. Since there are sufficient indications of violation of the relevant rules of promotion by the respondents and that a legal right of promotion as per the rules accrued to the writ petitioner and arbitrarily denied by the respondents, I come to a conclusion that this is a fit case for interference by the Court under Article 226 of the [Constitution of India](#) and that a mandate should be issued upon the respondents to treat the petitioner as qualified for promotion in E2 grade on the basis of the examination held in 1987.

22. The writ petition is, therefore, allowed. Let a writ of mandamus be issued upon the respondents and each one of them directing them to treat the writ petitioner to be qualified for promotion to E2 grade and to give him promotion to the E2 grade with effect from the date on which the candidate immediately junior to him has been given such promotion to E2, with all the accrued benefits within four weeks from the date of the communication of the signed copy of the operative portion of this judgment. However, I do not make any order as to costs.

23. All parties are to act on a signed copy of the operative portion of this judgment on usual undertaking.