

**BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT,
ASANSOL.**

PRESENT: Shri Ananda Kumar Mukherjee,
Presiding Officer,
C.G.I.T-cum-L.C., Asansol.

REFERENCE CASE NO. 04 OF 2015

PARTIES: Monotosh Kumar Chatterjee
Vs.
Management of Sodepur Area, ECL

REPRESENTATIVES:

For the Union/Workman: Monotosh Kumar Chatterjee (in person).
For the Management of ECL: Mr. P. K. Das, Advocate.

INDUSTRY: Coal.

STATE: West Bengal.

Dated: 30.12.2024

A W A R D

In exercise of powers conferred under clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India through the Ministry of Labour, vide its Order **No. L-22012/19/2015-IR(CM-II)** dated 18.06.2015 has been pleased to refer the following dispute between the employer, that is the Management of Sodepur Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

THE SCHEDULE

“ Whether the action of the Management of Sodepur Area of M/s. ECL in justified and whether Sri Monotosh Kumar Chatterjee is entitled to promotion as per the norms of the company i.e. M/S. ECL, if so what relief the workman is entitled to? ”

1. On receiving Order **No. L-22012/19/2015-IR(CM-II)** dated 18.06.2015 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a Reference case was registered on 01.07.2015 and an order was passed for issuing notice to the parties through registered post, directing them to appear and submit their written statements along with relevant documents in support of their claims and a list of witnesses.

2. Monotosh Kumar Chatterjee, the aggrieved workman was represented by Colliery Mazdoor Congress (HMS) and a written statement was filed on 12.08.2015. The fact of the case as adumbrated in the written statement is that, Monotosh Kumar Chatterjee was a permanent employee of Eastern Coalfields Limited (hereinafter referred to as ECL) and was posted at Sodepur Area office, as

Revenue Inspector, having U.M. No. 256026. He superannuated from service on 28.02.2014. The contention of the union is that Monotosh Kumar Chatterjee was granted promotion to the post of Technical Grade “A” on 12.03.1993. As per Cadre Scheme followed by the company, Implementation Instruction (hereinafter referred to as I.I.) No. 39 and 24 provide that an employee is entitled to promotion to the next higher post after completion of five years in Technical Grade “A”, which implies that Monotosh Kumar Chatterjee was entitled to be promoted from Technical Grade “A” to Technical Grade “A-1” in the year 1998. The aforesaid Implementation Instruction stipulated that an employee remaining in the Technical Grade “A” shall become eligible for promotion to Technical Grade “A-1” after completion of five years in Technical Grade “A”. Further contention of the union is that the management of the company did not follow the aforesaid norms in the case of Monotosh Kumar Chatterjee, who has been denied his promotion since the year 1998 till his retirement in the year 2014. It is asserted that the workman was not provided with promotion for a period of sixteen years, simply because he was an office bearer of a union i.e., the President of the Branch Committee of Sodepur Area Office, this amounts to clear victimization of the workman. It is inter-alia contended that other employees of Sodepur Area Office who were far more junior to Monotosh Kumar Chatterjee were promoted to Technical Grade “A-1”, several years earlier, ignoring the case of Monotosh Kumar Chatterjee, which amounted to discrimination against the workman by a Public Sector Company. Monotosh Kumar Chatterjee submitted several applications before the management of Sodepur Area Office for granting him promotion as per the norms of the company but the same yield no result as such an Industrial Dispute has been raised by the Colliery Mazdoor Congress (HMS) before the Assistant Labour Commissioner (Central), Asansol on 01.05.2013. On failure of conciliation a FOC Report dated 12.03.2015 was submitted by the Assistant Labour Commissioner (Central), Asansol. Considering the merit of the case, the Ministry of Labour and Employment, Government of India referred the dispute to

the Central Government Industrial Tribunal -cum- Labour Court, Asansol for adjudication. The union has prayed for directing the management of Sodepur Area to grant promotion in favour of Monotosh Kumar Chatterjee from Technical Grade "A" to Technical Grade "A-1" w.e.f. the year 1998, as per norms of the Company and consequential benefits which Monotosh Kumar Chatterjee is entitled to.

3. The management of ECL contested the case by filing written statement on 19.05.2016. Primary object of the management is that Monotosh Kumar Chatterjee has already superannuated from his service on 28.02.2014 as such he is not a workman as defined under Section 2(s) of the Industrial Disputes Act, 1947 and the Reference case is not maintainable. It is asserted that the claim for promotion is not an Industrial Dispute under Section 2(k) of the Industrial Disputes Act, 1947 and it does not involve any issue related to employment, non-employment or terms of employment and the Reference is bad in law and misconceived.

4. Further case of the management is that Monotosh Kumar Chatterjee, in his written statement has admitted that he reached his highest grade of Supervisory Staff and was receiving a salary which is more than Rs. 50,000/- (Rupees fifty thousand) per month, as such he is not a workman under the definition of Section 2(s) of the Industrial Disputes Act, 1947 and no Industrial Dispute can be raised on his account. The management asserted that Monotosh Kumar Chatterjee was already promoted to the Cadre of Technical and Supervisory Grade "A" and "A-1" and thereafter there is no grade for promotion. According to the management promotion is not a matter of right and depends upon vacancy in the cadre and eligibility of candidate. Monotosh Kumar Chatterjee was finally promoted to Technical and Supervisory Grade "A-1" w.e.f. 01.01.2002 after completion of eight years of service, as per provisions of National Coal Wage Agreement (hereinafter

referred to as NCWA) for providing time bound promotion. He was subsequently given Service Linked Promotion (hereinafter referred to as SLP) on 01.01.2010 in addition to his normal increments. According to the provision of NCWA an employee is eligible to get four promotions in the minimum, during his carrier. However, Monotosh Kumar Chatterjee was granted six promotions during his tenure of service and the dispute raised by him is without any merit. It is denied by the management that Monotosh Kumar Chatterjee became eligible for promotion in the year 1998 from Technical and Supervisory Grade "A" to Technical and Supervisory Grade "A-1" and further denied that Monotosh Kumar Chatterjee was not given promotion for being an office bearer of the union. It is urged that the claim of the union is not justified and the dispute is liable to be dismissed.

5. On 21.06.2016 the union submitted a rejoinder stating that Monotosh Kumar Chatterjee was not discharging any managerial function and the nature of duties performed by him would indicate that he was a workman and did not belong to Supervisory Grade. It is contended that the dispute raised by the union in relation to the promotion of workman is a condition of service and if the workman is not considered for promotion and is excluded from promotion without explanation, in violation of the norms of the company, the workman can raise Industrial Dispute which is the matter of Reference for adjudication. It is urged that a conciliation proceeding was initiated by the union which was participated by the management and workman and ultimately resulted in failure, giving rise to the present Reference case. It is asserted that the Reference for conciliation was made by the workman while he was in service, therefore the objection raised by management that there was no employer-employee relation between the parties at the time of initiating the Industrial Dispute has no force.

6. The point for consideration is whether Monotosh Kumar Chatterjee was entitled to any promotion as per the norms of the company and whether the action of management of Sodepur Area of ECL was justified for granting promotion to his junior staff member without considering him.

7. In the instant case Monotosh Kumar Chatterjee, workman witness no. 1 has filed an affidavit-in-chief and was cross-examined on behalf of the management of ECL. It has been stated by the workman that he retired from Technical Grade "A" and was provided upgradation to Technical Grade "A-1" by granting Service Linked Upgradation (hereinafter referred to as SLU) on 01.01.2002. He denied the suggestion that employee junior to him was not given promotion in Technical Grade "A-1" before him and no discrimination was done. The workman also deposed that he submitted papers related to promotion of Mr. Dilip Acharayya who was subsequently promoted to promoted to Technical Grade "A-1". The workman denied that he was not entitled to be considered for promotion from the year 1998 onwards.

8. In support of their case the management examined Mr. Rahul Singh, Senior Officer (Personnel), Sodepur Area of ECL as Management Witness – 1. It transpires from his testimony that Monotosh Kumar Chatterjee was granted promotion to Technical Grade "A" w.e.f. 12.03.1993, copy of the Order has been produced as Exhibit M-1. On 30.01.2002 an Office Order was issued by which Monotosh Kumar Chatterjee was upgraded to Technical Grade "A-1" under SLU, copy of the same has been Marked as Exhibit M-2. Furthermore, on 03.06.2010 Monotosh Kumar Chatterjee was given benefit of Service Linked Increment (hereinafter referred to as SLI), copy of the same has been produced as Exhibit M-3. It is stated by Management Witness No. 1 that in the year 2003 Grade "A" was the highest grade in the Cadre of Revenue Inspector and subsequent to the year 2003 a new Cadre "A-1" was introduced. The witness produced the promotion policy under

I.I. No. 39 under NCWA-VI dated 28.11.2003 for promotion from Technical and Supervisory Grade "A" to Technical and Supervisory Grade "A-1", copy of the document has been produced as Exhibit M-4. According to the management witness the claim of workman for promotion is not justified and a copy of I.I. No. 24 which relates to promotion during service span of a workman, mentioned in Clause 13.5.1 of NCWA-VIII has been admitted in evidence as Exhibit M-5.

9. In his cross-examination the management witness deposed that if an employee does not get promotion in ten years of service, he becomes eligible for SLU by way of upgradation allowing, an increment of three percent (3%) of Basic pay. The witness denied that three percent (3%) increment of Basic was not granted to the workman and that the workman continued to perform same nature of work as he was performed in his earlier grade. In case of Service Linked Promotion the workman holding the post of Technical Grade "A-1" is given SLI if he is not been given a regular promotion within a span of seven years in underground cases and eight years in surface cases. The witness also deposed that as there was no higher-grade after "A-1" in Technical Grade, a person after seven or eight years of service, as the case may be, was entitled to SLI and he was given increment of three percent (3%) of Basic. The witness denied the suggestion that since there is no provision for promotion of Technical Grade "A-1" in National Coal Wage Agreement no promotion was accorded to the workman for the rest of his service career and he was only granted one increment. The witness also denied that SLP of a workman, holding the post of Technical Grade "A-1", is not equivalent to promotion. The management witness deposed that for the purpose of promotion of workman from one grade to another grade, a Departmental Promotion Committee (hereinafter referred to as DPC) is constituted, which follows the Circular of the year 2012. Finally, it is denied by the management witness that Monotosh Kumar Chatterjee was deprived of his promotion from Technical Grade "A" to Technical Grade "A-1" as per I.I. No. 39 and 24.

10. Monotosh Kumar Chatterjee appeared in person and argued his case by submitting that the Industrial Dispute is maintainable as it relates to excluding him from being considered for promotion, which is a violation of his service condition. It is argued that he retired from service on 28.02.2014 and the complaint was made before the Conciliation Officer prior to his superannuation and eventually resulted in failure of conciliation and Reference of the Industrial Dispute is made to this Tribunal. According to the workman he made several representations before the management for granting him promotion from Technical Grade "A" to Technical Grade "A-1", as per norms of the company but it yielded no result. Furthermore, workmen who were junior to him in entering Technical Grade "A" were referred for their promotion to Technical Grade "A-1". It is inter alia argued that during his service carrier he was granted promotion only on one occasion on 12.03.1993 in Technical Grade "A". According to the I.I. No. 39 (Exhibit M-4) an employee is entitled to get promotion after five years from Technical Grade "A" to Technical Grade "A-1" and it is submitted that the workman was last promoted to Technical Grade "A" on 12.03.1993 vide Office Order No. ECL:CMD.C-6:WBE-5/425 dated 12.03.1993. It is argued that according to the Cadre scheme and I.I. No. 39 of Joint Bipartite Committee for the Coal Industry, Monotosh Kumar Chatterjee after completion of five years was entitled to a promotion to Technical Grade "A-1" in the year 1998, but the management has denied his promotion from 1998 till his retirement in 2014. In order to meet the contention of the management that the workman was granted SLU on 01.01.2002 by placing him in Technical Grade "A-1" and thereafter was allowed SLI on 03.06.2010 with increment of three percent (3%) of the Basic, it is argued that he received no monetary benefit by way of such upgradation and one Mr. Dilip Acharayya, a junior staff member who was promoted to Technical Grade "A-1" before him. Monotosh Kumar Chatterjee argued that a notional promotion should be grated to him w.e.f. 1998 and consequential financial benefit should be granted as he is now suffering financial loss at the time of computation of pension.

11. Mr. P. K. Das, learned advocate for management of ECL, in reply, argued that according to the provision of NCWA an employee is entitled to four promotional benefits in his service carrier and in the case of Monotosh Kumar Chatterjee, he received six promotional benefits which includes a promotion to Technical Grade "A" on 12.03.1993, a SLU by way of upgradation to Technical Grade "A-1" on 01.01.2002 and a SLI on 03.06.2010. It is further argued that Mr. Dilip Acharayya, who was posted in Personnel Department was granted promotion to Technical Grade "A" on 14.08.2001 and thereafter to Technical Grade "A-1" on 01.11.2011 i.e., long after promotion was granted to the aggrieved workman, who has already reached the highest grade. Learned advocate argued that Monotosh Kumar Chatterjee was granted three percent (3%) increment of his basic pay at the time of granting him SLU and another three percent (3%) increment of his basic pay at the time of providing him with the benefit of SLI, while he was in the post of Technical Grade "A-1". It is contended that the workman is not entitled to any benefit and the Industrial Dispute is liable to be dismissed.

12. I have considered the rival contentions of the parties in the light of the light of their pleadings and evidence on record. I have also considered the evidence adduced and the provision of I.I. No. 39 and 24, relied on by the workman. At the very outset, I considered it appropriate to address the objection raised by the management regarding maintainability of this Industrial Dispute on the ground that there is no relationship of employer-employee between the workman and management at the time the Industrial Dispute is referred and that Monotosh Kumar Chatterjee, holding a supervisory post is not eligible to raise any dispute as a workman. It is an accepted position that the terms of service of the aggrieved workman are guided by the National Coal Wage Agreement, which are applicable only to workman. Therefore, any difference between employer-employee connected with employment, non-employment, terms of employment or

conditions of labour of any person would be considered as Industrial Dispute. In the present case the workman being aggrieved with his condition of his service, for not being considered for his promotion within five years from his first promotion, has the right of raising the Industrial Dispute. It appears from the record that the Conciliation Officer failed to mediate and issued a Failure of Conciliation Certificate, prior to superannuation of the workman. Under such circumstance the contention of the management that the Industrial Dispute is not maintainable does not hold good.

13. The second facet of the workman's contention is that he was not granted a promotion to Technical Grade "A-1" due to which he suffered financial loss while computing of his pension. It transpires from paragraph – (3) of the affidavit-in-chief filed by Monotosh Kumar Chatterjee that he was promoted for the last time on 12.03.1993 to Technical Grade "A" as Revenue Inspector. He was entitled to promotion from Technical Grade "A" to Technical Grade "A-1" in the year 1998 as per norms of the company. From Exhibit M-4 i.e., I.I. No. 39 dated 28.11.2003, it appears that minimum experience for eligibility for promotion from Technical and Supervisory Grade "A" to Technical and Supervisory Grade "A-1" for Technical and Non-technical Personnel is five years. A prudent interpretation of the word "minimum experience" indicates that under no circumstance promotion should be granted before completion of five years' term in Technical and Supervisory Grade "A". By no stretch of imagination, the converse can be assumed by holding that on completion of the minimum experience of five years a person must be promoted from Technical and Supervisory Grade "A" to Technical and Supervisory Grade "A-1". In the instant case the evidence of management witness discloses that NCWA stipulates minimum four promotions to an employee during his service carrier, whereas Monotosh Kumar Chatterjee was given six promotions during the tenure of his service. In his examination-in-chief the management witness deposed that Monotosh Kumar Chatterjee was promoted from Revenue

Inspector in Technical Grade “B” to Revenue Inspector in Technical Grade “A” w.e.f. 1993 (copy of the Office Order is produced as Exhibit M-1). On 30.01.2002 an Office Order was issued by which the workman was upgraded from Technical Grade “A” to Technical Grade “A-1” under the scheme of SLU, copy of the same has been placed as Exhibit M-2. In paragraph – (5) of the written statement management categorically stated that Technical and Supervisory Grade “A-1” was the highest grade in the cadre of Revenue Inspector till the year 2003, therefore there was no scope for further promotion of Mr. Monotosh Kumar Chatterjee. The workman did not suggest to the management witness that the Technical and Supervisory Grade “A-1” existed prior to 30.01.2002 or he was denied promotion to the post earlier despite existence of such higher post. In cross-examination of the management witness reveals that since there was no grade higher than Technical and Supervisory Grade “A-1”, a person after stagnation of seven or eight years, as the case would be, was entitled to Service Linked Increment, which was equivalent to promotion. Accordingly, Monotosh Kumar Chatterjee received increment of three percent (3%) of his basic pay on his upgradation to Technical and Supervisory Grade “A-1” in the scheme of SLU on 30.01.2002 (Exhibit M-2) and he was also given the benefit of SLI w.e.f. 01.01.2010 by Office Order 03.06.2010 (Exhibit M-3). It is explicit from I.I. No. 24 that a person granted SLU or SLI is bestowed with one promotional increment of three percent (3%) of the existing basic pay in the grade / category after stagnation for seven or eight years, as the case may be and will be promoted to the next category or grade. It is evident the Monotosh Kumar Chatterjee was granted the benefit of promotion from Technical and Supervisory Grade “B” to Technical and Supervisory Grade “A” and thereafter SLU to Technical and Supervisory Grade “A-1” in the year 2002 and a further SLI in the year 2010 before he was superannuated in the year 2014. It has been contended by the workman that Mr. Dilip Acharayya, junior to him in service was granted promotion earlier to him in Technical and Supervisory Grade

“A-1” which amounted to discrimination. From of the aggrieved workman, I found that Mr. Dilip Acharayya was promoted to Technical and Supervisory Grade “A-1” w.e.f. 01.01.2010 having remained in the same grade “A” for a period of ten years without any promotion. In both the cases the promotion and SLU granted to Mr. Dilip Acharayya was long after the promotion granted to Monotosh Kumar Chatterjee. The aggrieved workman has miserably failed to establish that any of his junior had been granted any promotional benefit by superseding him. I find that the management of ECL did not commit any illegality in granting promotion, SLU or SLI to Monotosh Kumar Chatterjee quo his junior staff members in the establishment. The Industrial Dispute raised by Monotosh Kumar Chatterjee alleging discrimination against him by the management has no foundation and the same is liable to be dismissed.

Hence,

ORDERED

that the Industrial Dispute is dismissed on contest against the workman, Monotosh Kumar Chatterjee. I find no illegality or impropriety in the orders passed by the management of Eastern Coalfields Limited in granting promotion, SLU or SLI to Monotosh Kumar Chatterjee quo the junior employees of the establishment. An award be drawn up in light of my above findings. Let copies of the Award in duplicate be sent to the Ministry of Labour, Government of India, New Delhi for information and Notification.

(ANANDA KUMAR MUKHERJEE)

Presiding Officer,
C.G.I.T.-cum-L.C., Asansol.