

**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. 52 OF 2022

PARTIES: Mrinal Das
Vs.
Management of Khottadih OCP, ECL

REPRESENTATIVES:

For the Union/Workman: Mr. Chandi Banerjee, General Secretary, CMC (INTUC).
For the Management of ECL: Mr. Mani Padma Banerjee, Advocate.

INDUSTRY: COAL.

STATE: West Bengal.

Dated: 27.03.2025

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-22012/95/2022-IR(CM-II)** dated 31.10.2022 has been pleased to refer the following dispute between the employer, that is the Management of Khottadih Open Cast Project under Pandaveswar Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

THE SCHEDULE

“ Whether the action of the management of Khottadih OCP of Pandaveswar Area, M/s. E.C.Ltd. in non-payment of arrear of wages and other consequential benefits such as q.m.b. Sunday Holidays etc. for the period of service as executive cadre reverted back to non- executive cadre to Sri Mrinal Das is fair, legal and justified? If not, what relief the workman concerned is entitled to? ”

1. On receiving Order **No. L-22012/95/2022-IR(CM-II)** dated 31.10.2022 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a Reference case was registered on 01.11.2022 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.

2. After issuance of Notice, the Agent of Khottadih Open Cast Project under Pandaveswar Area of Eastern Coalfields Limited (hereinafter referred to as ECL) filed a written statement on 06.02.2023, contesting the Industrial Dispute. In gist,

the fact of the case according to the management is that Mrinal Das posted as Foreman In-charge (Electrical & Mechanical) at Khottadih OCP was promoted to the post of Subordinate Engineer (Electrical & Mechanical) in the Executive Cadre E-1 in the year 2011 vide letter of upgradation bearing No. ECL/C-5(D)/Upgradation(E1)/E&M/EE/925 dated 21.05.2011 issued by the Chief General Manager (P/EE), ECL, Sanctoria. The said employee was reverted back to his original post of Foreman In-charge in the Non-Executive Cadre on the basis of his own representation. Pay fixation was done after reversion to the post of Foreman In-charge along with payments of all consequential benefits. An order was passed by Coal India Limited (hereinafter referred to as CIL) to the effect that Subordinate Engineer who have been reverted back to Non-Executive Cadre shall be paid consequential benefits as if they have not been upgraded. It is the case of the management that the claim of the union for payment of arrears of difference of pay between Executive Cadre and Non-Executive Cadre, for the period he worked in the Executive Cadre is not maintainable as he has already drawn all the benefits, enjoyed the facilities of an executive of CIL. Fixation of pay as per National Coal Wage Agreement – IX (hereinafter referred to as NCWA-IX) has been considered and benefits of all increments have been granted by allowing pay protection. Further case of the management is that during the period he was posted as an executive the concerned employee has drawn salary for thirty (30) days in a month in place of twenty-six (26) days in a month payable to the non-executive employees. Therefore, he is not entitled to pay for Sundays and holidays. It is inter-alia contended that the Wage Board employees are deployed on Sundays and holidays as per quota or sanction whereas, executives are deployed on Sundays and holidays without any quota or sanction. The Non-Executive Cadre employees are therefore not entitled to wages for Sundays and holidays as a matter of right and it cannot be deemed that they would have been deployed on all Sundays and holidays if they were posted as non-executives. According to the management the concerned employee along with others appealed to the General

Manager (EE) ECL, Headquarters for payment of PRP (Performance Related Payment) in lieu of arrear / difference of wages for the period they worked in the Executive Cadre and the matter is under consideration as per Office Memorandum bearing No. CIL/GM (P)/B-163 dated 13.03.2018. It is urged that the petitioner's case is totally vexatious and baseless and the same is liable to be dismissed.

3. Written statement has been filed by the union on 28.03.2023. It is the case of the union that Mrinal Das, Foreman In-charge of Khottadih OCP was promoted to the post of Subordinate Engineer vide No. ECL/C-5(D)/Upgradation(E1)/E&M/EE/925 dated 21.05.2011 and was posted under Pandaveswar Area of ECL. In terms of Order issued by ECL bearing No. ECL/C-5(D)/Order/Revert Back/E&M/EE/2499 dated 18.10.2013 Mrinal Das was reverted to Non-Executive Cadre and he joined his previous grade on 01.11.2013. In the order of reversion, it was clearly mentioned that upon reversion to non-executive grade they would be treated as if they had not been upgraded and pay fixation would be done as per rule applicable for non-executive including benefits relating to NCWA-IX along with due increments. It is claimed that Mrinal Das is entitled to get difference of wages paid to him as an executive and his entitlement as a member of the non-executive cadre for the period he served as an executive and also for payment of wages for Sundays and holidays which a non-executive employee is entitled to receive. Reference has been made to the case of Mr. Apurba Kumar Roy and Mr. Ushapati Samanta who have received arrears of difference of wages on their reversion. Union has further referred to a Memorandum of Settlement between five (5) workmen and the management of Bankola Area of ECL, executed at the office of the Assistant Labour Commissioner (Central), Durgapur, where difference of Basic wages and wages for Sundays and holidays have been paid. The primary contention of the union is that with change of status of workman by the Order of CIL bearing No. CIL/C5A(iv)/B-303 dated

06/12.09.2013, the workman should be paid arrears of difference of wages and wages for Sundays and holidays where he had worked.

4. In order to substantiate their case union examined Mr. Mrinal Das as Workman Witness No. 1. He has filed his affidavit-in-chief where he has also claimed that in addition to the arrears of wages including Basic and Dearness Allowance, and wages for Sundays and Holidays the workman is entitled to quarterly and puja bonus on his reversion. Apart from reiterating the facts stated in the written statement, the retired workman has produced the following documents :

- (i) Copy of the Office Order dated 21.10.2013 by which the employees were reverted to their original substantive post has been marked as Exhibit W-1.
- (ii) Copy of the Pay Slip of Mrinal Das for the month of November 2013, as Exhibit W-2.
- (iii) Copy of the Pay Slip of Mrinal Das for the month of October 2013, as Exhibit W-3.
- (iv) Copy of applications dated 12.01.2012, 26.05.2014, 05.08.2014, and 05.12.2015 of Mrinal Das claiming for payment of difference of wages, as Exhibit W-4.
- (v) Copy of the Office Order dated 04.02.2011 by which the employee was promoted to the post of Subordinate Engineer, as Exhibit W-5.

5. It is deposed by the witness that as non-executive staff he received pay which was higher than the pay of executive staff members and filed a copy of Pay Slip for the month of November 2013 where his Basic pay is Rs. 45,477.48/-. He further stated that he received more Dearness Allowance and Charge Allowance than that in the Executive Grade. The workman witness stated that during his tenure as an executive his Basic pay was Rs. 26,346.82/- and Dearness

Allowance Rs. 22,547/- and that he did not receive any Charge Allowance while posted as an executive and no payment was made for Sundays and holidays, which he used to receive as a non-executive. Witness also deposed that no arrears of difference of wages has been paid to him after reversion. Puja and quarterly bonus are also not paid to him for the period he posted as an executive.

6. In course of cross-examination the witness deposed that as a member of Executive Cadre, employees are not entitled to payment for Sundays and holidays. He stated that as an executive he is not entitled to wages for Sundays and holidays. The witness admitted that no general order was issued by the company that on reversion from executive to non-executive, employees would be entitled to difference of wages for entire period they served in the Executive Cadre.

7. Mr. Pradeep Kumar Sarkar has been examined as Management Witness No. 1. He filed affidavit-in-chief in support of management's case. There is no dispute regarding reversion of Mrinal Das to Foreman In-charge in Non-Executive Cadre w.e.f. 12.09.2013. It is stated that CIL, in their order, provided that on reversion to non-executive cadre the employees would be paid consequential benefits considering as if they have not been upgraded and pay fixation would be done as applicable for non-executive as per rules. The witness further stated in his affidavit-in-chief that as the workman has availed all the benefits and facilities as an executive of CIL his claim for arrears of difference of pay between executive and non-executive during the period of his posting as an executive is not maintainable. So far as the claim for wages for Sundays and holidays the witness in his affidavit-in-chief stated that non-executive employees are deployed on Sundays and holidays as per quota or sanction but the executive employees are deployed on Sundays and holidays without any quota and they draw salary for thirty (30) days. Therefore, non-executives are not entitled for payment of wages for Sundays and holidays. Management witness during his examination-in-chief has produced the following documents :

- (i) Copy of Office Order dated 04.02.2011 of ECL by which the employees were upgraded to the post of Subordinate Engineer has been produced as Exhibit M-1.
- (ii) Copy of the Office Order dated 06/12.09.2013 issued by CIL for reverting employees to their original substantive post has been marked, as Exhibit M-2.
- (iii) Copy of Order dated 05.09.2013 issued by the General Manager (Personnel), CIL, as Exhibit M-3.
- (iv) Copy of Order dated 31.05.2013 relating to implementation of NCWA-IX, as Exhibit M-4.

8. In course of cross-examination Management Witness deposed that he is aware that after reversion of Mrinal Das he has received arrears of wages due to them from 2011 to 2013.

9. The moot question for consideration is whether Mrinal Das, the concerned employee is entitled to any arrears of difference of wages in respect of Basic pay, Dearness Allowance, and wages for Sundays and holidays between Executive Cadre and Non-executive Cadre for the period he served in the executive cadre i.e., from 01.06.2011 to 31.10.2013 and if he is entitled to any consequential benefit.

10. Mr. Chandi Banerjee, Union representative argued that on promotion to a higher cadre i.e., to the post of Subordinate Engineer, generally an employee would receive higher pay than he would receiving in the Non-Executive Cadre. It is argued that in terms of Office Order dated 21.10.2013 (Exhibit W-1) the employee was reverted to his earlier post i.e., Foreman In-charge in Non-Executive Cadre under Pandaveswar Area, wherein it was stated that he would be treated as if he has not been upgraded and pay fixation would be done as per rule

applicable for non-executive including benefits related to NCWA-IX. Referring to an Order dated 05.09.2013 issued by the General Manager (Personnel), CIL (Exhibit M-3), Mr. Banerjee argued that in furtherance of Office Order dated 31.05.2013 (Exhibit M-4) regarding exercise of irrevocable option by the interested Subordinate Engineers for reversion to their substantive post in Non-Executive Cadre it was clarified that upon reversion it will be treated as if they have not been upgraded and pay fixation would be done as applicable for non-executives as per rules with benefits relating to NCWA-IX and increments due, as per rule. The union representative urged that during the period of two years the concerned workman has been receiving less pay than he has been receiving in the Non-Executive Cadre and the clarification dated 05.09.2013 was issued to resolve the stalemate and to treat the reverted officials as if they had never been upgraded. It implies that during two years of service in the Executive Cadre, the workman was entitled to the arrear of difference of pay, payment of wages for Sundays and holidays, and as well as payment of Puja and quarterly bonus.

11. Mr. Mani Padma Banerjee, learned advocate for the management of ECL, in reply, argued that the order of reversion dated 21.10.2013 (Exhibit W-1) provided that on reversion the workmen would be treated as if they have not been upgraded and pay fixation will be done as per rule applicable for non-executives prospectively from the date of his joining. It is argued that such workmen are not entitled to any difference of wages for the period of their posting in Executive Cadre from 01.06.2011 to 31.10.2013. It is urged that the concerned workman has enjoyed all the benefits of the post in the Executive Cadre and has drawn the salary of an executive for thirty days a month. Therefore, he is not entitled to any wages for Sundays and holidays on reversion. Besides, a non-executive employee receives pay for twenty-six days and he is entitled to payment of wages for Sundays and holidays only if he is deployed as per quota / sanction during Sundays and holidays. In the present case the workman has received payment of

thirty days a month as executive and it cannot be presumed that they would have been employed on all Sundays and holidays in the year or are entitled to any difference of pay for all Sundays and holidays.

12. Considered the pleadings of the parties, materials on record and arguments advanced on behalf of workman as well as management. Admittedly, Mrinal Das and other co-employees were promoted to the post of Subordinate Engineer from the post of Foreman In-charge. General grievance surfaced when the employees on their promotion to the higher post were suffering financial loss due to less payment made in comparison to the wage they would have received for the same period in the Non-Executive Cadre. It appears from Order bearing No. CIL/C5A(iv)/B-303 dated 06/12.09.2013 (Exhibit M-2) issued by the General Manager (Personnel), CIL, that all two hundred four (204) Subordinate Engineers posted in various subsidiary companies of CIL were reverted to their substantive posts in Non-Executive Cadre in exercise of irrevocable option pursuant to order No. CIL/C-5A(iv)/718 dated 31.05.2013 (Exhibit M-4). In the order it is provided that on reversion they will be governed by the rules and regulation applicable to the Non-Executive Cadre employees and their pay in Non-Executive Cadre would be fixed as per rules applicable in the earlier Non-Executive Cadre held by them prior to upgradation. It is further clarified by order bearing No. 2637 dated 05.09.2013 issued by the General Manager (Personnel), CIL (Exhibit M-3) that upon reversion from Subordinate Engineers to their substantive post in Non-Executive Cadre it will be treated as if they have not been upgraded and pay fixation would be done as applicable for non-executives as per rules with benefits relating to NCWA-IX. Upon considering the sum and substance of the clarificatory order dated 05.09.2013, I find that two aspects are required to be considered. Firstly, on reversion to substantive post in non-executive cadre the employee is to be paid arrears as if had not been upgraded and therefore in my considered view he is entitled to the pay and benefit according to NCWA. The terms and

conditions of NCWA-IX are effective from 01.07.2011. Therefore, the concerned employee is entitled to receive arrears of difference of wages of Basic pay and Dearness Allowance (i.e., Basic pay and Dearness Allowance as non-executive, less the Basic pay and Dearness Allowance as Subordinate Engineer in the Executive Cadre) from 01.07.2011 to 31.10.2013 as per NCWA-IX and for the month of June 2011 as per rates of prevailing NCWA. He is also entitled to his Puja and Quarterly bonus for the period he was posted as an executive. Secondly, the claim of the union regarding payment of wages for one hundred nineteen (119) Sundays and fifteen (15) holidays during the period of his posting in Executive Cadre, it appears from the evidence on record that while being posted in the Executive Cadre the concerned employee has been paid wages for thirty days. A non-executive employee on the other hand is entitled to wages for twenty-six days a month and if he is deployed on Sundays and holidays then he would be entitled to payment for such days. It is not mandatory that a workman in the Non-Executive Cadre would be employed on all Sundays and holidays. It cannot be presumed that the concerned workman, if posted in the Non-Executive Cadre would have been deployed on Sundays and holidays or would have been entitled to pay. Therefore, I find and hold that the workman is not entitled to any additional wages for Sundays and holidays as claimed by the union.

13. In the present case there is a claim for payment of puja and quarterly bonus. The workman has not been paid any puja and quarterly bonus during his posting as an executive for the period from 01.06.2011 to 31.10.2013. It appears from the pleading of the management that reverted employees requested for payment of PRP. However, management admitted the same has not been paid till date. I therefore hold that Mrinal Das, U.M. No. 575849 who was posted under Pandaveswar Area on reversion and already superannuated from service is entitled to receive arrears of difference of Basic pay and Dearness Allowance from the management of ECL for the period from 01.06.2011 to 31.10.2013 during his

posting in executive cadre under Pandaveswar Area and on fixation of his pay under NCWA-IX he is also entitled to receive quarterly and puja bonus from the management of the company for the said period. Management of Khottadih OCP is directed to assess the dues within three (3) months from the date of communication of the Award and disburse the same to Mrinal Das, U.M. No. 575849 without further delay.

Hence,

ORDERED

that the Industrial Dispute is allowed, in part, on contest against the management of Khottadih Open Cast Project under Pandaveswar Area of Eastern Coalfields Limited. Mrinal Das (U.M. No. 575849) Foreman In-charge who has superannuated from service is entitled to payment of arrears of difference of Basic Pay and Dearness Allowance between Foreman In-charge, Non-Executive Cadre and Subordinate Engineer, Executive Cadre for the period from 01.06.2011 to 31.10.2013 as well as quarterly and puja bonus for the said period. Management is directed to assess the dues within three (3) months from the date of communication of the Award and disburse the same to Mrinal Das. Let 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.

Sd/-

(ANANDA KUMAR MUKHERJEE)

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