

**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. 57 OF 2022

PARTIES: Dinesh Kumar Gareri
Vs.
Management of Khas Kajora Colliery, ECL

REPRESENTATIVES:

For the Union/Workman: Mr. Jamaluddin Mia, General Secretary, RMBKS.
For the Management of ECL: Mr. P. K. Das, Advocate.

INDUSTRY: Coal.

STATE: West Bengal.

Dated: 17.02.2025

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-22012/101/2022-IR(CM-II)** dated 06.12.2022 has been pleased to refer the following dispute between the employer, that is the Management of Khas Kajora Colliery under Kajora Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

THE SCHEDULE

“Whether the action of the management of Khas Kajora Colliery, Kajora Area, M/s. E.C.Ltd. not re-designated/regularized and not given arrear as Winding Engine Operator after working more than 11 years in the post of Winding Engine Operator instead of Haulage Operator is justified or not? If not, what relief the workmen are entitled to and from”

1. On receiving Order **No. L-22012/101/2022-IR(CM-II)** dated 06.12.2022 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a Reference case was registered on 08.12.2022 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 and a list of witnesses.

2. Mr. Jamaluddin Mia, General Secretary, Rastriya Mulnivasi Bahujan Karmchari Sangh, filed written statement on 14.06.2023 for the first time disclosing the name of aggrieved workman as Dinesh Kumar Gareri. It is surprising that the Schedule of the Industrial Dispute, referred for adjudication,

does not bear the name of the discontented workman, in absence of which such Reference does not have any significance. Mr. P. K. Das, learned advocate for the management of Eastern Coalfields Limited (hereinafter referred to as ECL) filed the written statement on the same date i.e., 14.06.2023. In gist, the fact of the case as disclosed in the written statement of the union is that Dinesh Kumar Gareri bearing U.M. No. 125431 is posted as a Haulage Operator at Khas Kajora Colliery under Kajora Area of ECL. He is working as a Winding Engine Operator from 2013 and passed 2nd Class Winding Engineman Examination held on 14.12.2016 and a certificate was issued from the Board of Mining Examination. After passing the examination the workman requested the management on several occasion for regularizing him to the post of Winding Engine Operator but the management did not consider his prayer. Ultimately the workman submitted an application on 07.02.2021 for his posing as a Winding Engine Operator but the management did not pay any heed. The workman through the union has prayed for designating him as Winding Engine Operator.

3. The management of ECL contested the Industrial Dispute by filing their written statement. It is contended that Dinesh Kumar Gareri applied for selection / regularization to the post of Winding Engine Operator on 10.06.2017, after passing 2nd Class Winding Engineman's Examination. He has also submitted his certificate. Referring to the cadre scheme for non-executive employee of Coal India Limited it is submitted that a candidate having three years' experience as Haulage Khalasi in Category-IV and 2nd Class Winding Engine Khalasi Certificate issued by the Directorate General of Mines Safety (hereinafter referred to as DGMS) is eligible for the post of Winding Engine Operator in Category-V. According to the management Dinesh Kumar Gareri is having a 2nd Class Winding Engine Khalasi Certificate but his present designation of Haulage Operator in Category-III does not satisfy the eligibility criteria for his promotion / regularization to the post of Winding Engine Operator, Category-V. Management denied that the workman

was arbitrarily and illegally denied promotion to the said post and prayed for dismissal of the Industrial Dispute.

4. The moot point for consideration is whether Dinesh Kumar Gareri has fulfilled the criteria for his regularization to the post of Winding Engine Operator and to what relief the workman is entitled to?

5. In support of the workman's case the union examined Dinesh Kumar Gareri as Workman Witness No.1 and filed his affidavit-in-chief, wherein he specifically stated that after passing his Winding Engineman's Examination on 14.12.2016 from DGMS he approached the management for his regularization to the post of Winding Engine Operator but the management did not pay heed. On a perusal of the affidavit-in-chief, I find that it has not been drafted properly. The workman has produced a copy of his Winding Engineman's 2nd Class Certificate (Steam), which has been marked as Exhibit W-1. It is deposed by the workman that no formal order was issued by the company, in writing, asking him to work as a Winding Operator.

6. In cross-examination the witness deposed that he applied before the management of the company for his regularization to the post of Winding Engine Operator but was unable to produce any document in support of such prayer. The witness thereafter deposed that he submitted application to the Grievance Cell of Khas Kajora Colliery. The fact that he is posted as Haulage Operator has not been denied by the management of the company in course of cross-examination of the workman witness.

7. Management examined Mr. Proloy Dasgupta, Manager (Personnel), Khas Kajora Colliery as Management Witness No. 1. In his affidavit-in-chief the witness deposed that Dinesh Kumar Gareri is posted as Haulage Operator at Khas Kajora

Colliery. On 10.06.2017 he applied for regularization as Winding Engine Operator and his application is produced as Exhibit M-1. Copy of the Identity Card issued by ECL is produced as Exhibit M-2. Copy of the Certificate issued by the Board of Mining Examination in favour of Dinesh Kumar Gareri is produced as Exhibit M-3. Witness deposed that workman is not entitled to the post of Winding Engine Operator as he does not have three years' experience in the capacity of Haulage Operator, Category-IV as the workman is posted as Haulage Operator in Category-III. A copy of Pay Slip of the workman for the month of July, 2024 is produced as Exhibit M-4. A copy of the Cadre Scheme, applicable to the workman, is produced as Exhibit M-5. A letter dated 10.04.2019 issued by the Area Personnel Manager, Kajora Area, stating that there was overall surplus of eight Winding Engine Operator in the area and proposed that the employee may give three preferences of his posting, is produced as Exhibit M-6. A copy of letter dated 29.04.2019 addressed to Dinesh Kumar Gareri, seeking his consent for being posted in any other area of the company as per requirement is produced as Exhibit M-7.

8. In course of cross-examination the witness deposed that the workman submitted his option in response to the letter dated 29.04.2019. The purported reply was marked as 'X' for identification and was subsequently admitted in evidence as Exhibit M-8.

9. Mr. Jamaluddin Mia, union representative arguing on behalf of the workman submitted that Dinesh Kumar Gareri was appointed under the company as a loader in the year 1996. He was regularized to the post of Haulage Operator in the year 2012 and on verbal direction he was working as Winding Engine Operator since 2014. It is submitted that the workman passed his 2nd Class Winding Engineman's Examination from DGMS on 14.12.2016 (Exhibit W-1) and thereafter submitted his application before the company for regularizing him to the post of Winding Engine Operator (Exhibit M-1) but the management

did not consider the case of the workman. It is argued that the management by not taking any decision on the basis of the prayer of the workman on fulfilling his eligibility has caused suffering to him and resulted in his financial loss.

10. Mr. P. K. Das, learned advocate for the management, in reply argued that the workman was never deployed to work as a Winding Engine Operator. It is fairly admitted that the concerned workman has been posted as Haulage Operator and he also passed the 2nd Class Winding Engineman's Examination from DGMS. Referring to Exhibit M-5, the Cadre Scheme it is submitted that for the purpose of a workman to be regularized or promoted to the post of Winding Engine Operator in Category-V he must be literate and able to read and write in Hindi / regional language, he should have the qualification of Winding Engine Khalasi and undergone trade test and training for six months, on production of his Winding Engineman's 2nd Class Certificate on competency issued by DGMS he can fill up the post of Winding Engine Operator provided he has three years' experience as Haulage Khalasi in Category-IV. Learned advocate argued that as there was surplus of Winding Engine Operator at Khas Kajora Colliery the Deputy Manager (Personnel), Khas Kajora Colliery had issued a letter to Dinesh Kumar Gareri on 29.04.2019 (Exhibit M-7), asking him to submit his consent that on selection for deployment as Winding Engine Operator he will be posted in any other Area of the company, as per requirement, and asked for three preferences for his place posting. Learned advocate submitted that the workman did not comply to such letter and did not submit his willingness to be transferred to any other place. It is accordingly urged that the Industrial Dispute is liable to be dismissed.

11. I have considered the nature of dispute raised by the union on behalf of the workman, pleadings of the parties, evidence on record and argument advanced in favour of respective parties. In his evidence-in-chief Mr. Proloy Dasgupta (MW-1)

has stated that Dinesh Kumar Gareri is posted as Haulage Operator at Khas Kajora Colliery. He also stated that on 10.06.2017 the workman submitted an application seeking his regularization to the post of Winding Engine Operator. The management has not laid any emphasis upon the category of Haulage Operator in which the workman is working. It is also admitted that the workman has passed a Winding Engineman's 2nd Class Course from DGMS and is adequately qualified for his posting as Winding Engine Operator. It transpires from the evidence of management witness that the workman submitted an application before the management of Khas Kajora Colliery on 10.06.2017, informing that he is a certificate holder of 2nd Class Winding Engineman on the basis of examination dated 14.12.2016 and requested for his re-designation to the post of Winding Engine Operator (Steam). It is undisputed that the workman is posted as Haulage Operator prior to his passing the examination of 2nd Class Winding Engineman in the year 2016. According to the Cadre Scheme the workman has also fulfilled the number of years of experience necessary in the post of Haulage Operator before being designated as Winding Engine Operator. It is gathered from the letter dated 29.04.2019 issued by the Deputy Manager (Personnel), Khas Kajora Colliery (Exhibit M-7) that the proposal for encadrement of Dinesh Kumar Gareri as Winding Engine Operator was forwarded to the higher authority of ECL Headquarters for obtaining necessary approval but it was returned with comment that as there was overall surplus of eight Winding Engine Operator in the Area, the employee on being selected for deployment as Winding Engine Operator will be posted in other Area of the company as per requirement and the concerned workman was advised to submit his consent. The workman in his letter submitted on 16.12.2021 (Exhibit M-8) has expressed his consent that he is willing to be posted in any other Area on his regularization to the post of Winding Engine Operator. There can be no uncertainty about the criteria of experience and educational qualification to be fulfilled by the workman for being posted as Winding Engine Operator in Category-V. After compliance of all the requirement

by the workman, the management of the employer company cannot keep the workman waiting for his legitimate claim for a better designation which will only add to the betterment of the company by boosting the moral of the workman at his workplace. Deprivation of legitimate claim due to inaction of the management only reduces the efficacy of the workman. In the instant case, I find that the management has acted illegally by not regularizing Dinesh Kumar Gareri in the post of Winding Engine Operator since 2017, though he fulfilled all the conditions for the post. The management is therefore directed to consider the case of Dinesh Kumar Gareri and regularize him to the post of Winding Engine Operator w.e.f. the date of submission of his application on 16.12.2021 within three (3) months from the date of communication of the Award. The workman shall also be entitled to fixation of his Pay in the said post w.e.f. December, 2021.

Hence,

ORDERED

that the Industrial Dispute is allowed in favour of Dinesh Kumar Gareri, on contest, against the management of Khas Kajora Colliery, under Kajora Area of Eastern Coalfields Limited. The management of the employer company is directed to regularize Dinesh Kumar Gareri to the post of Winding Engine Operator w.e.f. December, 2021 and fix his Pay according to his designation within three (3) months from the date of communication of the Award and also pay the arrear dues, if any, to the workman within one (1) month thereafter. 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.