

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00388/2014

DATED THIS THE 25TH DAY OF OCTOBER, 2018

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI DINESH SHARMA, MEMBER (A)

Sri Narayan Singh
S/o Sri Prem Singh,
Aged about 47 years,
Working as
Junior OCM Grade-II,
Material Department,
KIOCL, Donimalai,
No. 120, Type-II, South Block,
Donimalai Town Ship,
Donimalai – 583 118,
Sandur Taluk, Bellary District

Residing at C/o. Krishnamma,
No. 406, Akash Nagar, NMDC,
Donimalai 583 118
Sandur Taluk
Bellary DistrictApplicant

(By Advocate M/s Subbarao & Co.)

Vs.

1. Union of India
Represented by its Secretary,
Department of Mines,
3rd Floor, A wing,
Shastri Bhawan, New Delhi – 110 001

2. The Kudremukh Iron Ore Co. Ltd.,
Govt of India Enterprises,
Having its registered office at
II Block, Koramangala,
Bangalore – 580 034

3. The Senior Manager (HR),
Kudremukh Iron Ore Co. Ltd.,
Govt. of India Enterprises,
II Block, Koramangala,
Bangalore – 580 034Respondents

(By Shri M.V.Rao, Counsel for Respondent No. 1 and
Shri M. Swayam Prakash, Counsel for Respondent No. 2 & 3)

O R D E R (ORAL)

(HON'BLE DR. K.B. SURESH, MEMBER (J))

Heard. The applicant suffered an injury on 19.06.2000 and under the Workman's Compensation Commissioner in Case No. WCA/NF/38/2005 he had been assessed with a disability of 15% and granted a compensation of Rs.71,000/- odd and apparently, on their own, the company had posted him to the Pollution Control Department for performing an alternate job.

2. Now the company would say vide Annexure-A11 that since the applicant is not fit to perform the regular job of Junior OCM as has been decided by their own Medical Board and having been given an alternate job in the Pollution Control Department the applicant is not eligible for regular promotion. In other words, functional incapacity of the applicant has been assessed as if not 100% at least more than 85% so as to bring it within the schedule. If it has been brought in into schedule as aforesaid, then the workman's compensation which ought to have been given to him under the same schedule ought to have been 100%. Since the Workman's Compensation Commissioner had acted on the inputs granted by the company also in adjudicating the disability as only 15%, the company cannot now turn around and say that the applicant had been fully incapacitated as it now appears that it is at their own motion that applicant had been given an alternate employment and not through his motion.

3. The applicant has taken an alternate contention also that under Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act of 1995 he cannot be discriminated against in matters of employment. Therefore, unless the disability had been assessed as 100% or within the frame of 85% to 100%, the denial of

promotion to the applicant cannot be justified as the company cannot have two stands, i.e., before the Workman's Compensation Commissioner and before the administrative adjudicatory authorities. Both have to be same and similar. Since the company had taken protection under the 15% clause of the disability found by the Commissioner then there is no reason to hold that the applicant is not eligible for promotion. Therefore if the applicant's juniors have been promoted and the applicant is also eligible for it as it is, then the applicant will be eligible for all the promotions cumulatively as also the financial benefits which go along with it. The OA is therefore allowed. A mandate is issued to the respondents to grant the benefits to the applicant in tune with the benefit granted to the next junior to the applicant in 2000.

4. The OA is thus allowed. No order as to costs.

(DINESH SHARMA)

(DR.K.B.SURESH)

MEMBER (A)

MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No. 170/00388/2014

Annexure A1 Copy of the Office Order dated 23.06.1993

Annexure A2 Copy of the Office Order dated 12.05.1994

Annexure A3 Copy of the office order dated 25.04.1995

Annexure A4 Copy of the letter dated 31.10.1997

Annexure A5 Copy of the office order dated 13.11.1998

Annexure A6 Copy of the medical certificate dated 22.11.2002

Annexure A7 Copy of the letter dated 12.01.2007

Annexure A8 Copy of the letter dated 05.03.2007

Annexure A9 Copy of the office order dated 05.03.2008

Annexure A10 Copy of the representation dated 09.11.2012

Annexure A11 Copy of the letter dated 26.12.2012

Annexure A12 Copy of the promotion policy of KIOCL

Annexure A13 Copy of the settlement dated 06.01.2006

Annexure A14 Copy of the settlement dated 31.08.2010

Annexures with Additional Affidavit

Annexure A28 Copy of the order dated 16.12.2017

Annexure A29 Copy of the details of salary

Annexure A30 Copy of the office order dated 09.01.2017

Annexures referred in rejoinder

Annexure R1 Copy of the joining report dated 07.04.1992 and office order dated 09.04.1992

Annexure R2 Copy of the office order dated 12.05.1994 and joining report dated 16.05.1994

Annexure R3 Copy of the promotion letter dated 31.10.1997

Annexure R4 Copy of the accident enquiry report, accident report and medical report

Annexure R5 Copy of the medical certificate dated 27.11.2002

Annexure R6 Copy of the representation dated 02.12.2002 and 13.12.2002

Annexure R7 Copy of the office order dated 17.12.2002 and joining report

Annexure R8 Copy of the office order dated 12.08.2003 and joining report

Annexure R9 Copy of the representation dated 11.10.2003

Annexure R10 Copy of the office order dated 29.07.2004 and joining report

Annexure R11 Copy of the order dated 29.02.2012 of W.C. Commissioner

Annexure R12 Copies of the letter dated 08.11.2003 & 28.11.2003

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