

GAHC010068522024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/1897/2024

ASSOCIATION OF SCIENTIFIC AND TECHNICAL OFFICERS (ASTO),
ONGC, HAVING ITS REGISTERED OFFICE AT SHED NO. 7 TEL BHAWAN,
DEHRADUN, UTTARAKHAND AND HEADQUARTER OFFICE AT ROOM NO.
2016, 2ND FLOOR, TOWER-A, VASANT KUNJ, NEW DELHI-110070,
THROUGH THE VICE PRESIDENT- ASTO, ONGC, ASSAM ASSET, SRI
PRAVIN KUMAR SONKAR.

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP.BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF
PETROLEUM AND NATURAL GAS,GOVT. OF INDIA, NEW DELHI, PIN-
110001.

2:OIL AND NATURAL GAS CORPORATION LTD.

REGISTERED OFFICE AT DEENDAYAL URJA BHAVAN
5
NELSON MANDELA ROAD
VASANT KUNJ
NEW DELHI
PIN- 110070.

3:THE CHAIRMAN AND CEO

OIL AND NATURAL GAS CORPORATION LTD.
DEENDAYAL URJA BHAVAN
5-A
NELSON MANDELA ROAD
VASANT KUNJ
NEW DELHI
PIN- 110070.

4:THE DIRECTOR- HUMAN RESOURCE

OIL AND NATURAL GAS CORPORATION LTD.
DEENDAYAL URJA BHAVAN
5-A
NELSON MANDELA ROAD
VASANT KUNJ
NEW DELHI
PIN- 110070.

5:THE EXECUTIVE DIRECTOR- CHIEF
ER

OIL AND NATURAL GAS CORPORATION LTD.
DEENDAYAL URJA BHAVAN
5
NELSON MANDELA ROAD
VASANT KUNJ
NEW DELHI
PIN- 110070.

6:THE GENERAL MANAGER (HR)- CORPORATE POLICY
OIL AND NATURAL GAS CORPORATION LTD.
DEPARTMENT OF EMPLOYEE RELATIONS
CORPORATE POLICY SECTION
GREEN HILLS
GROUND FLOOR
A- WING
TEL BHAWAN
DEHRADUN
PIN- 24800

Advocate for the Petitioner : MR. B D GOSWAMI

Advocate for the Respondent : DY.S.G.I.

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

06.05.2024

Heard Mr. B. D. Goswami, learned counsel for the petitioner. Also heard

Ms. A. Gayan, learned CGC for respondent no. 1; Mr. I. Choudhury, learned Senior counsel assisted by Mr. B. Choudhury for respondent nos. 2 to 6.

2) By this writ petition filed under Article 226 of the Constitution of India, the petitioner has assailed the order dated 26.12.2023 issued by the General Manager (HR), Corporate Policy (respondent no. 6) as well as the communication dated 19.03.2024 issued by the Executive Director, Chief HRD, ONGC (respondent no. 5).

3) The herein before referred order and the communication which are under challenge are quoted below:

HRD/PROM/2023/026

Dated: 26.12.2023

OFFICE ORDER (26/2023)

Subject: Modifications in criteria for promotion of E2 to E3 and E3 to E4 levels

ONGC Board of Directors in its 372nd meeting held on 25th October, 2023 at New Delhi accorded approval for modifications in criteria for promotions from E2 to E3 and E3 to E4 levels, effective from 01.01.2024 onwards, as under:

Top 75% of employees who are considered for promotion will be promoted with designation to the next higher level.

Existing provision for cut-off marks for next pay scale i.e. 11 marks less than last qualifying marks for promotion with designation, to continue.

Change in the weightages given for PAR and Experience: PAR weightage in the promotions is increased to 60 marks from the current 50 marks. Experience marks is reduced to 20 marks from 30 marks.

Other criteria shall remain the same.

(Vaskar Kr. Barai)

General Manager (HR)- Corporate Policy

Ref: HRD/PROM/E2-E3 & E3-E4/2024 Dated: 19.03.2024

Sub: Empanelment with designation from E2 to E3 and E3 to E4 w.e.f. 01.01.2024.

List of executives shall join the promoted post at their respective present

place of posting, unless specified, only after issue of formal orders. Executives whose promotions are linked with transfers (PLT) have to invariably join at their new place of posting by the specified date for whom promotion orders will be issued separately.

Further, these promotions are subject to all necessary clearances.

Promotions orders alongwith office orders for executives who are empanelled for next higher pay scale will be forwarded to respective Heads/Incharges HR/ERs.

Heartiest Congratulations to all the empanelled executives.

(Sheel Sood)

ED-Chief HRD.

4) The petitioner are the Association representing the Executive cadre of Officers of Oil and Natural Gas Corporation Limited (ONGCL). The Letter of Authority to empower the deponent to file this writ petition by a resolution adopted by the Central Executive Committee of the petitioner held on 04.03.2024 is produced in the course of hearing.

5) The learned counsel for the petitioners Association has submitted that a Memorandum of Understanding (MoU) dated 04.08.2024 was signed between the Association of the Petitioner and the ONGC management, which, amongst others, envisaged participation of the petitioner association in the consultation process while preparing the recruitment and promotion policy. It is further projected that in the consultation process which was initiated for a change in policy of promotion, a meeting was held between the petitioner association and the management of ONGC on 30.10.2023, wherein an impression was given that the existing promotion policies are under review, however, in contrast, it appears from the impugned office order no. 26/2023 dated 26.12.2023 that the Board of Directors of ONGC in its 372nd meeting held on 25.10.2023, had already given its approval for modifications in the criteria for promotions from E2 to E3 and E3 to E4 levels, effective from 01.01.2024

onwards.

6) Accordingly, the learned counsel for the petitioner has submitted that the consideration of promotion would be limited to top 75% employees with a cut off marks for the next pay scale as well as the change in weightages given from performance appraisal and experience. It is submitted that the said modifications in criteria was not done after consultation with the petitioner association and therefore, conditions which are adverse to their interest has been implemented and accordingly, the present challenge has been made.

7) Agitating the issue of maintainability, the learned senior counsel for respondent nos. 2 to 6 has submitted that in the meeting for consulting the Petitioner association which, was held on 13.10.2023, the petitioners association was informed of the reasons why the change of promotion policy was required. Referring to the minutes of the meeting held on 30.10.2023, (Annexure-11), Agenda no. 34 and 36 was read to demonstrate that the promotion policy was on account of review of existing human resource packages with several parameters which are mentioned in Agenda no. 34 and by referring to Agenda no. 36, it is submitted that while the promotions would be effected to 75% of the eligible executives based on performance appraisal, experience and qualifications, but the interest of the other executives were also protected by giving pay scale of next level to all the executives who scored certain marks. Accordingly, it is submitted that the policy was renewed with focus on linking the promotion with performance. In this regard, by referring to Para 6 of the case of *Roshan Lal Tandon Vs. Union of India and Others*, AIR 1967 SC 1889, it is submitted that the Constitutional Bench of the Supreme Court of India has held that once a person is appointed to his post of Office by the Government, the Government servants acquires a status and his rights and

obligations are no longer determined by the consent of the parties, but by statute or statutory rules, which may be framed and altered unilaterally by the Government. It is submitted that the same principle would apply in the affairs of the respondent no. 2 Corporation. Therefore, it is submitted that although consultation process was envisaged which was also done, but the members of the petitioners association cannot dictate the policy to the respondent no. 2 Corporation. It is submitted that the law which is already been laid down in the Supreme Court of India disentitles the writ petition to be maintainable.

8) It is also submitted that the consultative meeting was held on 30.10.2023 and the revised policy was notified on 26.12.2023. After that the Departmental promotion Committee commenced a massive exercise to promote eligible Officers and the promotion order which is annexed to this writ petition as an appendix to the communication dated 19.03.2024, (Annexure-18 A) , contains the names of hundreds of Officers of ONGCL, who have been given promotion at different levels. Accordingly, it is submitted that the petitioner association did not come at the earliest moment and allowed the promotions to take place and thus, after allowing the modified promotion policy to be implemented, the present writ petition has been filed. It is submitted that in paragraph 38 of the writ petition specific plea has been taken by the petitioner association that they were not assailing the promotion of those officers who were already given promotion. Accordingly, it is submitted that if this Court sets aside the promotion policy, it would have adverse affect to the Officers, who have already been promoted as those promotions cannot be saved.

9) In the said context, it is also submitted that the writ petition is bad for the non-joinder necessary parties as the Officers who were given promotion are not arrayed as respondents and orders adverse to their interest

cannot be passed without giving them any opportunity of being heard.

10) Further challenge to the maintainability of the writ petition is raised by submitting that the petitioner association has registered office at Dehradun and the registered Office of the respondent no. 2 is at Delhi. The policy was issued from the corporate Policy section of the respondent no. 2 located at Dehradun. Accordingly, it is submitted that either the Courts of Delhi or the courts of Dehradun alone will have the territorial jurisdiction to entertain the challenge made in of the writ petition.

11) While countering the point of maintainability raised by the learned senior counsel for the respondent nos. 2 to 6 and the learned counsel for the petitioner had referred to the order dated 01.05.2024, wherein it is recorded that the learned senior counsels for the respondent nos. 2 to 6 had raised a preliminary issue by filing an objection on 30.04.2024. Accordingly, on the issue of maintainability, the learned counsel for the petitioner has submitted that the Officers of the Assam Asset of ONGC have come forward to challenge the said amended promotion policy and that the deponent has sworn the affidavit in support of this writ petition has been empowered by way of resolution dated 04.03.2024 by the petitioner association to file this writ petition. It is submitted that the Assam Asset has a large number of officers and therefore, more officers of the Assam Asset will be adversely effected by the policy, and therefore, the present writ petition will be maintainable as the respondent no. 2 has an office at Assam. It is submitted that there is already an agreement between the petitioner association and the ONGC to include the petitioner association in the consultation process and as the decision to amend the policy was already taken on 25.10.2023 by the Board of Directors of ONGC in its 372nd meeting, the consultation process was already been made.

12) It is submitted that the statement made in para 38 of the writ petition will make it clear that the petitioner association is not challenging the promotion already made and the purpose of filing this writ petition for a direction that this court to promote all the remaining officers of the cadre of E2 and E3 level who would otherwise be deprived of promotion, by the unilateral decision of the respondent no. 2 corporation. Hence, it is submitted that there is no requirement to intake the officers already promoted as respondents as it could not affect the prayer made in the writ petition.

13) On the point of maintainability, having heard the both sides, this Court is of the considered opinion that the petitioner association is having its registered office at Dehradun and Headquarters at New Delhi and that the challenge in this writ petition is not only for the officers of the Assam Asset but the nature of challenge made in this writ petition which is directed against the office order dated 26.12.2023 and the communication dated 19.03.2024 cannot be said to be limited to the officers of the Assam Asset. Therefore ex-facie it appears that the territorial jurisdiction of this challenge does not fall within the jurisdiction of this Court.

14) On the issue relating to the non-joinder of necessary parties, this Court is of the considered opinion that in the event of the office order dated 26.12.2023 (Annexure 13) and the impugned communication dated 19.03.2024, (Annexure 18) are interfered with, there is no way that the promotions which had been made on 19.03.2024, in accordance with the new promotion policy can be saved. Therefore, the officers who were being promoted on the basis of office order dated 26.12.2023 vide promotion orders passed on 19.03.2024 prima facie cannot be saved. There is no doubt that without setting aside of the said policy, no effective orders can be passed by this Court to direct the

promotion of the 25% of remaining officers at the scale of E2-E3 and E3-E4. Therefore on the ground of non-joinder of necessary parties, this writ petition fails. In course of submissions made by the learned counsel for the petitioner association, he has placed a copy of letter under file no. 30(1)/2024-IR dated 10.04.2024 issued by the DGM(HR) -I/c.Corp.IR, addressed to the Deputy Chief Labor Commissioner (Central), there is an observation in para 2 of the said letter that the petitioner association has more than 70% of the total executive strength as its members. If all the officers are not its members, the petitioners association cannot challenge the promotion policy which effects persons who are not their members without impleading them as respondents. Therefore, in the absence of the officers, who are not members of the petitioner association, the present challenge would also not be maintainable on the ground of non-joinder of necessary parties, as the petitioner cannot be permitted to an espouse the cause of their non members.

15) Although this Court has not entertained this writ petition on merits, as the Constitutional Bench judgment of the Supreme Court of India in the case of Roshan Lal Tandon (supra) has been cited, it will only be appropriate that para 6 on which reliance is placed on this case is quoted below without any observations being made on the merit of this matter:

“We pass on to consider the next contention of the petitioner that there was a contractual right as regards the condition of service applicable to the petitioner at the time he entered Grade "D" and the condition of service could of be altered to his disadvantage afterwards by the notification issued by the Railway Board. It was said that the order of the Railway Board dated January 25, 1958 Annexure "B" laid down that promotion to Grade C from Grade D was to be based on seniority-cum-suitability and this condition of service was contractual and could not be altered thereafter to the prejudice of the petitioner. In our opinion there is no warrant for this argument. It is true that the origin of Government service is contractual.

There is an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is more one of status than of contract. The hall-mark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. The emolument of the Government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee. It is true that Article 311 imposes constitutional restrictions upon the power of removal granted to the President and the Governor under Article 310. But it is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different something in the nature of status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are fixed by the law and in the enforcement of these duties society has an interest. In the language of jurisprudence status is a condition of membership of a group of which powers and duties are exclusively determined by law and not by agreement between the parties concerned. The matter is clearly stated by Salmond and Williams on Contracts as follows:

"So we may find both contractual and status-obligations produced by the same transaction. The one transaction may result in the creation not only of obligations defined by the parties and so pertaining to the sphere of contract but also and concurrently of obligation defined by the law itself and so pertaining to the sphere of status. A contract of service between employer and employee, while for the most part pertaining exclusively to the sphere of contract, pertains also to that of status so far as the law itself has seen fit to attach to this relation compulsory incidents, such as liability to pay compensation for accidents. The extent to which the law is content to leave matters within the domain of contract to be determined by the exercise of the autonomous authority of the parties themselves, or thinks fit to bring the

matter within the sphere of status by authoritatively determining for itself the contents of the relationship, is a matter depending on considerations of public policy. In such contracts as those of service the tendency in modern times is to withdraw the matter more and more from the domain of contract into that of status." (Salmond and Williams on Contracts, 2nd edition, p. 12)."

16) The reason for quoting the relevant part of the said judgment is only because of the fact that the Constitutional Bench of the Supreme Court of India having observed that the right of the employer is available to make any change in the policy is required to be followed by applying the principles of Article 141 of the Constitution of India. However, it is made clear that the observation is only a passing remark and will not constitute any decision of the Court on merit.

17) Therefore, on the preliminary issues raised by the respondent nos. 2 to 6, this writ fails and same is dismissed. The question regarding lack of territorial jurisdiction is kept open to be decided in a more appropriate case.

18) The photocopy of the said communication dated 10.04.2024, is being kept as a part of the record.

19) Before parting with the records, it is made clear that this order shall not be a bar for the petitioner association to approach the jurisdictional Court after rectifying the defects if so advised.

JUDGE.

Comparing Assistant