

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.543 OF 2008
WITH
WRIT PETITION NO.2490 OF 2009
WITH
WRIT PETITION NO.1359 OF 2010
WITH
WRIT PETITION NO.1360 OF 2010

Dwarika Prasad,
of Mumbai, Indian habitant,
Residing at Flat No.P-2-11,
Challenger Tower, No.2,
Thakur Village, Kandivali (East),
Mumbai-400101. ...(Petitioner in WP/543/2008)

Anil Kumar,
Aged about 59 years,
of Mumbai, Indian habitant,
Residing at C-5/32, Santhal,
ONGC Colony,
Bandra Reclamation Bandra (West),
Mumbai-400050. ...(Petitioner in WP/2490/2009)

Gautam Adhikary
of Mumbai, Indian habitant,
Residing at A-102, ISM House,
Thakur Village, Kandivali (East),
Mumbai-400101. ...(Petitioner in WP/1359/2010)

Ramsewak Sonwanshi
of Mumbai, Indian habitant,
Residing at Flat No.1604,
Wing A, Samarpan,
(Near Magathane Telephone Exchange),
Western Express Highway,

...(Petitioner in WP/1360/2010)

-Versus-

- 1 Oil & Natural Gas Corporation Limited,
6, Jeevan Bharati Tower-II,
124, Indira Chowk,
New Delhi-110001.
- 2 The Chairman & Managing Director,
Oil & Natural Gas Corporation Limited,
6, Jeevan Bharati Tower-II,
124, Indira Chowk,
New Delhi-110001.
- 3 Director (Human Resources),
Oil & Natural Gas Corporation Limited,
6, Jeevan Bharati Tower-II,
124, Indira Chowk,
New Delhi-110001.
- 4 Group General Manager (HR & ER),
Head of Regional Office,
Oil & Natural Gas Corporation Limited,
4-NSE Building, Bandra Kurla Complex,
Bandra (East), Mumbai-400051.

..RESPONDENTS

● ● ● ● ● ● ● ● ● ● ● ●

Mr. H.D. Buch along with Mr. S.K. More, learned Advocates for the Petitioners.

Mr. S.U. Kamdar, Senior Advocate along with Mr. S.P. Bharti, Mr. Yashesh Kamdar and Mr. Dilip Kumar Mishra, Advocates for the Respondents.

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**CORAM : S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.**

Reserved on : 17th March, 2017

Pronounced on : 22nd September, 2017

JUDGMENT : (Per S.C. Dharmadhikari, J.):

1 These Writ Petitions involve a common question of fact and law. They were heard together and are disposed of by this common judgment.

2 Since arguments were extensively canvassed in Writ Petition No.543/2008, we take the facts from the paper book of this petition.

3 The Petitioner is a citizen of India. He belongs to Scheduled Caste (“Jatav” community of the State of Uttar Pradesh). The first Respondent before us is the Oil and Natural Gas Corporation Limited and Respondent Nos.2, 3 and 4 are it's senior officials such as the Chairman & Managing Director, the Director (Human Resources) and the Group General Manager (HR & ER). The Petitioner was an employee of the first Respondent and at the relevant time, was working as Deputy General Manager (Reservoir) at E-6 level.

4 The Petitioner seeks to challenge his repeated supercession in the matter of promotion from the post of the Deputy General Manager (E-6 level) to the post of General Manager (E-7 level). The Petitioner invites our attention to the Modified Recruitment and Promotion Regulations, 1980 (for short “the Regulations”) and the criteria for promotion laid

down therein.

5 It is stated that the petitioner joined the first respondent on 01.02.1978 in the post of Assistant Executive Engineer (Reservoir) at level E-1. The petitioner has since maintained a spotlessly clean service record and as a result thereof, he has been promoted from time to time to the higher posts. In the past the petitioner was always promoted when eligible and when promotion was due. The petitioner has rendered meritorious service for almost 30 years and has never received a single memo. The petitioner has received Awards and letters of appreciation from his superiors from time to time. The performance appraisal of the petitioner is free of any adverse remarks.

6 It is then stated by the Petitioner that he was last promoted to the post of Deputy General Manager (Reservoir) being Level E-6 on 01.01.1998. According to Regulation 23 of the said Regulations, he became eligible for promotion to the post of General Manager (Level E-7) upon completion of three years experience in the post of the Deputy General Manager (Level E-6) which is the feeder post for promotion to the post of General Manager (Level E-7).

7 According to the Petitioner, the promotions to the E-7 level posts which were supposed to have been granted on 01.01.2001 were ordered as late as in April 2003. Thereafter, the respondents started

considering promotions for two calendar years at a time instead of one calendar year as required. Thus, promotions which were due on 1.1.2002 and 1.1.2003 were declared as late as in April 2004 and similarly, promotions which were due on 1.1.2004 and 1.1.2005 were declared as late as in May 2005. It is averred by the petitioner that in contravention of directives issued by the Government of India all the aforesaid promotions were issued with retrospective effect. The said Government directive has been incorporated in the said Regulations.

8 It is stated that the petitioner who was to be promoted w.e.f. 01.01.2001 and who was within the zone of consideration in all aforesaid years, was continuously superceded. The employees junior to the petitioner and far outside the zone of consideration, were preferred and promoted to the E-7 level in contravention of the said Regulations and the Government instructions. Moreover, no reasons whatsoever were given as required by the said Regulations to the petitioner explaining why the petitioner was being repeatedly ignored for promotion to the post of E-7 level. The petitioner made a detailed representation dated 16th March, 2005 to the 2nd Respondent and pointed out provisions of the said Regulations and the various Government instructions which ought to have been followed. According to the Petitioner, he requested the respondents to reconsider his case so that he may get his due promotion to the post of

General Manager w.e.f. 01.01.2001. By their reply dated 12th December 2005, the respondents falsely stated that the petitioner could not establish his relative merit and hence was not recommended. Copies of the said representations are annexed at Exhibits A and B to the petition memo.

9 It is then stated by the petitioner that in continuance of the illegal practice of granting promotions in the aforesaid manner, the respondents on or about 01.06.2007 issued an order once again purportedly granting retrospective promotions from E-6 level to E-7 level. According to the said Order, 113 executives were purportedly granted promotions w.e.f. 1.1.2006 and 69 executives were purportedly granted promotions w.e.f. 1.1.2007. The said promotions were granted on the basis of the recommendations of the Departmental Promotions Committee (DPC) meetings held on May 2007.

10 It is stated in the petition that as per said Regulation 7 (2) and (8), the promotions are vacancy based. Accordingly, the respondents were required to determine the number of vacancies before conducting DPC proceedings. The petitioner says that once again the petitioner, though eligible and within the zone of consideration, was not promoted while officers far junior to the petitioner and clearly outside the zone of consideration, were granted promotion.

11 The Petitioner then stated that in the seniority list prepared

for E-6 level officers, the petitioner is positioned at Serial Number 50 in the order of seniority for promotions made from 1.1.2006/1.1.2007. Having regard to the current prevalent formula of ascertaining the normal size of the zone of consideration, which is one and a half times the number of vacancies plus three, the petitioner was clearly falling within the zone of consideration. The petitioner says that a closer examination of the said purported promotion order not only reveals that numerous officers far below the petitioner in the seniority have been promoted, but also reveals that about 28 officers far beyond the zone of consideration, ranking at serial numbers as far as 287, 297, 298, 301, 308, 309, 311, 312, 314, 315, 316, 320, 321, 322, 324, 326, 327, 328, 329, 331, 333, 334, 342, 345, 348, 352, 354 etc. in the seniority list have been promoted while the petitioner has been ignored without assigning any reason.

12 The petitioner further stated that the aforesaid formula applies for ascertaining the normal size of the zone of consideration out of the eligible candidates from the seniority list. According to the Petitioner, he clearly falls within the zone of consideration.

13 The petitioner has reproduced Regulation 7 (11)(iii)(b) of the said Regulations reading as under :

*“7(11)(iii)(b) : Merit Promotion by Selection-Corporate
Promotions (E-5 level and above) :*

- 1. The promotions at corporate level (E-5) level and above) are based on Merit and qualification scheme.*

2. *The marks are awarded for qualification, experience (PAR)s and performance in the interview.*
3. *The qualifying marks are 60 % in interview as well as over all for General candidates and 40 % for SC/ST/ candidates”.*

14 The petitioner has then stated that in respect of the promotions to E-7 level up to 12.1.2000 and 1.1.2001 the selection criteria followed by the Departmental Promotion Committee (for short “the DPC”) was in accordance with the provisions of the said Regulations. Thus, the criteria for selection was based on the following ingredients of merit :

- I. Qualification,
- II. Experience
- III. Performance Appraisal Report (PAR for short) and
- IV. Performance in the interview.

According to the Petitioner, the weight-age given to each of the aforesaid ingredients was as follows :

Qualification	-	15 marks Q1-15 Q2-10 Q3-07
Experience	-	15 marks (3 years-9 marks 4 years-11 marks 5 years-13 marks 6 years and above-15 marks)

PAR (Average of preceding 3 years) : 50 marks.
A+ - 50

A	-	40
B	-	30
C	-	20
D	-	10

Interview: 20 marks.

Total : 100 Marks.

15 According to the Petitioner, the Performance Appraisal was done in two parts viz. under the heads “Performance Appraisal” and “Potential Appraisal” as per the format prescribed. “Potential Appraisal” consisted of 10 attributes/traits. The Petitioner has annexed a specimen copy of the Performance Appraisal form at Exhibit C to the petition.

16 It appears, according to the Petitioner, that in the 237th Executive Committee meeting held on 27.01.2003 at Dehradun, certain new criteria was purportedly approved and the Executive Committee decided in the DPC meeting dated 25.02.2003 that the said purported new selection criteria would be followed for promotions from 2002 onwards and that the criteria mentioned in paragraph 14 of the petition memo would be applicable to promotions for 2000 and 2001. The Petitioner has annexed the copy of the Minutes of the proceedings of the DPC for promotion to the post of General Manager (E-7 level) w.e.f. 01.01.2000/01.01.2001, at Exhibit D to the petition.

17 It is further stated that in the meeting of the DPC for

promotions to the E-7 level w.e.f. 01.01.2002/01.01.2003, the DPC followed the following selection criteria :

- i. Qualification
- ii. Performance Appraisal Report and
- iii. Potential Assessment.

Thus, according to the petitioner, two vital components of merit viz. “Experience” and “Interview” were done away with and “Potential Assessment” (PA for short) was added as a new criterion. The weight-age given to each of the aforesaid ingredients was as follows :

Qualification	05 marks
	Q1-05
	Q2-02
	Q3-Nil
PAR	15 marks
	A+ - 05
	A - 03
	B - 01
	C - Nil
	D - Nil

Potential Assessment (PA) : 20 marks (These marks shall be given by DPC as per the ten attributes (AA-2, AV-1, BA-0)

Total : 40 marks

Minimum Eligibility Criteria (70 % of Q+PAR) + 60% of PA)

To qualify both separately.

The Petitioner has annexed the copy of the minutes of the proceedings of the DPC for promotion to the post of General Manager (E-7 level) w.e.f. 01.01.2002/01.01.2003 at Exhibit E to the petition.

was applied and followed by the respondents in contravention and violation of the said Regulation 7(11)(iii)(b) as reproduced above. The same was done without amending the said Regulations and hence without following the proper procedure. The new purported criteria followed by the DPC was made by the Executive Committee without approval of the ONGC Board. The said Regulations, which have a statutory force and effect, were illegally and arbitrarily by-passed on the basis of an executive fiat of the Executive Committee. The Executive Committee was not vested with the necessary power, authority or jurisdiction to alter the criteria to be followed and has done so in gross violation of the statutory Regulations. Moreover, the purported criteria followed from 2002 onward was never circulated in the ONGC. According to the petitioner, not even executive instructions were issued to remove the two vital components of merit promotion viz. experience and performance in interview. As a matter of fact, no amendment was made by the respondents to the statutory Regulations to incorporate the purportedly newly designed criteria.

19 The Petitioner, therefore, challenges the new criteria. He would submit that apart from being arbitrary and illegal, it has resulted in the selection which is not rational or objective. Ten attributes laid down for Potential Assessment (PA) are the same as the attributes relevant

under the head "Potential Appraisal" under the format prescribed for Performance Appraisal Report (PAR). The marks allotted by the Departmental Promotion Committee under the potential assessment are shown as 20 which is contrary even to the purported decision taken in the 237th executive meeting held on 27.01.2003 at Dehradun. However, the minutes of this meeting indicate that the marks allotted for the above are 10. It is in these circumstances that the Petitioner alleges that the entire decision making process smacks of malafides and fraud. The decision of the Executive Committee has been manipulated by the Departmental Promotion Committee (DPC) as regards the potential assessment (PA). The formula for Minimum Eligibility Criteria is defective and absurd in the sense that even the basic educational or professional qualification of an incumbent has been devalued and only 70% thereof has to be considered. The Performance Appraisal Report (PAR) and Potential Assessment (PA) are to be considered separately, though they are two descriptions of the same attributes and that has resulted in doubly considering the same set of attributes of an individual under separate heads. No material was available before the Departmental Promotion Committee to assess the potential assessment of the candidates. On this basis, the allegation of favoritism is levelled by the Petitioner.

20 Thereafter, the Petitioner refers to the mandatory policy

instructions of the Government of India contained in the office memorandum dated 15.05.1989 which inter-alia laid down that while modifying the Recruitment Rules, it should be ensured that interest of SC/ ST candidates is not adversely affected. As compared with the regulation mentioned in paragraph 13 of the writ petition, namely, Regulation 7(11)(iii)(b), the relaxation of 40% marks for SC/ST candidates with regard to performance in interview, was done away with when designing the new selection criteria. In the new criteria, no relaxation has been made for SC/ST candidates by the Respondents. Hence, the Government of India instructions are disobeyed.

21 Then, the Petitioner refers to the criteria followed by the Departmental Promotion Committee for promotions to E-7 level w.e.f. 01.01.2004/ 01.01.2005. The Petitioner stated that for the years 2006 and 2007, the purported criteria remained the same as was applied for the years 2002-2003 and 2004-2005, but the ratings of the Performance Appraisal Report (PAR) were revised. After setting out this revision in paragraph 21 of the petition, it is alleged that the criteria followed for the years 2006 and 2007 was also not in accordance with the said Regulations. The Petitioner has once again been deprived of promotion in an arbitrary and illegal manner.

22 The Petitioner also faults the constitution of the

Departmental Promotion Committee for the year 2006-2007. He complains that this constitution was not in accordance with the provisions of Regulation 7(1) of the said Regulations, so also, with the office order dated 30.08.1989 inasmuch as no member of the SC/ST community was nominated as a part of the Departmental Promotion Committee (DPC). The constitution of the Departmental Promotion Committee for the year 2006-2007 was also contrary to the provisions of Rule 4 of the ONGC Limited Service Rules, 1995 r/w paragraph 20 of the Presidential Directives dated 25.04.1991 issued by the Government of India which are quoted in paragraph 24 of the petition. Essentially, therefore, the Petitioner is pointing out the defects in the constitution of the Departmental Promotion Committee and further non adherence to the criteria for promotion to the post of General Manager (E-7 Level) by the Departmental Promotion Committee.

23 The Petitioner, after pointing out the Regulations in further paragraphs in great details, alleges that his continued supercession is contrary to even the directions issued by the Government of India. In particular, the Petitioner highlights the alleged injustice to the employees of the SC/ST category. The Petitioner also alleges that there is violation of the instructions issued by the Department of Personnel and Training, Government of India, set out in the Office Memorandum dated

06.01.2006. The promotions have been effected retrospectively from 01.01.2006 and 01.01.2007.

24 The Petitioner made two representations, details of which are set out in paragraph 32 and copies of these are at annexures I and J.

25 It is a common ground that this petition was placed before this Court and an order came to be passed on 10.04.2008. Thereafter, leave was sought to amend the petition and it was amended. The Petitioner then states that he was invited for a meeting and by Respondent No.4. The Petitioner was informed at the meeting, which he attended along with other representatives for promotions to E-7 Level, that it has almost been finalized by the Executive Committee and that the Director (HR)/ Respondent No.3 has desired that Respondent No.4 should obtain from the Petitioner an undertaking to withdraw the petition and tender an apology. The Petitioner expressed his inability to give an unconditional undertaking. Finally, Respondent No.4 agreed to accept the undertaking from the Petitioner to the effect that if the Management of Respondent No.1 favourably considers the case of the Petitioner's promotion to the post of General Manager (E-7 Level), he would withdraw the petition. After referring to the presence of other persons at this meeting, the Petitioner states that he handed over the letter. Then, that letter/ undertaking was forwarded to Respondent No.3. This

conditional undertaking was not acceptable and the Petitioner kept on receiving phone calls to alter this undertaking. It is in these circumstances that he would allege further and in the amended petition that because of his refusal to give an unconditional undertaking, he was denied the promotion.

26 It is in these circumstances that the Petitioner would allege that the Respondents have treated him unfairly, unreasonably and malafides are apparent as they desire that the Petitioner should give an unconditional undertaking to withdraw the petition in lieu of his promotion. For this reason, he would submit that the decision taken in the Departmental Promotion Committee meeting held for promotion to the post of E-7 Level w.e.f. 01.01.2008 be declared as null and void.

27 Then, in the grounds of the Writ Petition the Petitioner elaborates his challenge. It is not necessary to refer to these grounds in great details for the simple reason that the Petitioner has, during the course of arguments, invited our attention to the same.

28 In the light of the above pleadings, the Petitioner prays for issuance of appropriate writ, order or direction to declare as null and void the decisions of the Executive Committee (237th meeting) held on 27.01.2003 at Dehradun and the decisions/ recommendations of the Departmental Promotion Committee held for promotions to the post of

General Manager (E-7 level) for the years specifically set out in prayer clause A(ii) of the petition. A writ of mandamus is then sought directing the Respondents to promote the Petitioner to the post of General Manager (E-7 Level) w.e.f. 01.01.2002 on par with the others and grant consequential benefits.

29 An affidavit in reply has been filed after the Writ Petition was served on the other side by the Manager of Respondent No.1. He has stated that the employees of Respondent No.1/ Corporation are divided into two cadres, namely, "executive" and "non executive" categories. The executive category (Class-I) starts from E-1 level and the employees are promoted to higher executive cadres i.e. E-5 and above levels on the basis of the criteria fixed by Respondent No.1/ Corporation, which is contained in the Modified Recruitment and Promotion Regulations, 1980 and the instructions/ decisions taken by Respondent No.1 from time to time in it's Executive Committee meetings with the approval of the ONGC Board.

30 It is further stated that the said Regulations contemplate filling of positions by promotion (Regulation 7) and lay down the criteria for promotions to various levels of executive cadre. Regulation 11 contemplates Merit Promotion by Selection for E-3 and E-4 level officers and also for Corporate Promotions i.e. E-5 level and above.

31 It is further stated that the petitioner joined the 1st

Respondent Corporation in 1978 on the post of Assistant Executive Engineer (Reservoir) at E-1 level. The petitioner has been promoted from time to time and the petitioner was last promoted to the post of Deputy General Manager (Reservoir) being at E-6 level on 01.01.1998.

32 It is then stated that the promotion policy of the 1st respondent was codified vide said Regulations in 1980 in the context of long stagnation extending 7/9 years of executives specially at Junior and Middle Management levels. In the process, eligibility of promotion was accorded overriding priority as compared to available positions. However, the 1st respondent Corporation amended the policy from time to time to bring in improvements in the policy and to eliminate dissatisfaction amongst the executive cadre.

33 It is further stated that the petitioner was considered by the 1st respondent Corporation for his promotion to the post of General Manager (level E-7), but since the petitioner could not establish his relative merit, the Departmental Promotion Committee did not recommend his name for promotion. According to the Respondents, the 1st respondent Corporation by letter dated 12.12.2005 communicated the said fact to the petitioner. As the petitioner was not found fit in comparison to other officers who were eligible for the promotion, he was not promoted.

34 With reference to paragraph 8 of the Writ Petition, the Respondents have stated that it is correct that the petitioner was within the zone of consideration, but it is totally incorrect that the petitioner was superseded as promotions to corporate level i.e. E-5 to E-8 are only on merit and not on seniority cum merit. All those who are found “Fit” as per the benchmark set by the DPC, have been promoted on their relative merit. Thus, according to the Respondents, there is no supercession in respect to any of the executives as their inter-se seniority is always maintained in the promoted post. It is, therefore, stated that none of the officers was promoted to E-7 level in contravention of any regulation and/or instructions.

35 It is then stated in the affidavit in reply that though the officers who completed three years at the feeder post are entitled for being put in zone of consideration, but that is not the sole criteria for promotions. Any officer working at E-6 level for three years has to be found fit for E-7 level on relative merit by DPC consisting of all Functional Directors of the Company i.e. Director from the concerned discipline and all other Functional Directors.

36 With reference to paragraph 18 of the petition, it is denied by the Respondents that the modified new criteria is arbitrary or illegal or faulty or defective, lacking rationale or objectivity. It is totally incorrect,

according to the Respondents, that the attributes mentioned in the potential assessment are repetitive of the attributes of PAR. It is stated that PARs are filled up by the immediate controlling officers and on promotions, the Executives are assessed by the DPC members, who are Functional Directors of the respondent Corporation to judge the capabilities of the Executives to take up the higher responsibilities in the senior position, depending on the organization requirement at the time of promotion.

37 It is then clarified by the Respondents that as per the Government of India OM No. 1/9/69-Estt (SCT) dated 26.03.1970 as amended by OM No. 36028/21/2003-Estt (Res) dated 29.01.2004 read with OM NO. 36012/6/85-Estt (SCT) dated 1.11.1990, there is no reservation for SC/ST for promotion by selection within Group "A" posts which carry an ultimate salary of Rs. 18,300/- or more. However, it is stated that while recommending the name of Executives for E-7 level promotion, the DPC always took care to ensure that no SC/ST candidates, who are otherwise found 'Fit', are not left out by DPC. It is then stated that the reliance on office Memorandum i.e. OM No. AB/14017/22/89-Estt (RR) dated 15.05.1989 by the petitioner is totally incorrect and misplaced as the same nowhere contemplates modification of the recruitment rules. It is further stated that the DPC constituted by the

respondent Corporation while recommending the name of Executives for E-7 level promotion, always took care to ensure the proper application of Government instructions/policy in regard to schedule caste/schedule tribe candidates.

38 With reference to paragraph 23 of the petition, it is denied by the Respondents that the constitution of DPC for the year 2006-2007 was contrary to any provisions or any presidential directives as alleged. It is stated that DPCs for all years were constituted as per relevant Regulation r/w Office Order dated 30th August 1989. It is stated that the promotion to E-6 and E-7 level is promotion for senior level position, affecting the functioning of the respondent Corporation.

39 While replying to paragraph 25 of the petition, it is stated that the contention of the petitioner is totally misconceived and the same is denied. It is stated that the list of candidates selected was posted on the Respondent's internal website. It is further stated that the DPC followed the procedure for determining the merits as per criteria approved by the Board of the Respondents. The Respondent Corporation always made best efforts to ensure that PARs of all the executives are placed before the DPC, but if for any reason, in regard to any PAR of an executive not completed at the time of DPC meeting, in such case, PAR marks are arrived at by taking average of last available PARs in order to

avoid any delay in the matter.

40 With regard to the contentions raised in paragraph 32 of the petition, it is stated that what is stated therein is totally baseless and incorrect, therefore, denied. It is stated that there has been no supercession at all. The DPC graded all those executives fit and who met the prescribed benchmark, were put in the select list in the order of their inter-se seniority in the feeder grade. It is, therefore, stated that the petitioner, after failing to obtain any interim relief in the matter, sometime in the 1st week of May 2008, approached the respondent Corporation through All India SC and ST Officers Association and expressed desire to settle the dispute amicably by considering his case sympathetically. As per HR practice of the respondent Corporation of counseling, it was suggested to the petitioner not to litigate. During meeting with the 4th respondent, the Petitioner himself showed willingness to withdraw the case. It is specifically stated that none of the officers of the respondent Corporation have ever communicated to the petitioner to furnish an undertaking to withdraw the present petition or tender an apology as alleged or otherwise. The petitioner himself in his interest agreed to proceed in the manner as stated above to facilitate favorable consideration of his case on merits. It is, therefore, denied that the petitioner has been persuaded or pressurized for withdrawing the

petition and tendering any apology by officer of the respondent Corporation.

41 Thereafter, in the further paragraphs of this affidavit, Respondent No.1 asserts the contentions as aforesaid and denies whatever is contrary or inconsistent therein.

42 Thus, the stand and which is reiterated throughout is that all promotions from E-6 to E-7 level have been done in accordance with the existing Regulations/ Instructions.

43 The petition was amended and to the amended petition as well, an affidavit in reply has been filed and it is specifically denied that the Management exerted any pressure on the Petitioner to withdraw the petition.

44 There is an affidavit in rejoinder dated 17.07.2008 filed by the Petitioner and apart from reiterating the allegations and averments in the Writ Petition, he would submit that Respondent No.1 and the Association of Scientific and Technical Officers (for short "the ASTO") had entered into a Memorandum of Undertaking (MoU) dated 04.08.2004. Relying upon clause 3.8 of the MoU, it is stated that it was agreed that there will be no change in the promotion policy or criteria to be followed for promotion to E-5 or above level posts. It is once again denied that the changes in the promotion criteria in the 237th and 257th meetings of the

Executive Committee had been approved by the Board of Directors. It is reiterated that the promotion policy now applicable contravenes the Regulations. It is stated that there is no organization in existence by name "All India SC and ST Officers Association" as alleged by the Respondents and he has, therefore, reiterated that Respondent No.1 tried to persuade him to withdraw the petition and then only he would be promoted.

45 There is a further affidavit filed by the Petitioner dated 13.10.2011 in which the Petitioner states that while conducting and granting promotions, the Respondents have relied upon the minutes of the ONGC Board meeting held on 07.02.2004 under the agenda Item No.121.09 claiming that the promotion criteria evolved in the above referred Executive Committee meetings held on 27.01.2003 and 26.01.2004 was approved by the Board. However, the Petitioner reiterates that a perusal of the minutes of the 237th Executive Committee meeting held in January, 2003 and the Departmental Promotion Committee proceedings for deciding promotions to E-7 level posts w.e.f. 01.01.2002 and onwards, would clearly show that this criteria was never implemented. The minutes of meeting of the above Executive Committee, namely, 237th and 257th, were circulated much after the Board meeting held on 07.02.2004. That is how the Petitioner relies upon the information obtained by one Mr.Y.Chaturvedi by his RTI application

dated 03.07.2010.

46 Further, the Petitioner tries to falsify Respondent No.1's contention about the ratification obtained from the Board. The Petitioner submits that the Board approved the selection criteria not for the posts (E-5, E-6 and E-7 levels), but Group General Manager and Executive Director, namely, E-8 and E-9 levels. This is how the Petitioner meets the stand of Respondent No.1. He then relies upon the agenda items and RTI information. He also raises the issue of Respondent No.1's conduct before the Honourable Supreme Court of India.

47 It is common ground that this Writ Petition was earlier dismissed, but later on, by the order of the Honourable Supreme Court, it came to be restored to this Court's file. The Petitioner, thus, in several paragraphs of this affidavit relies upon the information obtained under the Right to Information Act, 2005. Then, he refers to the master chart for promotions to the post of General Manager and submits that there is an arbitrary and illegal adjustment of marks in the garb of Potential Assessment (PA).

48 The Petitioner refers to each of the master charts of promotions, namely, w.e.f. 01.01.2002, 01.01.2003 and reiterates that while considering the same candidates by the same Departmental Promotion Committee on the same date and at the same time for

01.01.2006 and 01.01.2007, the Departmental Promotion Committee has evaluated PA and has given two separate and different assessments of PA under the head "DPC Marks" in case of several candidates. Once again the Petitioner has raised the issue of absence of one SC/ ST member at the Departmental Promotion Committee.

49 This detailed further affidavit required a response from Respondent No.1 and through their Manager (HR), they filed another affidavit dated 18.01.2012. The Respondents raised the issue of delay and laches and acquiescence to submit that the petition deserves to be dismissed with heavy costs. It is submitted that it is alleged by the Petitioner that he was due for promotion since 01.01.2002, but he was denied the same. He was superseded allegedly at that time, but such occasions have been questioned belatedly in 2008, namely, after the period of four years. The Petitioner has sought to challenge new promotion policy implemented by Respondent No.1 for corporate level promotions w.e.f. 01.01.2002. It is urged that under the same policy, the Petitioner was promoted to E-7 level in 2009. During 2002 to 2008, approximately 5400 officers from E-5 and above levels have been promoted. They have been promoted under the new promotion policy for corporate level promotions based on modified criteria and thereafter, till the date of filing of this affidavit, 3400 officers approximately in E-5 level

and above have been promoted. It is, therefore, clear that the Petitioner was aware of this policy, he was considered for promotion under this policy, but having not obtained it till 2008, now out of frustration, the Petitioner and others have challenged this new promotion policy.

50 Then, it is asserted that hardly four officers have challenged the Modified Promotion Policy for corporate level promotions implemented by Respondent No.1 since 01.01.2002. It is stated that about 8800 officers in corporate level are promoted since 01.01.2002. Hence, the new policy is widely accepted.

51 In paragraph 5 of this affidavit, Respondent No.1 says as to how there is change in the legal entity, namely, earlier it was ONGC Commission, but after the repeal of the earlier enactment, namely, ONGC (Transfer of Undertaking and Repeal) Act, 1993 (Act No.65 of 1993), Respondent No.1 became a public limited company. It is now under the corporate structure and managed as a company registered under the Indian Companies Act, 1956.

52 Respondent No.1 in paragraphs 7 and 8 of this affidavit has traced the history of the guidelines and regulations inter-alia in the matter of corporate level promotions and transfers. After referring to the initial Regulation, namely, the ONGC Recruitment and Promotion Regulations, 1980, it is urged that after repeal of the earlier enactment,

Respondent No.1 framed the ONGC Service Rules, 1995 (for short "the Service Rules"). The relevant portion with regard to the recruitment and promotional avenues appearing in paragraph 8, firstly states that the recruitment to the posts under the Company shall be subject to the Recruitment and Promotion Rules of the Company. Then, Rule 20 of the Service Rules is referred classifying the promotions into two categories, namely, selection and non selection posts. This relevant portion reads as under:-

"The selection post were defined as posts -- promotion to which shall be made by selection based on merit with due regard to seniority. It was further provided in the said Rules that promotion shall be made in accordance with the relevant provision of the ONGC Recruitment and Promotion Rules i.e. the Recruitment and Promotion Regulation, 1980 as modified from time to time."

53 Respondent No.1 then refers to the Board meeting held on 06.02.1997 at which there was discussion on the point of modification to the Regulations of 1980, the mode of promotion for E-5 and above levels and it was decided to modify the Regulations and now the Modified Recruitment and Promotion Regulations, 1980 (for short "MRPR") are in force. The said Regulations retain some of the earlier provisions and particularly the merit based promotion for E-5 and above levels and those who are fulfilling minimum three years experience are eligible to be

considered. That is how subsequent promotions have been granted and every endeavour has been made to adhere to the MRPR and relevant rules. It is stated that there has never been any charge of illegality or irregularity, much less, arbitrariness when a larger number of officers were granted promotions under the same set of Regulations and Rules.

54 After referring to the organizational restructuring, the affidavit refers to the deliberations with the Association of Scientific and Technical Officers (ASTO) of Respondent No.1 which is a representative body of all officers of Respondent No.1. The deliberations were also on the point of promotions and other related service issues. As far as the Corporate Rejuvenation Campaign (CRC) is concerned, while implementing the same in the matter of corporate level promotions, the Board in its 92nd meeting held on 30.05.2002 discussed, deliberated and approved the criteria for filling up the posts of Executive Directors (E-9 level) as recommended/ decided in the 16th Human Resources Management Committee meeting held on 16.05.2002. That criteria was approved by the Board in this meeting of 30.05.2002. The approved criteria is set out at page 237 of the paper book in paragraph 14 of this affidavit.

55 It is in these circumstances that the process of deliberations continued with the ASTO and there were MoUs entered and executed

particularly the MoU dated 30.09.2002. Pursuant thereto, it was decided that corporate level promotions w.e.f. 01.01.2000/ 01.01.2001 would be as per the old criteria and w.e.f. 01.01.2002, the modified criteria contemplated by the Management would apply.

56 In paragraph 16 of this affidavit, there is a reference to the 237th meeting of the Executive Committee held on 23.01.2003. It discussed the issue of modifying the criteria for other corporate level promotions, namely, E-5, E-6 and E-7 w.e.f. 01.01.2002. In that meeting, it was decided that the promotions w.e.f. 01.01.2000, 01.01.2001 and 01.01.2002 shall be on the basis of the criteria adopted therein. Setting out this criteria in great details including changes brought about, in paragraph 17 it is stated that after the modified criteria applied to the promotions of Executive Directors, the issue was further discussed in the 257th meeting of the Executive Committee. It is in these circumstances, the minutes of the Executive Committee meetings have been extensively referred and copies thereof are annexed. Then, there is reference to the 92nd Board meeting, 237th and 257th Executive Committee meetings. All the decisions taken in these meetings were placed in the Board meeting held on 07.02.2004. Thus, there is transparency and Respondent No.1 modified the criteria in regard to the corporate level promotions dispensing with the two previous parameters, namely, interview and

experience and introduced Potential Assessment (PA) as one of the criteria in addition to qualification and Performance Appraisal Report (PAR) for all corporate level promotions. In the chart at page 241, paragraph 19 of the affidavit, earlier criteria, deliberated, further deliberated and approved criteria are extensively set out.

57 In paragraph 20, it is pointed out as to how the Petitioner was considered for E-7 level promotion in 2001. That was on the basis of the earlier criteria. However, he was not selected. Then, he was considered for promotion for E-7 level in 2002/ 2003 by the Departmental Promotion Committee on the basis of the modified criteria, but he could not be promoted as he did not meet minimum eligibility criteria. It is stated that this modified criteria was applied to consider the Petitioner for promotion in the years 2004, 2005, 2006 and 2007. In such consideration, no personal interviews were held. The Petitioner was not promoted only because he could not meet the minimum eligibility criteria in both parameters, namely, qualification, PAR and PA. In 2008, he could not secure cut off marks decided by the Departmental Promotion Committee and therefore, he was not promoted. In 2009, he was considered by the Departmental Promotion Committee and has been promoted under the modified criteria which he has accepted. Hence, the Petitioner having participated in the process throughout and not

questioning the criteria for all these years, he is now estopped from challenging the same. It is stated that the Petitioner was very much aware about the modified promotion policy/ criteria as he knows the details of promotions including the names of officers who gained the promotions. He was very much aware about changes in the promotion policy and that he had been considered by the Departmental Promotion Committee since 2002 without interview. It is in these circumstances that all the allegations made by the Petitioner are denied including those in the further affidavit and the stand in the earlier affidavit of Respondent No.1 has been reiterated.

58 It is not necessary for us now to refer to each of the subsequent paragraphs of this affidavit. It is stated in paragraph 22(c) that the extract of the Board meeting held on 07.02.2004 (decisions taken therein), the office orders have all been provided to those who have asked for the same, by the Recruitment and Promotion Section, of Respondent No.1. Thus, there was no secrecy. In the subsequent sub-paragraphs, details of promotions gained by the officers are pointed out. It is specifically stated as to how the promoted officers included those from the SC/ ST categories and who were found suitable by establishing their relative merits. In every promotion from 2002-2003 onwards, SC/ST officers have been promoted after due consideration from E-6 to E-7 level. Substantial

number of SC/ ST officers have gained promotions and for that matter, in 2005, 48 SC officers and 16 ST officers were considered, out of which, two were selected from SC category and one from ST category. Every year this went on and in the year 2006, 37 SC officers were considered, out of which, 22 were selected. In the year 2008, 33 SC officers were considered for promotion from E-6 to E-7 level and 15 SC officers were selected. Out of 14 ST officers who were considered for promotion, 09 were selected. It is in these circumstances, the allegations about discrimination against the SC/ ST candidates have been met and they are denied.

59 At page 279 of the paper book, we have the extract of the minutes of the 34th ONGC Board meeting held on 06.02.1997 at New Delhi and clauses 34.13 and 34.14 contain the proposals for modifications in the existing recruitment and promotion regulations for Executive and Non Executive posts.

60 It is on the above material that we have considered the rival contentions.

61 Mr. Buch, learned Advocate appearing for the Petitioner, would submit that the Petitioner was working as the Deputy General Manager (Reservoir). This is E-6 level post in Respondent No.1 Corporation. The Petitioner is complaining about supercession from E-6 to E-7 level. Meaning thereby, those juniors and appointed after the

Petitioner, were selected for promotion and the Petitioner was overlooked. The Petitioner was completely unaware of the new policy and in that regard, Mr. Buch would rely upon Regulation-23 of the said Regulations which prescribes the criteria for promotions. That is not followed in the case of the Petitioner's supersession. A new criteria was applied.

62 Referring to the pages 279 to 281, 285, 289 and 292 of the paper book, Mr. Buch would submit that every modification/ change in the Recruitment and Promotion Rules will require specific approval of the ONGC Board. Mr. Buch would submit that Respondent No.1 is deliberately creating confusion by referring to the criteria/ modified criteria. It is a common ground, according to Mr. Buch, that once there are Rules in place and specifically providing for promotion criteria, then, they alone would govern the exercise of promotion. They cannot be displaced or brushed aside by some other criteria allegedly adopted. In any event, the modified criteria was never approved nor brought for approval of the Board.

63 Mr. Buch would submit that Respondent No.1 would rely upon the resolutions of the Board meeting held on 07.02.2004. However, their contentions are belied if one refers to page 317 of the paper book. That is a copy of the confidential communication dated 24.03.2004

addressed to all members of the Board enclosing therewith the minutes of the 121st meeting of the Board held on 07.02.2004 at New Delhi. Page 325 of the paper book is nothing but a part and parcel of the said minutes at item No.121.09. The heading of this item is "Corporate Promotions-Selection of Group General Manager/ Executive Directors". There is a detailed reference to the promotion policy, but it is evident that there is no approval to the changes in the criteria/ policy of promotion from E-6 to E-7 level. Alternatively and without prejudice, Mr. Buch would submit that there is no specific approval to the changes or modifications in the promotion policy for the posts at this level. The Board resolutions only speak of E-8 and E-9 level posts. Mr. Buch would submit that his arguments would find support from the copy of the agenda of the Board meeting particularly at page 157 of the paper book.

64 The Petitioner, according Mr. Buch, is unaware of any 257th meeting of the Board or any decision taken therein. It is submitted by Mr. Buch that at page 122 of the petition, what is specifically annexed is a copy of the minutes of the 257th Executive Committee meeting held on 26.01.2004 at Dehradun. From page 122 of the paper book, it is evident that these minutes were circulated on 21.02.2004. In such circumstances, the decisions of the executive meeting or recommendations with regard to the policy of promotion or changes therein, could never have been

approved by the Board as the Board meeting was convened and held on 07.02.2004. By referring to page 249 of the paper book, Mr. Buch would submit that there is no presumption that the Board members were aware of the Executive Committee decisions. They could never have been aware of the same in advance. Even if some members of the Board and Executive Committee are common, one can never in law infer a deemed knowledge of the Board meeting and particularly about such important policy decision.

65 Alternatively and without prejudice, Mr. Buch submits that even if the Board resolution is valid and the Executive Committee decisions have been approved and can be termed as legal, still there is no notification or amendment to the MRPR. Mr. Buch would refer to the pages 242, 243 and 257 of the paper book, which are paragraphs of the affidavit in sur-rejoinder and particularly paragraph 21 thereof, to submit that the documents annexed thereto and particularly the extract of the minutes of the Board meeting would reveal that the goalposts keep on changing.

66 Mr. Buch relies upon pages 15, 80, 81 and 87 of the paper book, to urge that nothing that is stated by the Petitioner is a figment of his imagination, but borne out and supported by the record. There is no consistency in the policy of promotion and particularly the executive level

posts. The result is that there is a complete arbitrariness, favoritism, nepotism and lack of transparency. Mr. Buch would, therefore, submit that the Petitioner's allegations stand proved by the marks allotted while considering the candidates for promotion. They keep on changing as per the whims and fancies of the Departmental Promotion Committee. These changes have been made so as to enable the Departmental Promotion Committee to shift or change its policies.

67 Mr. Buch then refers to page 233 of the paper book which is nothing, but paragraph 8 of the affidavit in sur-rejoinder of Respondent No.1, to submit that the actions impugned are arbitrary and unreasonable and there are no guidelines prescribed. In such serious matter of promotions from E-6 to E-7 level (top level executive posts), the Departmental Promotion Committee has been given total freedom and latitude. There are no guidelines which would guide and advise the Departmental Promotion Committee in this matter. It is the subjective satisfaction of the Departmental Promotion Committee which has resulted in lack of objectivity in the assessment. The assessment has not been impartial.

68 Mr. Buch then invited our attention to the position of the Petitioner insofar as the PAR is concerned. In that regard, relying upon page 224 of the paper book, which is a table showing factual details of

incomplete PARs considered by the Departmental Promotion Committee for promotion from 01.01.2002 to 01.01.2008, Mr. Buch would submit that the representation of the Petitioner, copy of which is at page 46 of the paper book, has not been considered at all. All the above issues have been highlighted by the Petitioner in that representation including the complaint about his illegal supercession. Even the benchmark or criteria has been referred and it is submitted that in the promotion order dated 04.03.2005, the candidates at Sr.Nos.23 to 26 are junior to the Petitioner. The Petitioner at that time, had put in more than 27 years of service. That is how the subsequent act seeking to promote the Petitioner, cannot redress his grievances or the complaints set out in the representation and this petition. Mr. Buch would submit that they have been highlighted throughout and how they have been not redressed is apparent from a cryptic and virtually unreasoned reply, copy of which is at page 53 of the paper book. Referring to paragraphs 5 and 6 of the reply to the Petitioner's representation made prior to this petition, Mr. Buch would submit that the criteria is deliberately kept vague. There is no consideration of relative merit by applying a well defined and settled criteria. At every stage, some new benchmarks are set. Eventually, in matters of public employment, an employer like Respondent No.1 cannot violate the mandate of Articles 14 and 16 of the Constitution of India. Mr.

Buch would submit that the said mandate is totally flouted.

69 On the point of delay and laches, Mr. Buch would submit that this is a technical defence raised and that has no merit. There are reasons set out for the delay on page 36 paragraph 39 of the writ petition. They are sufficient and reasonable for overlooking and condoning the delay, if any. Alternatively and without prejudice, it is submitted by Mr. Buch that immediately after receiving the DPC proceedings under the RTI Act under covering letter dated 11.09.2007 (Exhibit K, page 104), the representation dated 15.10.2007 (Exhibit J, page 98) was submitted wherein, the issues of new criteria being in violation and contravention of the MRPR and being without approval of the ONGC Board were brought to the notice of the Respondents. That representation was never replied to. Mr. Buch further submitted that the Writ Petition was filed on the basis of promotion criteria contained in 237th Executive Committee meeting minutes dated 04.02.2003 by alleging that the DPCs from 01.01.2002 to 01.01.2007 had not followed the criteria. The marks for PA were 10 as per the above 237th EC minutes, but the DPCs had taken the marks as 20 and that too without amending the existing Regulation 7(11) (iii)(b) of MRPR. It was also urged that the two vital parameters, namely, "Experience" and "Interview" were eliminated. The 20% relaxation in qualifying marks for SC/ST candidates in interview was also taken away

in violation of the Government Office Memorandum dated 15.05.1989. In addition, other grounds, namely, DPC constitution, zone of consideration and prior approval of the ONGC Board were also included in the Writ Petition.

70 Mr. Buch further submitted that the controversial new criteria only came to the knowledge for the first time of the Petitioner when the Respondents filed the reply dated 02.07.2008 and enclosed as Exhibit B the copy of the 257th Executive Committee minutes circulated under the confidential covering letter dated 21.02.2004. Mr. Buch would submit that the Respondents did not raise any objection of delay and laches in their two affidavits in reply dated 02.07.2008 and during the oral arguments at the time of admission. Since the Writ Petition has been admitted by this Court, it shows that this Court has admitted the Writ Petition for consideration on merit and the argument of alleged delay cannot be raised by the Respondents at this belated stage and delay, if any, must be considered as condoned.

71 Mr. Buch would then submit that in compliance with Regulation 7(4)(c) of the said Regulations, the procedure for merit promotion is required to be decided two months in advance before the date of selection, but it has not been done. Similarly, in terms of Regulation 7(9), the candidates are required to be informed of their non-

selection and under which parameter of the promotion criteria, the candidates failed to score the required marks so that the candidates may overcome the deficiency on next occasion. But, nothing has been communicated to the Petitioner for his non-selection.

72 Mr. Buch then submitted that on page 257 paragraph (c), the Respondents have admitted that no office order was issued by them. It has been further averred that on demand, the modified criteria was provided to the employees. The claim of the Respondents is incorrect since while replying to the Petitioner's representation dated 16.03.2005, the impugned criteria was never disclosed by the Respondents. Thus, the new criteria was never disclosed by the Respondents till they replied to the present Writ Petition. All the DPC proceedings w.e.f. 01.01.2000/ 01.01.2001 have been made available in September, 2007 under the RTI Act.

73 Mr. Buch would submit that the new promotion policy is being followed even now, hence, it is a continuing wrong and results in perpetual arbitrariness on a large scale. The Writ Petition is not only confined to challenge to the new criteria, but other violations of the procedure have also been challenged in the Writ Petition. Even the new criteria has not been followed correctly by the DPC. As such, the minimum qualifying marks prescribed have been changed on each

occasion in between the proceedings illegally. Thus, there is no delay in filing this petition and if any, the same has been adequately explained.

74 On the point of estoppel, Mr. Buch would submit that it is explained in the Written Submissions as to how that principle has no application. Firstly, there is no question of waiver or estoppel when it comes to the Constitution and fundamental rights guaranteed by Articles 14 and 16(1) of the Constitution of India. Relying upon paragraphs 36 to 47 of the Written Submissions, Mr. Buch would submit that this principle has no application even on merits as throughout the Petitioner has complained that he was due for promotion, but deliberately overlooked.

75 Then, Mr. Buch sought to meet another objection raised by Respondent No.1 of non impleadment of promoted candidates. Mr. Buch would submit that it is not necessary that the Petitioner impleads all of them for the simple reason that the present petition concerns E-7 level promotions w.e.f. 01.01.2002 to 01.01.2008 involving 386 candidates only. The subsequent promotions for E-7 posts w.e.f. 01.01.2009 have been made by Respondent No.1 at their risk and responsibility since this Court had clearly ordered that the subsequent promotions would be subject to the final outcome of the Petitioner. Hence, it is not necessary to join 5400 candidates as that is irrelevant and in any event, exaggerated claim.

76 Finally, on this point Mr. Buch would submit that when violation of the constitutional mandate as enshrined in the above Articles is highlighted, then, it is not permissible to raise a technical objection nor is there necessity to implead all the affected candidates. All individuals, who have been promoted, ought to have been made aware by Respondent No.1 about the pendency of this petition and their promotions are subject to the final result of this petition. Nobody has moved for his impleadment.

77 As far as the merits and particularly, constitution of the Departmental Promotion Committee is concerned, Mr. Buch invited our attention to paragraphs 75 to 81 of the Written Submissions and would submit that all his contentions have been summarized therein. Mr. Buch essentially concentrated on the plea of no approval from the Board of Directors and in that regard, relied upon paragraphs 13 to 23 of the Written Submissions which are additional submissions. They are in addition to those noted above by us.

78 With regard to the discrimination and arbitrariness, Mr. Buch in addition to his oral submissions, highlighted paragraphs 54 to 69 of the Written Submissions and for absence of criteria, he invited our attention to paragraphs 70 to 74 of his Written Submissions.

79 Mr. Buch would then submit that it is erroneous to contend that the Petitioner was never superceded. From what is set out by him in

the petition and in his further affidavits, the Petitioner has been superceded and though belonging to SC category, his interests have been not protected by the organization. On this point, Mr. Buch highlights paragraphs 82 to 86 of the Written Submissions.

80 To support all the above contentions, Mr. Buch relies on the extract from the commentary of Late H.M.Seervai on the Constitution, Volume-I, Third Edition. He would submit that the way the marks are allotted, reflects clear arbitrariness and discrimination. That violates the mandate of Article 16(1) of the Constitution of India.

81 In addition, Mr. Buch relies on the following judgments :-

- (i) *Govind Prasad vs. R.G.Prasad and others, 1994 (I) LLJ 943.*
- (ii) *P. Sadagopan and others vs. FCI and another, AIR 1997 SC 2700.*
- (iii) *Dr.Rajinder Singh vs. State of Punjab and others, JT 2001 (4) SC 538.*
- (iv) *UOI Through Government of Pondicherry and another vs. V.Ramakrishnan and others, JT 2005 (9) SC 422.*
- (v) *P.Mohannan Pillai vs. State of Kerala and others, AIR 2007 SC 2840.*
- (vi) *Union of India and others vs. Sangram Keshari Nayak, JT 2007 (6) SC 272.*
- (vii) *K.A. Nagamani vs. Indian Airlines and others, JT 2009 (4) SC 674.*
- (viii) *Jagdish Prasad vs. State of Rajasthan and others, JT 2011 (7) SC 384.*

- (ix) *Hardev Singh vs. UOI and another*, (2011) 10 SCC 121.
- (x) *K.Shekar vs. Indiramma and others*, AIR 2002 SC 1230.
- (xi) *Union of India and others vs. N.R.Banerjee and others*, (1997) 9 SCC 287.
- (xii) *Anami Narayan Roy vs. Suprakash Chakravarthy and others*, 2009 (3) Bom.C.R. 221.
- (xiii) *Union of India vs. B.S.Darjee and another*, JT 2011 (12) SC 25.
- (xiv) *UPSC vs. L.P.Tiwari and others*, JT 2006 (10) SC 624.
- (xv) *Dev Dutt vs. Union of India and others*, (2008) 8 SCC 725.
- (xvi) *Superintending Engineer, Public Health, UT Chandigarh and others vs. Kuldeep Singh and others*, (1997) 9 SCC 199.

82 Mr. Kamdar, learned Senior Counsel appearing for the Respondents/ ONGC, on the other hand, submits that this Writ Petition has no merit and must be dismissed. Mr. Kamdar would submit that the Respondents have pointed out in their affidavits in reply and sur-rejoinder as to how the Petitioner has conducted himself in this litigation. He has taken chances and by means of this petition, sought to pressurize the Respondents in meeting his unreasonable and unfair demands.

83 Mr. Kamdar submits that Mr. Buch can never dispute the proposition that Article 16(1) of the Constitution of India does not guarantee promotion. There is no right to promotion, but the right is restricted to being considered for promotion. That right to be considered

is assured to all, non Scheduled Caste and non Scheduled Tribe, and Scheduled Castes and Scheduled Tribe candidates. In this case, the Petitioner admits that there is no reservation in promotion. Assuming it has been provided, though not admitting it, the field and competition is restricted to reserved category candidates, still, they have to compete inter-se. It is only when they are found eligible and fulfill the required criteria that they can be promoted. None can, therefore, raise a dispute when he or she has expressly being considered for promotion, but not found fit.

84 Mr. Kamdar then submits that the Writ Petition is barred by delay and laches and deserves to be dismissed also because necessary parties have not been impleaded and joined as party respondents. He would also submit that the Petitioner is estopped from challenging the selection/ promotion process once he has participated in the same.

85 On merits, Mr. Kamdar would submit that the petition is misconceived and lacks substance. The Petitioner overlooks the fact that he was duly considered and when he was found suitable and met the required criteria and benchmark, he was duly promoted. It is pertinent to note that the Petitioner was repeatedly considered for promotion to E-7 level w.e.f. 2001, first under the earlier criteria and subsequently under the modified criteria. Inviting our attention to Annexure-D to the paper

book (pages 59 to 67), Mr. Kamdar submits that the Petitioner's performance was evaluated on the basis of the earlier criteria for promotion and he was not selected by the Departmental Promotion Committee. That DPC shortlisted certain candidates as suitable for promotion after considering details of the service records, PARs and performance in interview. There were approximately 355 candidates. Thereafter, for promotion w.e.f. 01.01.2002 to 01.01.2009, the Petitioner was evaluated on the basis of the modified criteria. There are several documents on record evidencing the same. For promotion w.e.f. 01.1.2002 and 01.1.2003, The Departmental Promotion Committee assessed approximately 424 candidates. After considering details of their service record, PARs and attributes, the DPC shortlisted the Executives suitable for promotion. Once again the Petitioner was not selected. Similarly, the Petitioner was part of a pool of 480 candidates considered and assessed by the DPC for promotion to E-7 level w.e.f. 01.01.2004 and 01.01.2005 (Annexure-G to the petition, pages 79 to 84). A pool of 509 candidates was considered and assessed by the DPC for promotion to E-7 level w.e.f. 01.01.2006 and 01.01.2007 (Exhibit H, pages 85 to 89). Although the Petitioner submitted the letter dated 06.05.2008 to Respondent No.1 to withdraw his petition if his promotion was considered favourably by the Management, the DPC did not find him fit

for promotion to E-7 Level. The Petitioner was not part of the list of Executives promoted to E-7 level w.e.f. 01.01.2008 which list was uploaded on the website of Respondent No.1 on 28.05.2008 (Annexure-M). Thereafter, the Petitioner was promoted to E-7 level w.e.f. 01.01.2009 and he accepted this promotion.

86 The events set out above, according to Mr.Kamdar, not only establish that the Petitioner was duly considered for promotion, but also the fact that he participated in the promotion process. In 2009, he accepted the benefit of promotion under the modified criteria. The Petitioner was aware that he had been considered for promotion, but had not been promoted. He was also aware that no interview had been conducted at the time of assessing the candidates for promotion w.e.f. 01.01.2001 onwards and he had not been called for any such interview. It is in these circumstances that Mr.Kamdar would submit that none of the arguments of Mr.Buch can be accepted.

87 Mr.Kamdar then urged that prior to modification of criteria for promotion to E-7 Level, Respondent No.1 has entered into the Memorandum of Understanding (MoU) with the Association of Scientific and Technical Officers (ASTO) of Respondent No.1. Mr.Kamdar submits that this MoU contains specific recitals about new Recruitment and Promotion Policy. It was agreed that this will be finalized by 15.11.2002

and will be applied and implemented prospectively. While reviewing the Recruitment and Promotion Policy, organizational requirements, merit and aspirations of employees will be borne in mind. It was agreed that promotion upto 2002 will not be linked with the review of Recruitment and Promotion Policy (R&P Policy). Therefore, introduction of the modified criteria for promotion w.e.f. 01.01.2002 was done with the approval of the Association.

88 It is then contended by Mr.Kamdar and without prejudice to the above, that there is no infirmity in the manner in which the DPC has assessed the candidates for promotion. The Oil and Natural Gas Corporation Limited Service Rules, 1995 (for short "the ONGC Service Rules") prescribe that the promotion to selection posts shall be made by selection based on merit with due regard to seniority, in accordance with the relevant provisions of the MRPR, 1980. Regulation 7 of the MRPR, 1980, which provides for filling up of vacancies by promotion, has been duly amended in the manner more particularly set out, according to Mr.Kamdar, in the relevant documents as also in the written submissions. Mr.Kamdar would submit that eventually all these are policy matters. There is no restriction on the power to amend the Recruitment and Promotion Regulations, except to the limited extent that modifications/ changes would have to be carried out with the approval of the Board.

Mr.Kamdar submits that from the Executive Committee Charter, it is evident that the Executive Committee is, inter-alia, responsible for deciding the policy and setting the guidelines for Corporate Level promotion and transfer.

89 Mr.Kamdar submits that unnecessary and uncalled for confusion is created by the Petitioner with regard to the minutes of the 237th meeting of the Executive Committee held on 27.01.2003 and 257th Executive Committee meeting held on 26.01.2004. The modifications to the criteria in the MRPR, 1980 were duly discussed in this meeting, but the criteria laid down in 237th meeting was not followed by the DPC for 2000-2001. It was decided that new criteria approved in the 237th meeting would be applied for promotion from 2002 onwards. Therefore, there was no change in the criteria in between the promotion process as alleged. The criteria laid down in 237th meeting was subsequently modified in the 257th meeting and it was the criteria as laid down in the 257th meeting that was finally adopted by way of amendment to Regulation 7 of the MRPR, 1980. Mr.Kamdar relied upon Item Nos.257.01.03 and 257.01.04 of the minutes of the 257th Executive Committee meeting. Thus, the criteria prescribed by the Executive Committee in 257th meeting was modification of the criteria prescribed under Regulation 7 of the MRPR, 1980.

90 Then, Mr.Kamdar submits that equally baseless is the argument of Mr.Buch that the modifications to the MRPR, 1980 made by the Executive Committee for promotion to E-7 level w.e.f. 01.01.2002, have not received any approval from the Board of the ONGC. Mr.Kamdar submits that the criteria has been duly approved by the Board and that is clear from the minutes of the 121st Board meeting of the ONGC held on 07.02.2004. Mr.Kamdar invites our attention to the specific approval by the Board in the words i.e. *"The Board approved the changes in policy for all corporate level promotion vis-a-vis practices under MRPR, 1980"*. Thus, the amendment to Regulation 7 of the MRPR, 1980 carried out by the Executive Committee was approved by the Board. The Regulation, therefore, stands duly amended. Mr.Kamdar submits that the modified promotion criteria was duly approved by the Board and that is referred in the agenda note prepared for the 183rd Board meeting of Respondent No.1. In that regard, our attention is invited to Exhibit-X to the rejoinder (pages 330 to 334 of the paper book). The MoU dated 04.08.2004 with the ASTO relied upon by the Petitioner, was executed after the 257th Executive Committee meeting at which Regulation 7 was amended and the 121st Board meeting approving this amendment. Further, at the time of this MoU, the promotions to the post of General Manager (E-7 level) w.e.f. 01.01.2002 - 01.01.2003 had already been announced by the DPC

in April, 2004. This was on the basis of the new criteria which did not involve an interview. Our attention is invited to Exhibit E to the petition, at page 69 in this behalf.

91 Mr.Kamdar submits that everything was within the knowledge of the ASTO and it's members, who were promoted under this policy. However, there is confusion created by the Petitioner by arguing that the modified promotion criteria was approved at the ONGC Board 121st meeting on 07.02.2004. Mr.Buch had argued that the minutes of the 237th Executive Committee meeting were not before the Board as they were circulated only on 21.02.2004. Mr.Buch had argued that this is after the date of the Board meeting. However, the date of circulation of the minutes of the 257th Executive Committee meeting is irrelevant. It is the date of the meeting which is crucial and relevant. Admittedly, 257th Executive Committee meeting was held on 26.01.2004 which is before the 121st Board meeting. In any event, Mr.Kamdar submits that the Respondents have clarified in paragraph 7 of the sur-rejoinder that the members of the Executive Committee were also the members of the Board. Therefore, they were well aware of the modifications in the selection criteria prescribed by the Executive Committee in it's 237th and 257th meetings. In any event, for the benefit of the Directors, changes in the promotion process were recapped by the Chairman and Managing

Director of the ONGC.

92 It is in these circumstances that Mr.Kamdar would submit that the agenda item or it's wording will not restrict the powers of the Board. The Board can pass a resolution in respect of the items not on the agenda. No member of the Board had objected to passing of a resolution in respect of the item by taking it up for discussion. Hence, any technical objection raised by the Petitioner is irrelevant.

93 Mr.Kamdar submits that there is no arbitrariness or illegality as alleged by the Petitioner. The DPC has not changed, much less arbitrarily, the minimum qualifying marks. The minimum qualifying marks as prescribed by the Executive Committee and approved by the Board, have not been modified by the DPC. Mr.Kamdar submits that the posts are limited and there are large number of eligible candidates. The DPC is required to identify suitable and meritorious candidates keeping in view the provisions of the Service Rules and MRPR, 1980. Therefore, overall score or cut off mark is a relevant factor taken into consideration by the DPC to ensure that most eligible and suitable candidates are selected based on number of vacant posts, with due regard to the seniority. Suitable candidates are to be judged by the DPC and all Executives and those who meet the prescribed benchmark, are to be in the select-list in the order of their inter-se seniority in the feeder cadre. However, where a

candidate does not achieve minimum qualifying marks in Q+PAR plus PA as prescribed under the modified promotion criteria, the candidate is not promoted, irrespective of his overall score. Mr.Kamdar has clarified that several Government Office Memorandums and policies would not apply, nor would bind the ONGC. It is an autonomous body.

94 Mr.Kamdar has then clarified that the Government Office Memorandum dated 15.05.1989 pertains to framing/ modification of the Service Rules. In the instant case, the Service Rules have not been modified. The Office Memorandum contains some suggestions and it is not binding or mandatory. Mr.Kamdar submits that throughout the promotion is merit based and if the MRPR, 1980 is the guiding and applicable Regulation, then, other modes prescribed for selection particularly in the Central Government Office Memorandum dated 08.02.2002 are inapplicable. That cannot override or supercede the MRPR, 1980.

95 Mr.Kamdar submits that in the merit based promotion, the best candidate has to be promoted and therefore, the Government Office Memorandums dated 14.06.1978 and 28.01.1982 cannot be applied to the Corporate Level promotions. The level of employees to which the Office Memorandum dated 28.01.1982 applies is different. The corporate level promotions such as E-6 to E-7 level concern high ranking and

increased salary class of employees.

96 Mr.Kamdar submits that there is not a single instance pointed out by the Petitioner by which this Court can conclude that the SC/ST candidates are deliberately overlooked. In fact, figures would point out the position to the contrary. Many of them have gained promotions by the very process, which the Petitioner has now questioned and challenged. Mr.Kamdar, therefore, relied upon the data in this behalf to urge that the ONGC has not acted arbitrarily or illegally. The contention that the new criteria has been applied in breach of Regulation-7(4)(c), is misconceived and incorrect and in any event, is an admission by the Petitioner that the criteria for E-7 promotion is merit based. Thus, there is difference between the procedure for determining the merit and criteria to be applied by the DPC. Mr.Kamdar once again submits that there is a bald allegation without any specific illustration or example.

97 Mr.Kamdar then submits that this Court cannot sit in judgment or in appeal over the assessment of the candidates including the Petitioner by the DPC. In the absence of any illegality or arbitrariness or perversity, this Court should not interfere with the promotions in writ jurisdiction as if it is a court of appeal. The minutes of the DPC meetings would demonstrate that it has duly considered the service record, PARs, ten prescribed attributes of each of the Executives eligible for promotion,

before finalizing the promotions.

98 Mr.Kamdar then reiterates the plea that the constitution of the DPC is valid. There is no breach inasmuch as non inclusion of a SC/ST person in the DPC is not deliberate. There was no Director in the ONGC from this category from 2006 onwards and hence, they could not find any place on the Committee. Mr.Kamdar submits that it is not enough to allege that there is non inclusion or exclusion of the SC/ST member from the DPC. The Petitioner will have to establish that such exclusion or non inclusion resulted in discrimination or arbitrariness and that eligible SC/ST candidates were denied promotions. There are no malafides alleged as well.

99 It is in these circumstances, Mr.Kamdar would submit that there is no merit in the petition. The Petition be dismissed and Rule be discharged.

100 In support of his contentions, Mr.Kamdar has relied upon the following judgments :-

- (1) *K.A.Nagamani vs. Indian Airlines and others*, (2009) 5 SCC 515.
- (2) *All India State Bank Officers' Federation and others vs. Union of India and others*, (1997) 9 SCC 151.
- (3) *Anil Katiyar (Mrs) vs. Union of India and others*, (1997) 1 SCC 280.
- (4) *Union Public Service Commission vs. Arun Kumar*

Sharma and others, (2015) 12 SCC 600.

(5) *R.Veerabhadram vs. Govt. of A.P., (1999) 9 SCC 43.*

101 For properly appreciating the above contentions, we must notice some basic facts.

102 The petition was filed after the Petitioner made the representation. That representation was forwarded through the proper channels. A copy of that representation is at page 46 of the paper book (Exhibit-A). If it is carefully perused, the same is addressed as an appeal for reviewing the DPC proceedings for the post of General Manager (E-7 Level).

103 Thus, the Petitioner is aware that there was DPC and which was set up for considering the eligible candidates for promotion to the post of General Manager (E-7). The Petitioner is aware of the hierarchy, in the sense how he came up to E-6 level. The Petitioner himself states in this representation that he was considered for promotion to the post of General Manager (Reservoir) for the year 2001 onwards, but complains that he was superceded by juniors five times. Juniors were in his own discipline as well as others. A careful perusal of this representation/ appeal would reveal as to how the Petitioner is aware of every minute detail. In paragraph 4 of this representation, he states that the merit promotions are required to be made by applying zone of consideration.

He then refers to the Office Memorandum dated 24.12.1980 and paragraph 3 thereof. He submits that the same contains a safeguard against excessive supercession due to large field of choice. The Petitioner is aware that this Office Memorandum restricts the field of choice upto three times the number of vacancies. Then, he complains that if adequate number of SC/ST candidates are not available within the normal field of choice, then, that field can be extended to five times of vacancies and SC/ST candidates (not others) coming within the extended field of choice be considered. Then, he refers to the subsequent Office Memorandums and paragraph 2 of the Office Memorandum dated 22.04.1992 and states that the zone of consideration has since been modified by reducing the normal field of choice to twice the number of vacancies plus four by retaining the provision of extension of field of choice upto five times for SC/ST candidates only. Then, in paragraph 5, he sets out as to how from the seniority list of E-6 level for filling up 33 vacancies, the field of choice is required to be restricted to maximum 70 candidates for General category and 165 for SC/ST candidates.

104 In this entire representation, we have not noticed a word about any changes, but the Petitioner complains that in the present case, there is contravention of the Regulations by grant of retrospective promotions. In prior paragraphs, he complains about inclusion of certain

candidates in the zone of consideration against the stipulation in the Office Memorandums. In paragraph 7, he points out the contravention of the Office Memorandums and reiterates that he has been overlooked for promotion. He has been superseded erroneously. There is no complaint of any malafide or deliberate action.

105 We have already reproduced in the foregoing paragraphs the reply to this representation and which clearly indicates that the eligibility criteria for corporate level promotion is merit-based. Though there is no reservation applicable, concessions are granted to the SC/ST Executives, who are in the zone of consideration for promotion so as to be within the number of vacancies for which the select-list has to be drawn up. They would be included in the list provided that they are not considered unfit for promotion.

106 The Petitioner then puts in issue the basis of promotion and alleges that the promotions were given by the DPC on seniority-cum-merit basis and not relative/ comparative merit. He then complains that the promotions due on 01.01.2006 and 01.01.2007 were made retrospectively. Once again he alleges that the Petitioner was not promoted and persons junior to him were promoted. He alleges that those out of the zone of consideration were promoted. The Petitioner was supplied all the information in answer to his application made under the

Right to Information Act, 2005. The Petitioner then perused these materials including the minutes of the meetings of the Executive Committee and complained that there was decision taken to follow the new promotion criteria w.e.f. 2002. He alleges that originally, the promotions were governed by the ONGC (Recruitment and Promotion) Regulations, 1980. He himself says that in 1997 with the approval of the competent authority, the Recruitment and Promotion Regulations, 1980 were modified and they came to be known as the Modified Recruitment and Promotion Regulations (for short "MRPR"). The Petitioner then puts in issue that the modification to the MRPR, 1980 was granted on the condition that it would require specific approval of the Board. He refers to the office order dated 14.03.1997.

107 The Petitioner then says that the promotions were governed and regulated under Regulation 7 of the MRPR, 1980. Promotions to the post of level-5 and above were governed by Regulation 7(11)(iii)(b) and the DPC has to be conducted accordingly. The criteria was qualification, experience, Performance Appraisal Reports (PAR) and performance in interview. 20% relaxation in qualifying marks was provided for SC/ST candidates.

108 All this would indicate that neither the promotion is a matter of right, nor is the right to be considered for promotion, denied arbitrarily

and capriciously. There were definite guidelines and criteria to guide the Authorities in the matters of awarding and granting promotions. There was never a pick and choose policy and neither that is the allegation. However, the projection by the Petitioner is that even in the merit based promotion, being a SC candidate, he should have been given more weightage and preference. However, if the criteria itself is qualification, experience and performance, then, it is open to the Authorities and particularly the DPC to evaluate and assess the relative merit of the candidates. If the assessment is totally arbitrary, unfair, unreasonable and results in denial of a right to equality enshrined in Articles 14 and 16(1) of the Constitution of India, then, depending upon other things, a writ court may interfere, else, in such matters this Court cannot substitute its opinion and view with that of the Authorities. They are the best judges as far as the relative merit is concerned. If they have certain guidelines and prescribed Regulations even in matters of Performance Appraisal, then, their judgment has to be respected unless it is vitiated in law or in the manner set out herein above. We cannot, in the matter of promotions, interfere merely because in the opinion of the Petitioner, he was unfairly treated and being an employee belonging to the Backward Class, his performance was not judged fairly. At the same time, the Petitioner does not dispute that there are candidates of SC/ST categories who have been

promoted. Thus, even SC/ST candidates were considered for promotion and being a SC/ST candidate does not place their constitutional right any higher than General Category candidates. They also have no vested right in the matter of merit based promotion, but their right is equally restricted to being considered for promotion. It is their merit either inter-se if there is reservation in promotion, but if there is no reservation, then, they have to compete with General Category candidates and their performance would be appraised and assessed with others as well. Once the criteria is merit based promotion, then, no complaint of supercession can be made and given the nature of the limited right vesting in the public sector employee. Hence, we do not think that we can interfere on some general or sweeping or vague allegations of injustice in the matter of promotion.

109 It is alleged that instead of prescribed criteria, new promotion criteria was introduced and adopted by the DPC through the back door method without amending the above referred Regulations and two very vital parameters (experience and interview) were eliminated and an arbitrary tool of PA with 50% weightage in total marks (with rider of 60% qualifying marks) was introduced.

110 The Petitioner contended that in terms of the PA, the DPC was given arbitrary and unguided power to award marks resulting in

granting or depriving the promotions to the candidates irrespective of merit. The entire selection, thus, is dependent upon these arbitrary marks given by the DPC under the PA column irrespective of performance/assessment of candidates in Q plus PAR.

111 In that regard, it is explained by the Respondents in the affidavits placed on record that the MRPR, 1980 is effective from 01.01.1997. The term "Appointing Authority" is defined in Regulation 2(a) of the MRPR, 1980 to mean, in relation to any post the ONGC and includes any person to whom the power to make appointment or promotion to that post has been delegated by the Board. The term "Board" means the Board of Directors of the ONGC. The term "Competent Authority" means the ONGC and includes the Chairman and Managing Director, Directors or any other person to whom the power in this behalf has been delegated by the Board. Then, the method of filling up the posts is set out in Regulation 3 and as far as the posts in the ONGC are concerned, they have to be filled in by a direct recruitment, promotion of employees already in the service of the ONGC, or borrowing the services of persons from the Central Government or State Governments or Public Sector Undertakings or Local or other Authorities, or any other method as may be decided by the ONGC. The category of posts, scales of pay, qualifications and other matters concerned therewith are set out in

Regulation 4 and sub-regulation (3) thereof gives the Board the power to change or modify any term or condition in the Regulations.

112 The age limit for direct recruitment and other matters to be followed while making the recruitment/ promotion is set out in Regulation 5. Regulation 6 deals with filling up of vacancies by direct recruitment and then comes Regulation 7 and that is exclusively dealing with the vacancies to be filled in by promotion. Sub-regulation (1) of Regulation 7 says that all promotions to the posts shall be considered by the Promotion Committee duly constituted by the Appointing Authority in accordance with the orders issued by the Corporation from time to time and it shall consist of not less than three members. The employees of the Corporation fulfilling the criteria for promotion to the posts in Schedule-I appended to the Regulations, shall be eligible for consideration for promotion. Then, there are two provisos to sub-regulation (2) of Regulation 7, which enable the DPC to decide the number of employees to be considered for vacancies when they are limited and the number of employees fulfilling criteria is more. However, there is further proviso which limits the number of employees to be considered for vacancies. Such vacancies meaning limited promotional vacancies, to be not less than twice the number of vacancies sought to be filled in. Sub-regulation (3) says where an employee of the Corporation, who fulfills criteria, is not

considered by the DPC, it shall record in writing the reasons for not considering such employee. Sub-regulation (4) deals with cases where the criteria for promotion is merit and in such cases, the Promotion Committee before selecting employees, must consider the service records and annual confidential reports. There is a discretion in the Promotion Committee and it may hold written examination or practical test or interview or any combination of these. However, it shall follow the procedure for determining the merit as laid down by the Corporation at least two months in advance of the date of such selection.

113 It is, therefore, apparent that there is no mandate to conduct an interview. Holding of interviews is discretionary and the Promotion Committee may either hold interview, written test or practical test. There is no merit in the argument of Mr.Buch that oral interviews were held, but later on dispensed with. Once there is an option or discretion as above, then, we do not see how the candidates like the Petitioner can complain about non-holding of interviews. Secondly, it is not open to him to complain when despite no interviews being held, he participated in the process. He participated in the process also when the interviews were held. We must, therefore, guard ourselves for all such complaints as are made by the employee like the Petitioner who took his chances and every time offered himself or his candidature for promotion.

114 The criteria for merit based promotion is set out in Regulation 7(4), whereas, the criteria for promotion of "seniority-cum-fitness" is set out in Regulation 7(5).

115 The DPC only can recommend to the Appointing Authority the candidates, who it considers fit in the order of merit when the merit is the criteria and in the order of seniority when the seniority-cum-fitness is the criteria. These recommendations are placed before the Appointing Authority who may or may not accept all or any of the same and may pass necessary orders and the proviso below sub-regulation (7) of Regulation 7 obliges the Appointing Authority to record the reasons in writing when it does not accept any recommendation of the Promotion Committee. When the number of candidates exceed the vacancies, then, the names of remaining candidates in the order of merit have to be kept in the list for further use for filling up the vacancies which may arise in future. Thus, this is a select-list and its life is of six months and which can be extended to further period of six months for the reasons to be recorded in writing. Sub-regulation (9) of Regulation 7 says that the employee shall be informed of his non selection in the case of promotion. All promotions upto E-7 level in the Corporation shall be effective from 1st January of every year.

116 Sub-regulation (11) of Regulation 7 reads as under:-

“7. Filling up of Vacancies by Promotion :

(11) The promotions will be carried out under following three criteria:-

(i) Seniority-cum-Fitness (Upto E-1 level)

(ii) Quantification Scheme (E-2 to E-4 level)

(iii) Merit Promotion by Selection

(a) At E-3 and E-4 level

(b) Corporation Promotions (E-5 level and above)

(i) Seniority-cum-Fitness :

Under 'Seniority-cum-Fitness' criteria all employees who fulfil the specified requirement of experience and qualification as specified in Schedule-I appended to these Regulations are considered for promotion by duly constituted Departmental Promotion Committee according to seniority subject to their fitness based on performance appraisal reports of relevant period and trade test and interview, wherever required.

(ii) Quantification Scheme :

(a) Under the quantification scheme, the executives will be assessed by a selection committee on the basis of qualification, experience and Performance Appraisal Reports of the relevant period. Maximum marks allocated to each of these criteria would be as follows:

<i>a)</i>	<i>Qualification</i>	<i>20 marks</i>
<i>b)</i>	<i>Experience</i>	<i>32 marks</i>
<i>c)</i>	<i>Performance Appraisal Reports (PAR)</i>	<i>60 marks</i>
	<i>Total 112 marks</i>	

NOTE :

Where one or more PARs have not been written for any reason during the relevant period, the DPC should

consider the PARs of the years preceding the period in question and if in any case even these are not available the DPC should take the PARs of the lower grade into account to complete the number of PARs required to be considered. If this is also not possible, all the available PARs should be taken into account.

(O.M. No. 23(9)/GOVT.INST/88-89/SCT Dated 23-6-1989

*F.22011/5/86-ESTT.D., Government of India
Department of Personnel & Training.*

*Ministry of Personnel, Public Grievances and Pensions
Dated 10-3-1989.*

<u>a) Educational qualification</u>	-	(Maximum 20 marks)
Q.1	-	20 marks
Q.2	-	15 marks
Q.3	-	11 marks
Q.4	-	07 marks
 <u>b) Experience</u>	 -	 (Maximum 32 marks)
1) <u>E-1 to E-2</u>	-	
4 years	-	16 marks
5 years	-	20 marks
6 years	-	24 marks
7 years	-	28 marks
8 years & above	-	32 marks
 2) <u>E-2 to E-3</u>	 -	
5 years	-	16 marks
6 years	-	20 marks
7 years	-	24 marks
8 years	-	28 marks
9 years & above	-	32 marks

3) E-3 to E-4

4 years	-	16 marks
5 years	-	20 marks
6 years	-	24 marks
7 years	-	28 marks
8 years & above	-	32 marks

c) PARs (ACRs) - (Maximum 60 marks)

A+	-	60 marks
A	-	50 marks
A-	-	40 marks
B+	-	35 marks
B	-	30 marks
C+	-	25 marks
C	-	20 marks
D+	-	15 marks
D	-	10 marks

- (b) In view of revision of format w.e.f. 1995, PARs in more than one format would be considered for promotion effective from 1.1.97 onwards for few years. Therefore, the following equivalency would be adopted for the purpose of awarding marks for PARs:

Assessment under the new PAR system (Effective from 1.1.95)	Equivalent to earlier Alpha Grading
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Exceptional	-	95 to 100	A+
Top performer	-	80 to 94	A
Very Good	-	65 to 79	A-

<i>Adequate</i>	60 to 64	B+
	55 to 59	B
	51 to 54	C+
<i>Inadequate</i>	40 to 50	C/D+/D

- (c) *For consideration for promotion within executive levels (E-2 to E-3 and E-3 to E-4) it is necessary to secure a minimum of 74 marks out of a total of 112 marks.*
- (d) *The period (months/years) for which an executive is rated “Below Average” (upto 31.12.94) or “inadequate” (1.1.95 and after) will be completely taken out for the purpose of giving weightage of marks for experience for making assessment of promotion under the Quantification Scheme.*
- (e) *All PARs of an executive at the existing level would be considered for assessment for the purpose of promotion to the next higher grade.*
- (iii) (a) *Merit Promotion by Selection at E-3 and E-4 level :*
1. *Executives at E-3 and E-4 level securing 86 and above marks in the first attempt (i.e. first year of consideration) under Quantification Scheme will be considered for predating of promotion by one year on the basis of interviews by the Selection Committee for merit promotions.*
 2. *The number of merit promotion to be carried out in an year shall not exceed 10 % of executives who have secured 74 or more marks in Quantification Scheme, and have been empanelled discipline wise at each level (E3 and E4). However, the minimum of posts generated shall be one in case even a single person has been promoted.*
 3. *The number of post of merit promotions i.e. 10 % of executives empanelled shall be rounded up to nearest full figure (0.5 and more will be counted as one)*
 4. *The number of post thus created shall not be carried*

forward.

5. *All the executives securing 86 or more marks in a particular discipline and level shall be called for interview.*
 6. *The marking system shall be as under :*
Maximum marks under Quantification scheme - 112
Maximum marks for performance in interview - 112
Total maximum marks - 140
 7. *Qualifying marks for interview shall be 16.8 (60%) for General/OBC and 11.2 (40%) for SC/ST candidates.*
- (iii) (b) *Merit Promotion by Selection – Corporate Promotions (E-5 level and above):*
1. *The promotions at Corporation level (E-5 level and above) are based on Merit and quantification scheme.*
 2. *The marks are awarded for qualification, experience, PARs and performance in the interview.*
 3. *The qualifying marks are 60% in interview as well as over all for General candidates and 40 % for SC/ST candidates”.*

117 A perusal of the same would indicate that the Petitioner was concerned with corporate level promotion (E-5 level and above). That is merit based promotion by selection. As far as that is concerned, the criteria or guiding principles are set out in Regulation 7(11)(iii)(b) and that indicates that the promotions at corporate level are based on merits and quantification scheme. The marks are awarded for qualification, experience, PARs and performance in interview. The qualifying marks are 60% in interview as well as overall for General Category candidates and

40% for SC/ST candidates. It is common ground, therefore, that there is eligibility criteria for promotion to different levels and set out very clearly in Regulation 7(23) and the Notes below the same. From all of these, it would be apparent that this is the merit based promotion and the PAR criteria is also set out in the same.

118 As far as the Service Rules are concerned, they are compiled differently and they are titled as "The ONGC Service Rules, 1995" and brought into effect from 24.04.1995. It is very clearly stipulated in sub-rules (1) and (2) of Rule 4 that the recruitment to the post under the Company shall be subject to the Recruitment and Promotion Rules of the Company. Nothing in these Rules and the ONGC Recruitment and Promotion Rules shall affect reservation and other concessions required to be provided for SC/ST and other categories of persons in accordance with the Presidential Directives and Orders/Instructions issued by the Government of India from time to time and adopted by the Company.

119 There may be office memorandums, but what is apparent is that these Office Memorandums of the Ministry of Personnel, Public Grievances and Pension, Department of Personnel and Training, Government of India, even in matters of promotions, have to be adopted, but if there are specific Rules and made for this aspect by the ONGC, then, even the Petitioner does not say that they should be ignored or

brushed aside.

120 To our mind, all this guarantees that there is no arbitrariness, discrimination, favoritism and nepotism in matters of promotion. There is also transparency which is assured in the process by these stipulations. When every thing as above is in place, then, merely because a particular employee amongst thousands of employees complains that he has been erroneously and illegally superceded, we have to be cautious and careful and not, with respect, get carried away.

121 In the affidavits in reply, Respondent No.1 has invited the attention of this Court to the pertinent fact that the petition pertains to promotion of E-7 level post. As far as that is concerned, the affidavit invites this Court's attention to the Memorandum of Understanding and clause 3.8 thereof. It is stated that it is incorrect to allege in the petition as also in the rejoinder that merely not annexing the documents, namely, extract of minutes of the Board meeting dated 07.02.2004, does not mean that such meeting was never held or that modified criteria was not approved by the Board. It is stated that modified criteria for all Corporate Level Promotions, namely, dispensing of interview and introduction of PA, was accepted and approved in the 92nd Board meeting of Respondent No.1. Thereafter, deliberations of 237th and 257th Executive Committee meetings followed by acceptance and approval by the Board of

Respondent No.1 on 07.02.2004 clearly show that introduction of PA and dispensation of experience and interview, introduction of marking system and increase in marks in PA from 10 to 20, have got approval of the Board of Respondent No.1. It is clear that the Executive Committee has authority to deliberate and make suggestion in regard to transparent promotions of employees. Its deliberations and discussions are approved by the Board. The modified promotion policy/ change in criteria is approved by the Board of Respondent No.1. Relevant extract of the minutes of the Board meeting dated 07.02.2004 has been reproduced in the affidavit in reply of Respondent No.1 dated 18.01.2012, which reads thus:-

"The Agenda papers for the said items were tabled by Director (HR). Especially for the benefit of new Navratna Directors, C & MD recapped the substantive changes introduced with CRC process in respect of promotions. There is a serious shortage of competent and qualified officers in the junior grades; on the other hand, career progression of the large number of qualified officers in the middle management is bottlenecked. The problem is compounded by the process of interview of all eligible executives for assessment of promotability, in addition to giving weightages for seniority and performance appraisal. The very process of interviewing large number of eligible executives in each grade was taking several years and therefore, promotions were being ordered with a backlog of as much as 2 to 3 years.... There have also been wide-spread resentment about the interview process itself because of the perceived lack of objectivity further to stop the practice of unqualified / under qualified employees getting

promoted to middle/ senior management, specific weightage for qualification now have been incorporated in the criteria. These sweeping changes were formulated and consensus building exercise carried out specifically with ASTO, representing officers' community. The Executive Committee has studied the problems and solutions in detail, and decided on the revised promotion policy to preempt and organizational collapse. These decisions conform to CRC approved by the Board and the Government.

The Board approved the changes in the policy for all corporate level promotions vis-a-vis policies under MRPR 80. It was further advised that for promotion to the grades E-8 (GGM) and E-9 (ED) the following sequence should be followed:"

122 It is in these circumstances, we are of the opinion that this Court cannot place a different interpretation far from substituting the opinion of the Board with any other opinion or conclusion. The minutes make it clear that it was not only the criteria for Grade E-8 and E-9 which was discussed, but the Board took cognizance, discussed and approved the changes in the policy for all Corporate Level promotions. We have carefully perused both the agenda and the minutes. It is common ground that items were taken up for discussion and the Board's decision has been recorded accordingly. If the agenda item was the proposal for modification in the existing Recruitment and Promotion Regulations, 1980 for Executives and Non Executives, then, merely because the proceedings did not go grade-wise or that the agenda item or minutes do not refer to specific grade, does not mean that either there was no agenda

item or no discussion or deliberation. We do not think that it is possible for us to indulge in any hairsplitting or guesswork. It is apparent that modified criteria for all corporate level promotions upto E-7 Level was duly discussed and deliberated upon by the Executive Committee and its recommendations and suggestions were approved by the Board. Thus, prior to the MoU all these decisions were in place.

123 It is then set out in the affidavit in reply and with all annexures that the Regulations framed are not statutory and the Executive Committee has full authority to deliberate, discuss and recommend or suggest modification in the relevant regulations as far as transfer and promotion. The Regulations infact guide Respondent No.1 in these matters and Mr.Buch does not dispute that these Regulations can be modified in the overall interest of the Corporation so also in general public interest. In that regard, the minutes of the 121st and 183rd meetings of the Board dated 07.02.2004 and 26.09.2008 are rightly relied upon. The modified criteria was introduced for better and improved functioning of Respondent No.1. The Executive Committee itself is a high power body comprising of the Chairman and Managing Director (CMD) and functional Directors. They are well versed and experienced persons of high caliber. We do not think that in the absence of any malafides, their decisions can be interfered with.

124 In any event, we find that the Petitioner was aware of the criteria. The modified criteria was given effect to immediately and not w.e.f. 01.01.2006 or 01.01.2007. The minutes of DPC meetings, Exhibit XI annexed to the rejoinder, would denote that eligibility criteria for E-7 level is three years experience at E-6 level in any discipline in Respondent No.1/ ONGC. The officers, who were appointed/ promoted to E-6 level on or before 01.01.2000, were considered. The eligibility criteria for selection was prescribed and the marks assigned are for qualification, PAR and PA. The minimum eligibility criteria was 70% of the Qualification plus PAR plus 60% of PA and to qualify both separately. The deliberations of the DPC and the criteria applied would indicate as to how the officers, who were 41 in number empaneled on 01.01.2003, were recommended for promotion by applying the modified criteria. It is in these circumstances that the Board meetings and thereafter, the consensus building exercise carried out with the ASTO resulting in the MoUs dated 30.09.2002 and 04.08.2004, indicate that Respondent No.1 took care of the interests and employees and their career prospects. They have been treated fairly. It is in these circumstances that the Petitioner's contention that he became aware of the new/ modified criteria only in 2007, is not supported by the record. There is no denial of the statement made in the affidavit in sur-rejoinder that the Petitioner himself participated in the

promotion process on and from 2002 onwards which was without interview and based on the modified criteria. Even if it is accepted, but not admitted that the Petitioner was unaware of the modified criteria, he should have made a grievance promptly after he was denied the promotion in 2002-2003. The Petitioner was aware that the procedure adopted was based on the modified criteria and there was no interview. The Petitioner thus, was not questioning the modified criteria or criteria as a whole and duly applied.

125 It is in these circumstances that we do not see as to how the functional test and criteria applied, suffers from arbitrariness or results in discrimination. It is the Chairman & Managing Director and all functionaries having vast experience and knowledge, who determine the potential by a fair process. They assess merits and demerits of individual employees and are in position to do so because of their vast experience and knowledge. If they adopt a rational and objective approach and do not deviate from the essential policy or transparency and fairness, then, merely because in a given exercise or in a particular DPC decision, some criteria was applied without deviating from the essential and underlying policy that cannot be the sole basis for alleging violation of the constitutional mandate. It has been explained in detail by Respondent No.1 in their affidavit in sur-rejoinder as to how problem solving, decision

making, planning and organizing are not forming the part of PAR and the team building, leadership, professional and managerial competence are significantly different. These attributes play an important role and the DPC while assessing suitability of candidates for higher Managerial position, takes this route. Hence, interview is not the only mode or method for assessing and judging the merit of the candidates. Once again it is clear that even the DPC comprises of senior officers, who with their expertise, experience and wisdom of years, arrive at an informed and rational decision. The decisions are made in the best interest of the organization. Therefore, meritorious juniors may find their way and can be promoted earlier. If the promotion is merit-based, then, that aspect is very vital and cannot be ignored.

126 Then, in matters of criteria for promotion and its modifications, it is clear that there are certain guidelines and procedural provisions. It is not as if a strict adherence to the same is contemplated. The criteria as discussed, debated and decided upon is to be made known to those who are eligible for promotion and could be considered for the same. It is not as if individual communications are contemplated. It is enough if the criteria to be applied is made known before the DPC meets. Apart therefrom, the DPC members judge the relevant merit and demerit of each candidate after perusing their profile carefully. Their performance

is recorded and such records maintained in ordinary and regular course of business, are placed before the DPC. The Annual Confidential Reports or related documents recording the performance, achievement and any misconduct or any act, which is detrimental to the interest of the organization, provides a safe guide to the DPC. It is not as if these aspects are not to be considered, particularly the integrity and character, performance has to be overlooked, when it comes to a SC/ST candidate. Like any other candidates, but similarly placed in matters of performance, character and integrity, a SC/ST candidate is preferred if that sub-serves larger interest of the organization. In other words, all things being equal, so as to encourage and give an opportunity to SC/ST candidates, even they are recommended for promotions by the DPC. The Government of India policies have been guiding Respondent No.1/ Corporation in such matters and consistent with the interest of Respondent No.1 they are adopted and applied as well. However, the Central Government policies are not necessarily binding. Therefore, not much capital can be made of the Office Memorandums and encouragement provided thereunder in matters of promotion to SC/ST candidates. There has been no provision brought to our notice in the nature of preference, reservation or relaxation.

Director from SC/ ST category was ever taken as a member of the DPC. It is pointed out that one Mr.Nathulal (Director, T & FS) was one of the member of the DPC for promotion to E-7 level w.e.f. 01.01.2002 to 01.01.2003 and 01.01.2004 to 01.01.2005. Hence, this contention is incorrect. Regulation 7(1) of the MRPR has been already referred by us and it very clearly says that all promotions shall be considered by the DPC duly constituted by the Appointing Authority in accordance with the orders issued by the Corporation from time to time and it shall consist of not less than three members. Thus, there is no mandate that there must be a SC/ST member in the DPC. Conversely absence of such member does not necessarily mean that there will be injustice to SC/ST candidates in matters of promotion. It is in these circumstances that we do not think that there is any merit in the argument of Mr.Buch on this point.

128 Further, we have ourselves carefully perused the relevant material and we find that there is no merit in the contention of the Petitioner on the point of criteria applied for promotions and approvals to the same by the Board.

129 We do not think that the Petitioner's case rests on the plea of arbitrariness alone. There is no introduction of PA by the back door. The argument is that Performance Appraisal and Potential Appraisal as per the format prescribed under the MRPR, 1980 together constitute appraisal of

the performance. The argument that Potential Appraisal consists of 10 attributes/ traits, but under the new criteria, PA was introduced also with 10 attributes, is not sound. The Petitioner contradicts himself because he only urges that out of 10 attributes of PA, 08 were common to the earlier appraisal attributes/ traits and there was only change in serial number. He may argue that same attributes are used for future assessment of candidates in PAR and PA, but we do not think that this is evaluation twice over. One is Performance Appraisal and another is Potential Assessment. Potential is judged bearing in mind likely contribution of the employee in future and in the best interest of the organization. It is not as if by reference to any attributes and master chart made by the DPC, it can be decided that no evaluation of individual attributes was done by the DPC. Merely because in the master chart, marks are given lump-sum under the heading "DPC Marks", would not mean that the assessment has not been done on the above lines. It has been clarified by Respondent No.1 that barring the Petitioner, nobody has any grievance about this procedure or method adopted. Apart from that, Respondent No.1 has clarified that in the light of large number of eligible candidates and limited number of posts available, the DPC is required to identify suitable and meritorious candidates. Therefore, their overall score or cut off is relevant factor. The process is that those achieving the prescribed

benchmark or minimum qualifying marks in Q+PAR rank higher in the select-list in the order of their seniority in the feeder cadre. We do not think that by this individual merits or demerits are not considered at all or weight-age is given to factors which are wholly irrelevant. Thus, irrelevant and irrational criteria has not been adopted in matters of promotion. Known tests and parameters have been adopted and applied with suitable modifications. This is a permissible course.

130 In the above circumstances, we do not think that there is any merit in the argument of Mr.Buch on the point of arbitrariness, non application of or lack of defined ad pre-determined criteria and constitution of DPC. We have already dealt with his argument on the point of approval of the Board of Directors to the modified criteria. We have also dealt with his argument on the interpretation and construction of the Regulations and their status.

131 In the final analysis, we find that Mr.Kamdar is right in urging that on the explanation that is provided on affidavits supported by records of the ONGC, this petition must fail.

132 Now, what remains for consideration are the judgments which have been cited by Mr.Buch.

133 The judgment of the Calcutta High Court in the case of Anil Kumar Joshi vs. Coal India Limited, Writ Petition No.12002 (W) of 2013

decided on 26.09.2014, was heavily relied upon by Mr.Buch. In that case, the Petitioners were Executives employed in the Coal India Limited and working in the Excavation Discipline in various subsidiaries of the Coal India Limited. They were working in E-6 Grade. They complained that they were qualified and eligible to be promoted as Executives from E-6 to E-7 Grade. The DPC marks were referred to argue that evaluation process in the new policy has been drastically changed from the existing one so as to frustrate the promotion of senior employees with greater experience. This was demonstrated by referring to the existing and new policy. That gave rise to a specific issue which fell for consideration, namely, whether, the vacancies of 2010 could be filled up by the policy of 2011 or whether, the same ought to have been filled up in terms of the policy prevalent in the same year and whether, the Rules relating to promotion can be drastically altered midway.

134 Firstly, such situation is not arising from the facts and circumstances in the case before us. Secondly, there is no occasion, therefore, to apply the principle that the amended Rules will not govern an exercise which has already commenced or in relation to the vacancies occurring prior to the amended Rules being brought into force. Hence, all judgments including Y.V.Rangaiah and others vs. J.Sreenivasa Rao and others, (1983) 3 SCC 284, State of Rajasthan vs. R.Dayal, (1997) 10 SCC

419 and B.L.Gupta vs. M.C.D., (1998) 9 SCC 223, have no application. It is in these circumstances that further issue or third limb of attack in Anil Kumar Joshi case (supra) does not arise.

135 That this view of the learned Single Judge of the Calcutta High Court has been confirmed or approved by the Division Bench, carries the matter, therefore, no further.

136 Then, Mr.Buch relied upon Bhagwandas Tiwari and others vs. Dewas Shajapur Kshetriya Gramin Bank, (2006) 12 SCC 574. The distinction between seniority-cum-merit and merit-cum-seniority in matters of promotion and the service law principles as a whole, was considered in this case and it was held that an officer has no right to be promoted merely on the ground of his seniority if he is not found fit to discharge duties of the promotional post. Further, on facts the Court found that if the promotion was by the Rules and the Rules provide for seniority-cum-merit and the marks were assigned for the same, then, the policy adopted resulted in shifting the focus from seniority-cum-merit as prescribed under the Rules to merit-cum-seniority. There was no stipulation in the circular for obtaining minimum marks for assessing the merit and that is how whole basis was found to be altered. It is in that context, the Honourable Supreme Court emphasized the difference between seniority-cum-merit and merit-cum-seniority. These principles

are too well settled and they would have to be applied on case to case basis. We, therefore, do not find that reliance placed on paragraphs 5 and 6 of this judgment is well placed or apposite.

137 Mr.Buch then relied upon the order passed by the Honourable Supreme Court in the case of Sukhdev Singh vs. Union of India in Civil Appeal No.5892/2006 decided on 23.04.2013. There also, the emphasis was that the ACRs have to be faithfully and properly written. They have to be written within the time prescribed as far as possible. Further, there is an obligation to communicate adverse remarks. We do not see any reason to rely on this judgment.

138 Though in the Written Submissions Mr.Buch has relied upon several judgments, however, he compiled only these 07 to 08 judgments and orders.

139 Mr.Buch tendered the documents and particularly the chart enlisting the promotion criteria followed by the DPC. On perusal thereof, we do not think that the Petitioner's grievance can be carried any further. There is no alteration or deviation of such magnitude as would enable us to interfere with the promotional exercise in this case. The qualification, experience and appraisal of the performance is common to all years post 01.01.2002. Upto 01.01.2001 interview was there, but given up later on.

140 Even the extract from the Constitutional Law of India by

H.M.Seervai, 3rd Edition, Volume-I, Section-I only reveals that it is a well settled principle and doctrine. The word "arbitrary" is employed in the context of discretionary exercise. However, whether, arbitrary or capricious are the words which can be employed to quash every promotional exercise, would depend on the facts and circumstances of each case. There has to be proof of arbitrariness, else such finding cannot be reached.

141 In the view that we have taken, it is not necessary to refer to all the judgments cited by Mr.Kamdar, but his reliance upon the judgments in the case of K.A.Nagamani and All India State Bank Officers Association Federation (supra) is accurate. These two judgments refer to a eligibility condition and which condition can be termed as reasonable. How the eligibility criteria for promotion is capable of being modified and could in a given case allow certain flexibility, is enumerated in these judgments. In the facts and circumstances of this case, reliance on these two judgments is, therefore, correct. Equally, the principles of judicial review and which have been pressed into service by Mr.Kamdar are relevant and we have applied these very principles while expressing our reluctance to interfere in the present promotional exercise.

142 As a result of the above discussion, the Writ Petition fails. It is dismissed, but without any order as to costs.

143 Mr.Buch conceded that barring some factual details, essentially the controversy in this Writ Petition is identical to Writ Petition Nos. 2490 of 2009, 1359 of 2010 and 1360 of 2010. He conceded that common judgment can be rendered in this and three other petitions. As such, Writ Petition Nos.2490/2009, 1359 OF 2010 and 1360/2010 are also dismissed.

144 Hence, Rule is discharged in all the petitions with no order as to costs.

(B.P. Colabawalla, J)

(S.C. Dharmadhikari, J)

[Kalyan Sangvikar, PA]