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Cont.P.No.1396 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : **04.09.2023**

Pronounced on : **21.12.2023**

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR
and
THE HON'BLE MR.JUSTICE K.KUMARESH BABU

Cont.P.No.1396 of 2021
in W.A.No.731 of 1999

Arul Anand

..... Petitioner

Vs.

1. Mr.D.D.Misra

The Director (Human Resources)
ONGC, Corporate Establishment,
Green Hills, Tel Bhavan,
Dehradun - 248 003.

2. Mr.M.V.Churian

The General Manager (P&A),
Southern Region, Business Centre,
Oil and Natural Gas Corporation,
Thalamuthu Natarajan Building,
Egmore, Chennai - 600 008.

..... Respondents

Prayer : Contempt Petition filed under Section 11 of the Contempt of Courts Act, 1971, to punish the respondents for deliberately and wilfully disobeying the order of this Court dated 10.12.2003 in W.A.No.731 of 1999.



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For Petitioner : Mr.N.G.R Prasad
for Mr.Govardhanan
M/s. Row and Reddy

For Respondents : Mr.R.Vijay Narayan, Senior Counsel
for Mr.Mohammed Fayaz Ali

ORDER

R.SURESH KUMAR, J

This Contempt Petition has been filed seeking to punish the respondents under Section 11 of the Contempt of Courts Act, 1971, for deliberate and wilfull disobeying the orders of this Court, dated 10.12.2003 in W.A.No.731 of 1999.

2. The brief facts leading to filing of this contempt petition reads thus:

(i) that the petitioner Arul Anand was selected as Assistant Marine Radio Operator in the respondent organisation, namely Oil and Natural Gas Corporation (in short "ONGC") and he joined duty on 09.01.1985. At that time, a policy decision was taken by the respondent organisation that, those employees in the pay scale of Rs.725-1480 who have rendered minimum of one year of service in that pay scale as on 31.12.1985 may be considered for



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appointment by selection in the post in the pay scale of Rs.1030-2000 in their respective disciplines with effect from 01.01.1986. This decision in fact has been taken by the respondent organisation only on 03.01.1989, by which time, the petitioner had already put in about four years of service. With regard to the counting of one year qualifying service for the purpose of getting promotion as per the policy decision taken on 03.01.1989, on 17.02.1989, a decision has been taken regarding the counting of qualifying service for the purpose of promotion in respect of the direct recruits like the petitioner.

(ii) Even though orders are passed for appointment by way of direct recruitment before December of that year, based on the vacancy, somebody would have immediately joined, somebody would join later because the joining time is given 45 days. Therefore if at all those who joined prior to 31st December would complete one year period on 31st December of next year, however some of them who would join in January or even February might not have fulfilled the one year qualification to get promotion as per the policy decision taken on 03.01.1989.

(iii) However, since 45 days joining time is given, that can also be



taken into account. Therefore within the 45 days, if any one joined, the remaining period, i.e., the period short of fulfilling the one year duration till 31st December of the next year would be calculated and accordingly, such promotion benefit would be extended.

(iv) However, in this context, insofar as the petitioner is concerned, such a promotion, after one year completion as on 01.01.1986 has been denied from the level of Assistant Marine Radio Operator into Marine Radio Operator (E0). The reason being for such rejection is, simultaneously another policy decision was taken where some conditions was imposed, thereby the first condition was (i) the recruitment should have been finalised in a particular year before the 31st December of that year (ii) the panel should have been operated in the same year fully or partially before 31st December of that year and (iii) one or more candidates junior to the one who had joined in subsequent year but within 45 days as stipulated in the offer of appointment and also that the concerned senior should have also joined within 45 days of the receipt of offer of appointment by him.

(v) This decision has been taken by the instructions, dated 17.02.1989



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and 28.03.1989 with the aforesaid three conditions.

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(vi) Insofar as the condition number (iii) is concerned, since no junior to that of the petitioner had joined, such a benefit has been denied to him. Therefore the said rejection order was made denying the promotion to the petitioner to the next level, i.e., E0 level as on 01.01.1986.

(vii) The said rejection order was under challenge in the writ petition, which was dismissed by the writ court in W.P.No.13797 of 1990, dated 29.10.1998. Aggrieved over the same, the petitioner filed Intra Court Appeal in W.A.No.731 of 1999. The said writ appeal came to be decided by a Division Bench of this Court, by order, dated 10.12.2003, where the Division Bench has held as follows :

" 10. On this backdrop, we see the policy, dated 19.04.1989. It is obvious that a fortuitous circumstance of a junior joining is introduced to deprive the otherwise eligible employee to have the benefit of relaxation. We take an example. In the same batch, ten persons might have been selected. Three out of them might have joined in Bombay



and other three in Madras and remaining four in Gauhati and whereas in other places, there may be some juniors who joined before 31st December. There may not be any junior person joined in Madras. Could then, the advantage be made available only to the persons joined at Bombay and Gauhati merely because the junior persons have joined earlier and not to those persons joined in Madras, could they lose the advantage merely because juniors have not joined here. This is incongruous and this is fortuitous also.

11. When a principle is to be culled out for relaxation of the particular number of days of service, the policy has to be such which has a universal application. This present policy, which depends on the fortuitous circumstances, would obviously not stand the test of Article 14 of the Constitution of India. Such policy would be capable of discriminating and that too, without there being anything in the hands of the concerned employees. It is not by a choice that the employee would be posted to the place. That would be for the administration to do. But merely



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because there is an accident of the junior being there in Bombay and Guahati and no such junior in Madras, the person joining at Madras, should not be deprived of the benefit, which is otherwise available to him, especially when such benefit is granted to the persons who had joined where juniors have already joined. Denial of such benefit or relaxation which depends on a fortuitous circumstance, like the junior being there or not there, would obviously not answer the acid test of Article 14 of the Constitution. By this itself we find that the policy, dated 19th April, 1989, is not only unreasonable but capable of being abused. In the case of the petitioner, it was not his fault that no juniors before him who were in the same batch had joined before 31st December. It is obvious that his counterparts joined at another place, where juniors have chosen to so join, would have that advantage of the relaxation, whereas similarly placed petitioner would be deprived of such a benefit of relaxation. In that view, we do not find that this policy is a sound policy. We would choose to quash the same.



12. Therefore, allowing the writ appeal, we set aside the order of the learned Single Judge and make the Rule in the writ petition absolute in terms of the prayers made. Needless to say that the petitioner shall be considered on the basis of the observations made by us, if he is otherwise entitled to the benefit, under the Rules. No costs."

(viii) Though such an order was passed by the Division Bench as early as on 10.12.2003, the respondent Department had filed Review Application of the said order of the Division Bench in Rev.Appl.No.68 of 2004, which in fact had been pending till 2015 and only was decided on 25.02.2015 by the First Division Bench of this Court, where the Division Bench has stated that, though the writ appeal was allowed as early as on 10.12.2003, it has not been given effect till date. The Review Application was filed on 03.02.2004, from thereon, the matter was adjourned from time to time till 19.04.2006 and it was once again surfaced on 02.07.2009 and once again it was adjourned to 07.07.2009, for more than four years, the revision petitioners had not evinced any interest to get the case posted. On a routine enquiry, the petition is taken up for hearing.



WEB COPY (ix) After making these observation, the Division Bench has passed

the following order and rejected the Review Application :

"6. A perusal of the order passed by this Court would show that both sides have been heard at length. The impugned order has been passed based upon the policy decision taken. Submissions have been made on the policy decision adopted by the petitioners. After hearing both sides, this Court came to the conclusion that the policy decision was violative of Article 14 of the Constitution of India. Therefore, we are of the considered view that the ground case of the petitioners that they have 5 not been given an opportunity to defend the policy decision does not hold water. There need not be any specific prayer and on the contrary, the case as a whole will have to be seen, which was done accordingly by this Court.

7. Coming to the second submission, that the recruitment list was confined to Southern Region alone, the same cannot also be looked into at this stage. Even if it is true, the petitioners were aware of such position. It is not, as if, they have



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unearthed a new ground and thereafter filed this review petition. Further more, the Division Bench was concerned with the policy adopted and the application of it to the post of the respondent. As the policy was not found in consonance with Article 14 of the Constitution of India, it was set aside. As rightly submitted by the learned counsel appearing for the respondent, an application for review cannot partake the character of rehearing. We do not find any error apparent in the eye of law warranting interference. Accordingly, the Review Application stands dismissed. No costs."

(x) After the revision was dismissed on 25.02.2015 as stated supra, the respondents filed Special Leave Petition before the Hon'ble Supreme Court. The Special Leave Petition Nos.30404 - 30405 of 2015 was disposed of by order of the Hon'ble Supreme Court, dated 13.04.2017. The Hon'ble Supreme Court has passed the following order :

"We are of the view that in the facts and circumstances of the present case, it was not necessary to go into correctness of the policy dated 19.04.1989. Accordingly, the observations with



regard to the same will not be treated as binding.

Benefits granted in favour of the respondent remains undisturbed.

The appeals are disposed of in above terms.

Pending application(s), if any, shall also stand disposed of."

(xi) With regard to the earlier decision taken dated 19.04.1989 is concerned, the correctness of the policy decision need not be gone into. However, the observation with regard to the same will not be treated as a binding, was the order passed by the Hon'ble Supreme Court. Insofar as the benefits granted by the Division Bench is concerned, the Hon'ble Supreme Court has stated that, the benefits granted in favour of the respondents therein (who is the petitioner herein) remains undisturbed.

(xii) Only after the disposal of these cases, including the conclusion reached by the orders of the Hon'ble Supreme Court as stated supra, the respondents had come forward to comply with the order passed by the Division Bench of the year 2003, where, orders have been passed on 19.10.2017, which reads thus:



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"GGM-Chief HRD, Oil and Natural Gas Corporation Limited has accorded approval for grant of Monetary Benefits that have accrued due to the promotion in respect of Shri.Arul Anand, Ex-Marine Radio Operator (E0 level) CPF No.62438, to the post of Marine Radio Operator (E0 level) in the pay scale of Rs.1030-2000/- with effect from 01.01.1986."

(xiii) Subsequently, the petitioner had given representation with regard to his further promotions, where, reply had been given by the respondents on 03.11.2017, inter alia stating the following :

"3. Further promotion to next higher level are being processed at Head Quarter, Dehradun."

(xiv) Subsequently, on 21.12.2017, the respondents has passed the following order :

"Shri Arul Anand

In recognition to your service in ONGC and appreciation of the sincere efforts rendered by you till 31.05.2003 (date of Retirement), the Competent Authority is pleased to grant you the



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monetary benefits which would have accrued to you on your deemed promotion to the post of Marine Radio Officer under 'SCF Criteria' w.e.f. 01.01.1991 instead of 01.01.1994 in the pay scale of Rs.2500-5150/- and Senior Marine Radio Officer under 'Quantification Scheme' w.e.f. 01.01.1998 instead of 01.01.2000, in the pay scale of Rs.13,750-18,700/-.

2. The due benefits arising out of subsequent pay fixation for the period from 01.01.1991 and 01.01.1998 (effective dates of promotion) to 31.05.2003 (Date of retirement), inclusive of all due benefits / benefits as may be due will be credited to your bank account. Concerned offices are being advised to take necessary action accordingly."

(xv) Therefore the promotion from Assistant Marine Radio Operator to Marine Radio Operator (E0) was given instead of from 01.01.1990 from 01.01.1986 and further promotion as Marine Radio Officer (E1) was given instead of from 01.01.1994 from 01.01.1991 and also further promotion for monetary benefits as Senior Marine Radio Officer (E2) was given with effect



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from 01.01.1998 instead of from 01.01.2000.

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(xvi) However, insofar as Senior Marine Radio Officer (upgraded E3) is concerned, he could not be empanelled as on 01.01.2003, as he could score only 68.5 marks out of total 112 marks against the minimum required of 74 marks for empanelment, therefore he was not empanelled as on 01.01.2003 for Senior Marine Radio Officer (E3). As he retired on superannuation on 31.05.2003, no further promotion could be given or empanelment could be made after 01.01.2003.

(xvii) These orders passed by the respondents were not to the satisfaction of the petitioner, therefore he moved the present contempt petition stating that, the petitioner is entitled to get empanelment for Senior Marine Radio Officer and Senior Marine Radio Officer (upgraded E3) and in this context, he compared with the case of one R.P.Balakrishnan (his colleague) and therefore in that context since such a promotion or upgradation was not given or extended to the petitioner, he alleged that, there has been a willful disobedience of the orders of this Court.



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Accordingly, he has moved the present contempt petition.

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(xviii) Though this contempt petition had been filed in the year 2018, it has been numbered only in the year 2021 as Contempt Petition No.1396 of 2021, where notice had been ordered to the respondents, on behalf of them, the learned counsel entered appearance and the matter was heard.

3. Mr.N.G.R. Prasad, learned counsel appearing for the petitioner had contended that, insofar as the first promotion is concerned from 01.01.1986 he was entitled to which was given, but, for subsequent promotion, i.e., for Marine Radio Officer (E1) is concerned, that should have been given by 01.01.1990, instead of 01.01.1991, correspondingly the other promotions should also have been given as in the case of his colleague one Mr.R.P.Balakrishnan. Since that has not been considered and given, wilfully the order passed by the Division Bench of this Court has been violated, therefore the respondents are liable to be punished by initiating contempt proceedings under Section 11 of the Contempt of Courts Act, 1971.

4. However, Mr.R.Vijay Narayan, learned Senior counsel appearing



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for the respondents has submitted that, since legal battle went on for long years, the writ petition, writ appeal, thereafter review application which was disposed only in the year 2015 and thereafter, the SLP was disposed only in the year 2017 and after completing all these litigations, as per the order passed by the Supreme Court, the respondents had come forward to comply with the orders of this Court and accordingly, promotion has been given in all levels, i.e., up to Senior Marine Radio Officer (E2) to the petitioner. He would also submit that, insofar as the further upgradation or promotion to the post of Senior Marine Radio Officer (upgraded E3) is concerned, his name though had been attempted to be empanelled as on 01.01.2003, since it is a selection post, where he had scored only 68.5 marks out of the total 112 marks, whereas the minimum marks required as per the rule, which was in vogue, was 74 marks, since he could not able to secure the minimum 74 marks, his name could not be empanelled as on 01.01.2003 for the post of Senior Marine Radio Officer (upgraded E3).

5. He would further submit that, thereafter on 31.05.2003, since he was superannuated, there was no question of considering his candidature for empanelment for the said post arise in the next year. Therefore, the learned



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Senior counsel appearing for the respondents would submit that, the respondents have complied with the orders of this Court scrupulously and nothing has been violated, therefore there is no wilfull disobedience as alleged in this petition in the present case. Hence, this Contempt Petition is liable to be rejected, he contended.

6. We have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

7. During the hearing, in fact on what basis that, R.P.Balakrishnan was given promotion to the three stages, whereas the petitioner has not been given and he has been given belatedly was questioned, in order to meet out the queries raised by this Court, on behalf of the respondents, additional counter affidavit, dated 01.06.2023 has been filed, where inter alia, the following has been stated :

"I.The case of Arul Anand:-

2. I submit that the Petitioner joined Oil and Natural Gas Corporation Ltd as an Assistant Marine Radio Operator on



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09.01.1985 and was granted promotion as given below and he retired on 31.05.2003.

<i>Designation</i>	<i>w.e.f.</i>
Marine Assistant Radio Operator (TC)	09.01.1985 (Date of joining ONGC)
Marine Radio Operator (E0)	01.01.1990,
Marine Radio Officer (E1)	01.01.1994, Empanelled for monetary benefit.
Sr. Marine Radio Officer (E2)	01.01.1998 – Not Empanelled. 01.01.1999 – Not Empanelled. 01.01.2000 – Empanelled for monetary benefit.

3.Immediately after the order passed by the Hon'ble Supreme Court of India in the SLPs dated 13.04.2017, the following promotion orders were passed.

<i>Designation</i>	<i>w.e.f.</i>	<i>Date of issue of order</i>
Marine Assistant Radio Operator (TC)	09.01.1985 (Date of joining ONGC)	
Marine Radio	01.01.1986 instead of	19.10.2017



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<i>Designation</i>	<i>w.e.f.</i>	<i>Date of issue of order</i>
Operator (E0)	01.01.1990 for monetary benefit	
Marine Radio Officer (E1)	01.01.1991 instead of 01.01.1994 for monetary benefit Considered for MRO (E1) w.e.f. 01.01.1990 but not empanelled due to consideration of PAR for the year 1986 in view of non-availability of PAR for 1989.	21.12.2017
Sr. Marine Radio Officer (E2)	01.01.1995 – Not Empanelled. 01.01.1996 – Not Empanelled. 01.01.1997 – Not Empanelled. (Due to not securing requisite marks) 01.01.1998 instead of 01.01.2000 – Empanelled for monetary benefit.	21.12.2017
Sr. Marine Radio Officer (upgraded E3)	01.01.2003 – Not Empanelled. (as he could score only 68.5 marks out of total 112 marks)	



<i>Designation</i>	<i>w.e.f.</i>	<i>Date of issue of order</i>
	against minimum required 74 marks for empanelment)	

The Respondent issued an order dated 19.10.2017 granting monetary benefits that have accrued due to the promotion of the Petitioner to the post of Marine Radio Operator (E0 level) in the pay scale of Rs.1030-2000/- with effect from 01.01.1986. *The order came after superannuation of petitioner w.e.f. 31.05.2003.* The said order was communicated to the Petitioner vide letter dated 20.10.2017. Consequently, under order dated 21.12.2017, the Peitioner was granted monetary benefits which would have accrued to the Petitioner on his deemed promotion to the post of Marine Radio Officer (E1) under the 'SCF Criteria' with effect from 01.01.1991 instead of 01.01.1994 in the pay scale of Rs.2500-5150/- and *monetary benefit* as Senior Marine Radio Officer under 'Quantification Scheme' with effect from 01.01.1998 instead of 01.01.2000 in the pay scale of 13,750 – 18,700/-. The due benefits arising out of subsequent pay fixation for the period from 01.01.1991 and 01.01.1998 (effective dates of promotion) to 31.05.2003 (Date of retirement) inclusive of all due benefits were credited to the bank account of the Petitioner.



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4. I submit that in view of the aforesaid factual position, it is abundantly clear that the Respondent have not committed any willful contempt of the orders of this Hon'ble Court but whereas, the Petitioner was granted promotion to Marine Radio Operator (E0 level) with effect from 01.01.1986 as prayed for in the Writ Petition. The Petitioner by way of the present Contempt Petition questions the dates on which he was granted subsequent promotion to Marine Radio Officer (E1) on 01.01.1991 and Senior Marine Radio Officer (E2) on 01.01.1998 in comparison with another employee Shri P.R.Bala Krishnan which is completely beyond the scope of the relief sought in the Writ Petition.

5. I submit that promotions of the Petitioner have been processed as per the extant Recruitment & Promotion Regulations of ONGC..."

8. Insofar as E1 to E2 promotion, i.e., Marine Radio Officer to Senior Marine Radio Officer, what shall be the criterion and how it has been applied to, based on which, what marks has been prescribed as the minimum mark and the petitioner secured how many marks, whether he reaches the zone of consideration by obtaining the minimum marks, all has been stated in the counter affidavit further, which reads thus :



"5.3 E1 to E2 Promotion:

[Marine Radio Officer to Senior Marine Radio Officer]

Under Career Growth Scheme, employees with 4 years' experience as Marine Radio Officer (E1) are considered for promotion to the post of Senior Marine Radio Officer (E2). The Petitioner was therefore considered for promotion to E2 level w.e.f. 01.01.1995. Since he could score only 77 marks out of total 105 marks and the minimum required marks for empanelment are 81.5 (out of 105), he was "Not Empanelled".

Considered PAR Year	PAR MARKS
1991	B+ (30)
1992	B+ (30)
1993	B+ (30)

The Petitioner was again considered for promotion to E2 level w.e.f. 01.01.1996 and this year too he could score only 80 marks against required 81.5 marks out of 105 and was, therefore, "Not Empanelled".



Considered PAR Year	PAR MARKS
1991	B+ (30)
1992	B+ (30)
1993	B+ (30)
1994	B+ (30)

The Recruitment and Promotion regulations of ONGC were revised w.e.f. 01.01.1997 and are known as MRPR'80. The Petitioner was again considered for promotion to the post of Senior Marine Radio Officer (E2) w.e.f. 01.01.1997 under MRPR'80 (revised w.e.f. 01.01.1997) and was "Not Empanelled" as he could score only 73 marks out of total 112 marks against minimum required 74 marks for empanelment.

Considered PAR Year	PAR MARKS
1991	B+ (30)
1992	B+ (30)
1993	B+ (30)
1994	B+ (30)
1995	B+ (30)

He was again considered for promotion to E2 level w.e.f. 01.01.1998 (under MRPR'80) and was "Empanelled" (for monetary benefits only as he had



superannuated on 31.05.2003)."

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9. Insofar as E2 to E3 level promotion, what was the criterion that has been followed also has been stated in the counter affidavit, which reads thus:

"5.4 E2 to upgraded E3 Promotion:

[Sr. Marine Radio Officer to Upgradation]

Under MRPR'80, employees of such disciplines, where growth was defined only upto E2 level, were entitled to get personal upgradation to E3 & E4 levels till 28.05.2012. Marine Radio Officers under MRPR'80 had defined growth up to E2 level only. Required experience for consideration for promotion to E3 scale is 5 years under MRPR'80. The Petitioner was therefore considered for upgradation to E3 pay scale w.e.f. 01.01.2003 and was "Not Empanelled" as he could score only 68.5 marks out of total 112 marks against minimum required 74 marks for empanelment. The Petitioner superannuated on 31.05.2003.

6. It may therefore be seen that orders of this Hon'ble Court as well as the Hon'ble Supreme Court of India have been implemented and promotions of the Petitioner have been processed as



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per the R&P Regulations of ONGC and orders to the same effect was issued on 21.12.2017. The Petitioner could not get empanelled in 1990, 1995, 1996, 1997 and 2003 since he could not score minimum requisite marks required for empanelment under various R&P Regulations."

10. Since the petitioner has very much compared with the case of R.P.Balakrishnan, that comparative table also has been given in the counter, which reads thus :

"7. I submit that the Petitioner has cited the case of Shri R.P. Bala Krishnan, whose Promotions in ONGC has been processed as per the R&P Regulations of ONGC, as given below. The said R.P. Balakrishnan superannuated on 31.12.2011.

<i>Designation</i>	<i>w.e.f.</i>	<i>Date</i>
Marine Assistant Radio Operator (TC)	10.12.1982 & regularized w.e.f. 25.05.1984	
Marine Radio Operator (E0)	01.01.1986	23.05.1989
Marine Radio Officer (E1)	01.01.1990	04.05.1991
Sr. Marine Radio Officer (E2)	01.01.1995	21.04.1995
Sr. Marine Radio Officer (UPG)	Not Empanelled w.e.f. 01.01.2000	



<i>Designation</i>	<i>w.e.f.</i>	<i>Date</i>
E3)	(Due to not securing requisite marks) Empanelled w.e.f. 01.01.2001	
Sr. Marine Radio Officer Upgraded-2 (E4)	01.01.2011	11.07.2011

7.1 Top of Class III (TC) to E0 Promotion:

Shri R.P.Balakrishnan was appointed as Marine Assistant Radio Operator (TC level) on ad-hoc basis on 10.12.1982 and was regularized in ONGC on 25.05.1984. He was promoted to the post of Marine Radio Operator (E0) w.e.f. 01.01.1986.

7.2 E0 to E1 Promotion:

Under Seniority cum fitness criteria of R&P 80 employees with 4 years' experience as Marine Radio Operator (E0) are considered for promotion to the post of Marine Radio Officer (E1). Shri R. P. Balakrishnan was, therefore, considered for promotion to the post of Marine Radio Officer (E1) w.e.f. 01.01.1990 and was "Empanelled" for the same.

7.3. E1 to E2 Promotion:

Shri R. P. Balakrishnan was considered for promotion to E2 level w.e.f. 01.01.1995 and was "Empanelled" for the same.

7.4 E2 to upgraded E3 Promotion:

Under MRPR'80 employees of such disciplines, where growth was defined only upto E2 level, were entitled to get personal



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upgradation to E3 & E4 levels till 28.05.2012. Marine Radio Officers under MRPR'80 had defined growth upto E2 level only. Required experience for consideration for promotion to E3 scale is 5 years under MRPR'80. Shri Krishnan was, therefore, considered for up gradation to E3 pay scale w.e.f. 01.01.2000 and was "Not Empanelled" as he could score only 73.5 marks out of total 112 marks against minimum required 74 marks for empanelment. He was again considered for promotion to E3 upgrade w.e.f. 01.01.2001 and was "Empanelled" for the same."

11. If we go through the aforesaid averments made in the counter affidavit, one can easily compare the case of R.P.Balakrishnan with the petitioner. It is not the automatic promotion or upgradation as claimed by the petitioner and each and every stage, there is a method for selection and for promotion, for which, some years of experience are fixed and or minimum marks have been prescribed, whoever has got such marks would be empanelled and those who missed to get the minimum marks would not be empanelled for that year and only when that candidate secure such mark only in that year, he would be empanelled.



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12. Therefore, insofar as the petitioner is concerned, he joined on 09.01.1985, subsequently he had been promoted as Marine Radio Operator (E0) on 01.01.1990 originally, which was subsequently made it as 01.01.1986. Like that, he was given such promotion as Marine Radio Officer (E1) w.e.f., 01.01.1994, however, subsequently it has been revised to 01.01.1991. Like that, he has not been empanelled for 01.01.1995, 01.01.1996 and 01.01.1997 for the post of Senior Marine Radio Officer for want of marks as he secured only 77, 80 and 73 marks respectively for these years, by which mark he has not reached the zone of consideration.

13. Only in the year 1998, since he has reached the zone of consideration, his earlier empanelment as on 01.01.2000 has been made it as 01.01.1998 from which he is entitled to get monetary benefits for the post Senior Marine Radio Officer (E2).

14. The subsequent promotion or empanelment is for the post of Marine Radio Officer (upgraded E3), for which he could have been empanelled on 01.01.2003, however at that time, he secured only 68.5



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marks out of 112 marks, whereas the minimum required marks was 74, therefore he was not empanelled on 01.01.2003. Immediately, thereafter on 31.05.2003, since the petitioner retired from service on superannuation, in the next year panel, he could not be empanelled, therefore to that extent he has been given promotion and upgradation and for all these upgraded post, since he was entitled to get the difference of salary, that has also been provided in the order passed by the respondents, dated 20.12.2017.

15. Having gone through these materials placed before us, we are satisfied that, the order passed by the Division bench of the year 2003 has not been violated or wilfully disobeyed by the respondents.

16. Moreover in contempt jurisdiction, the law is well settled that, if the Court comes to a definite conclusion that, there has been a wilfull disobedience of the orders of the Court, then alone the jurisdiction of the Contempt of Courts Act can be invoked. The contempt jurisdiction cannot be extended as a revisional or appellate jurisdiction to redress the further grievances of the parties to the *lis*.



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WEB COPY 17. Here in the case in hand, what has been the order that was passed by the Division Bench since has been protected by the Hon'ble Supreme Court, that the benefit extended to the petitioner cannot be disturbed is concerned, that benefit extended by the Division Bench is to give promotion to him in the first level as on 01.01.1986, which in fact has been given and as a consequential action, further promotion for the next level, i.e., E1, E2 level also had been given. In these two levels, the initial year of promotion, i.e., initially the year of promotion was fixed on 01.01.1994 and 01.01.2000 that has been revised to 01.01.1991 and 01.01.1998.

18. Insofar as Senior Marine Officer (upgraded E3) promotion is concerned, though he could have been empanelled in 01.01.2003 he has not been empanelled because he has not reached the zone of consideration by securing the minimum marks of 74 which has been fixed in this regard as he secured only 68.5 marks, for which, records had been produced before this Court.



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19. Thereafter since retired from service and superannuated on 31.05.2003, he cannot be considered for any further promotion even notionally. Therefore absolutely there has been no disobedience on the part of the respondents of the orders of this Court as alleged by the petitioners in this contempt petition.

20. Hence, for all these reasons and the discussions herein above made, we are not inclined to entertain this contempt petition any more and accordingly, it is liable to be closed. Hence this Contempt Petition is closed.

(R.S.K., J.) (K.B., J.)
21.12.2023

Index : Yes / No

Speaking Order / Non-speaking order

Neutral Citation : Yes / No

tsvn

R.SURESH KUMAR, J.
and
K.KUMARESH BABU, J.

tsvn



WEB COPY



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**Order in
Cont.P.No.1396 of 2021**

21.12.2023