



W.P.No.28699 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM

THE HON'BLE MR. JUSTICE RMT.TEEKAA RAMAN

W.P.No.28699 of 2011

Judgment reserved on 05.02.2025	Judgment pronounced on 07.02.2025
--	--

D.Baskaran
S/o.Late Duraisamy,
No.5 Ground Floor, C,
Comfort Apartment, 5th Cross,
Natesan Nagar,
Puducherry 605 005

Petitioner

Vs

1.Union Of India
Ministry Of Petroleum And Natural Gas
Rep. by its Secretary,
Shastri Bhavan, New Delhi

2.The GAIL (India) Limited,
(A Government of India Undertaking)
(Corporate HRD Department)
No.16, Bikaji Cama Place,
New Delhi – 110 066.

3.The Director (HR)
The GAIL (India) Limited,
(A Government of India Undertaking)
(Corporate HRD Department)
No.16, Bikaji Cama Place,
New Delhi – 110 066.



W.P.No.28699 of 2011

4. Departmental Promotion Committee (GAIL)
Represented by Director (HR)
The GAIL (India) Limited,
No.16, Bikaji Cama Place,
New Delhi – 110 066.

Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus calling for the records of the 2nd respondent in No.GAIL /CO/PRM/04/10 dated 07.04.2010 in so far as it relates to the date of promotion of the petitioner and quash the same and consequently direct the respondents to promote the petitioner as Chief Mananager (HR) with effect from 01.04.2009 and grant him all attendant benefits including the arrears of difference of salary.

For Petitioner : Mr.D.Baskaran
(Party-in-Person)
For Respondents : Mr.Sai Srujan Tyi
for M/s.Giridhar & Sai

ORDER

The writ petitioner has filed the present writ petition seeking the relief of certiorarified mandamus calling for the records of the 2nd respondent in No.GAIL /CO/PRM/04/10 dated 07.04.2010 in so far as it relates to the date of promotion of the petitioner and quash the same and consequently direct the respondents to promote the petitioner as Chief Mananager (HR) with effect from 01.04.2009 and grant him all attendant benefits including the arrears of difference of salary.



W.P.No.28699 of 2011

WEB COPY

2. The factual matrix of the case is as under -

2(a) The petitioner is having Master decree in multiple disciplinarys and he was appointed as Deputy Manager (HR) by the second respondent on 31.07.1985.

2(b) The case of the petitioner is that the post of Deputy Manager in the second respondent Organisation is categorized as E-3 Grade under the guide lines of the 2nd respondent. From April 2002, the promotion of Executives in the First Respondent Organization is being governed by the Circular dated 5th April 2002 in Co/HR/Po1/P-55 issued by the 2nd respondent which is Known as "The Revised Promotion Scheme for the Executives", herein after referred to as "Promotion Scheme-2002" for the sake of convenience.

2(c) As per the above said circular dated 5th April 2002, a revised Promotion Scheme for the Executives was framed and followed in the matter of Promotion.



W.P.No.28699 of 2011

WEB COPY

2(d) After initial appointment of the petitioner as Deputy Manager in the year 1995, he was promoted as Manager (HR) under E-4 Grade on 01-07-1999. Thereafter, though the petitioner was eligible for promotion as Senior Manager (HR) in E-5 grade in the year 2003 itself, he was overlooked and after a tough fight, he was promoted as Senior Manager (HR) on 11-4-2005.

2(e) As per clause 3 of the "Promotion scheme-2002" the executives employed by the 2nd respondent will be eligible for consideration for promotion from the existing grade to the next higher grade only on completion of a minimum length of service termed as 'Eligibility Period' as follows:-

E1 to E 2 - 5 years

E 2 to E 3 and above - 4 years

3. According to the petitioner, from the promotion of E1 to E2 Grade is 5 years and E2 to E5 Grade and above is 4 years and promotions are governed by "Promotion scheme-2002". According to the petitioner, he was



W.P.No.28699 of 2011

informed that the 4th respondent under the head of qualification has awarded 18/20 and based upon the said qualification, he was given promotion as Senior Manager (HR) under E-5 Grade on 01.04.2005, that communication is dated 31.12.2004.

4. The grievance of the petitioner is that he was not given promotion w.e.f. 01.04.2009 however he was given promotion only on 01.04.2010 and hence he has filed this present writ petition.

5(a) In the counter affidavit by the respondents, it is stated that the marking principle for Qualification marks was changed in DPC- 2008 and DPC-2009. The procedure to be DPC-2010 was again re-worked and approved by the Competent Authority vide note dated 15.3.2010. As per the marking principle followed for DPC-2009, 12 marks (full marks) for executive in HR in DPC would be accorded to current induction level qualification and 6 marks would be accorded for one step below induction level. Further, additional/higher qualification was restricted to two only (2 additional marks for each). Therefore, the petitioner herein was only eligible for 10 marks out of 20. This marking principle had been applied uniformly



W.P.No.28699 of2011

and in a non-discriminatory manner to all eligible candidates.

5(b) It is further stated in the counter affidavit of the respondents that even if the petitioner had been awarded the marks granted to him for Qualification in 2004, i.e. 18/20, then also he could not have been promoted in DPC 2009, as the total marks secured by him would have been 71 which is still lower than the total marks of 76 secured by the last successful/promoted executive in HR discipline. The same principle was applied uniformly to all eligible candidates. Furthermore, even if the Petitioner was awarded the same marks of 18/20 for 'qualification' as in DPC-2004, he still would not have been eligible for promotion in DPC 2009 as the total marks secured would have been 71, which is still lower than total marks of 76 secured by the last successful/promoted executive in the HR discipline. Further, there was no error in the calculation of marks whereas the marking principle followed in DPC 2004, DPC 2009 and DPC 2010 are uniform for all eligible executives in HR Discipline.

5(c) Even though the promotion scheme framed in 2002 governs the promotion of executives, the marking scheme applicable to the heading



W.P.No.28699 of 2011

'qualification' was changed for DPC-2008 & 2009. As per the revised marking scheme, the petitioner was only entitled to 10 out of 20 marks under 'qualification' in DPC 2009. These revised marking principles were applied uniformly to all eligible candidates without any discrimination. Even if the petitioner was given the marks under 'qualification' heading given to him in DPC-2004, i.e. 18 out of 20, he still would not have been eligible for promotion in 2009 as he would have scored only 71 marks which is less than 76 marks secured by the last successful/promoted executive in HR discipline in 2009 and the working principles for the promotion given w.e.f 01.04.2006.

5(d) The marking principle for 'qualification' was again changed for DPC-2010 as per note dated 15.3.2010. As per the revised marking principles, which was uniformly followed for all eligible executives in HR Discipline, the Petitioner was eligible for 16 out of 20 marks under 'qualification' heading in 2010. Taken with his other marks, the Petitioner was found eligible for and accordingly promoted to the post of Chief Manager in 2010.

6(a) The party-in-person as well as the standing counsel for the



W.P.No.28699 of 2011

respondents 2 & 3 would state that some disciplinary proceedings have taken place and during the pendency of this writ petition, disciplinary proceedings have been initiated against the very same petitioner and he was discharged from services by the second respondent.

6(b) The petitioner has challenged his order of dismissal before the High Court of Telengana at Hyderabad in W.P.No.26030 of 2017 and that writ petition was allowed. The respondent GAIL filed W.A.No.153 of 2021 wherein by an order dated 28.02.2023, the Division Bench of High Court of Telengana at Hyderabad the said appeal was partly allowed. Against the said order, SPL was filed before the Hon'ble Supreme Court SLP(C) No.9196 of 2023 and by an order dated 07.01.2025, the case was ordered to be listed in the usual course and he same is now pending.

7. Taking into consideration the pendency of the SLP before the Hon'ble Supreme Court, this Court confines itself to the limited scope of the prayer, namely whether the date of promotion and whether the petitioner is entitled to promotion from 01.04.2009 instead of with effect from 01.04.2010, as per counter.



W.P.No.28699 of 2011

WEB COPY

8. Heard the submissions of the party-in-person at length as well as the learned counsel for the respondents and perused the records.

9. As stated supra, the crux of the prayer is that the petitioner challenges the order dated 07.04.2010 in so far it relates to the date of promotion w.e.f. 01.04.2010 however the petitioner seeks direction to grant promotion w.e.f. 01.04.2009 with consequential benefits alongwith salary.

10. For the purpose of determination of the lis, the service matrix are extracted as under :-

10(a) The petitioner was originally appointed as Deputy Manager (E3 Grade); subsequently promoted to grades E4 (in 1999) and E5 (in 2004). Petitioner became eligible for promotion to E6 grade (Chief Manager HR) on 01.04.2009; he was considered by 2009-DPC, but not selected. In subsequent year 2010, petitioner was again considered and selected by 2010 DPC and promoted w.e.f 01.04.2010. Aggrieved by non-selection from



W.P.No.28699 of 2011

01.04.2009, the present Writ Petition is filed.

WEB COPY

10 (b) In the respondent company, promotion is governed by 2002

Promotion Scheme. It sets out :

- (i) promotion beyond E4 level is vacancy based (3.1.2)
- (ii) criteria for promotion is set out (3.2)
- (ii) DPC constitution for E6 level (5.2.c)
- (iv) authority for approving promotion (5.3)
- (v) appeal remedy is as below (8.2,8.3).

10(c) The criteria for promotion states as follows:

The relevant marks for consideration for promotion in executive grades of E and above against various factors will be as under:

Qualification : 20 marks

Experience : 20 marks

Performance Rating: 40. Marks

DPC Modulation : 20 marks



W.P.No.28699 of 2011

WEB COPY

13. Per contra, the respondent GAIL's defence for non-selection in 2009 is that marking scheme applicable for the heading "Qualification" was changed for DPC 2008, 2009, 2010. As per the marking principle followed for the DPC 2009, 12 marks (full marks) for executive in HR in DPC would be accorded to current induction level qualification and 6 marks would be accorded for one step below induction level. Further, additional/higher qualification was restricted to two only (2 additional marks for each). As petitioner's induction level qualification i.e MBA in HR was through distance learning, he was given 6 marks as against 12 marks; with 2+2 marks for additional LLB, LLM (2marks) + M.Phil (2 marks). Petitioner earned 10 marks in DPC 2009 and this pattern was followed from DPC 2008 onwards. Other candidates were also evaluated under the same changed criteria. Procedure followed from DPC 2010 was again re-worked restoring pre 2008 norms and approved by the Competent Authority vide note dated 05.03.2010, wherein for induction level post of MBA, full 12 marks was given (as in 2004).



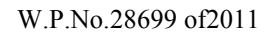
W.P.No.28699 of 2011

WEB COPY

14. DPC modulation marks considers relative performance/ attributes of eligible employees. Being a relative assessment, score changes every year. Petitioner was also charge sheeted in the year 2002 for acts exhibiting lack of integrity and conduct unbecoming of an employee and a penalty of withholding of one increment with cumulative effect was imposed on him for wrongful avilment of travel allowance against personal travel.

15. From the counter affidavit, on the factual ground, I find that against vacancies in E6 level in 2009, the highest score was 88 and least score was 76. Thus the last of the candidate selected scored 76. The petitioner in the instant case scored a total of 63 marks and if additional 8 marks against Qualification criteria (as per DPC 2004 marks) is awarded as claimed, petitioner would have got 71 marks and still way short of 76 scored by the last of the selectees. As such, the petitioner will not come within zone of selection and select list, even if he succeeds on the re-evaluation claimed.

16. It remains to be stated that the Departmental Promotional Committee has assessed the marks of the individual candidate as against the



This court being a constitutional court, in exercise of its power under Article 226 will not re-assess the marks evaluated by DPC, in the absence of any gross violation of DPC qualification or modulation. As stated supra, the qualification of 20 marks and the DPC modulation of 20 marks has been clearly spelt out in the previous paragraphs, as extracted from the counter. The minimum marks that has been obtained for the E6 Level in 2009, the marks scored by the last of the candidate selected was 76 marks, whereas the petitioner has secured only 63 marks.

17. Even assuming that without admitting the fact that as contended by the petitioner, he is entitled for another 8 marks under the qualification criteria, even if it is awarded, the petitioner will get only 71 marks, whereas the last selected candidate has scored 76 marks. Hence, even on the factual grounds, I find that even by granting of 8 marks, as claimed by the petitioner, though the rule is otherwise, he will get only 71 and not 76 marks which is the mark secured by the last selectee for the promotion in the year 2009. Therefore, this court finds that the contention put forward by the GAIL that the petitioner will not come within the zone of selection and



W.P.No.28699 of2011

the selection list for the promotion of the year 2009 is hereby upheld and hence the petitioner is devoid of merits and the same is hereby dismissed. Since the SLP is pending before the Hon'ble Supreme Court as against the order of termination of services, this court is not expressing anything except what is stated above.

18. With this observation, this Writ Petition is dismissed. No costs.

07.02.2025

rg
Index : Yes/No
Speaking/Non-speaking order



W.P.No.28699 of2011

WEB COPY

To

1.The Secretary,
Union Of India
Ministry Of Petroleum And Natural Gas
Shastri Bhavan, New Delhi

2.The GAIL (India) Limited,
(A Government of India Undertaking)
(Corporate HRD Department)
No.16, Bikaji Cama Place,
New Delhi – 110 066.

3.The Director (HR)
The GAIL (India) Limited,
(A Government of India Undertaking)
(Corporate HRD Department)
No.16, Bikaji Cama Place,
New Delhi – 110 066.

4.Departmental Promotion Committee (GAIL)
Represented by Director (HR)
The GAIL (India) Limited,
No.16, Bikaji Cama Place,
New Delhi – 110 066.



WEB COPY



W.P.No.28699 of2011

RMT.TEEKAA RAMAN, J.

rgt

Pre-delivery Order in

W.P.No. 28699 of 2011

07.02.2025