

(1994) 10 BOM CK 0021

In the Bombay High Court

Case No : Writ Petition No. 1759 of 1985

Ashok Kumar Gupta

APPELLANT

Vs

Oil and Natural Gas Commissioner and Others

RESPONDENT

Date of Decision : 06-10-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (1996) 3 LLJ 554

Hon'ble Judges : S.M. Jhunjhunwala, J; M.L. Pendse, J

Bench : Division Bench

Judgement

Pendse, J.—In Pursuance of an advertisement issued by Respondent No. 1, the Petitioner applied for post of Assistant Executive Engineer (Production) and was appointed with effect from September 1, 1980. The Respondent No. 1 had framed Regulations known as Oil and Natural Gas Commission (Recruitment and Promotion) Regulations. 1974. The promotion to the post of Executive Engineer was from the cadre of Assistant Executive Engineer. The posts of Assistant Executive Engineers were filled in either by promotion or by direct recruitment. The 1974 Regulations prescribe that the post of Executive Engineer was a non-selection and those Assistant Executive Engineers who were holding degree in Chemical/Mechanical/Petroleum Mining Engineering or equivalent and having two years experience were eligible for consideration of promotion. The experience of three years was required for Assistant Executive Engineers who were merely Diploma holders and four years in respect of Assistant Executive Engineers who were merely Science graduates.

2. The 1974 Regulations were replaced by a fresh set of Regulations known as Oil and Natural Gas Commission (Recruitment and Promotion) Regulations, 1980. These Regulations came into force with effect from April 25, 1980. The 1980 Regulations inter alia provide that the post of Executive Engineer is to be filled only by promotion. 75% of the posts were reserved for promotion on the basis of seniority-cum-fitness and those Assistant Executive Engineers who had put in six

years of service were to be considered. The balance 25% posts were to be filled in on merits from those Assistant Executive Engineers who had put in four years of service.

The employees who were due for promotion and who had suffered stagnation, moved the authorities to relax the requirement in respect of functional experience for promotion to the post of Executive Engineer. The Respondent No. 1 decided to relax the requirement and provided as follows :-

"(a) Officers who joined before April 25, 1980 at EI level and above.

Relaxation to the extent of 1974 Regulations may be given in functional experience.

(b) Departmental promotees recruits from amongst the departmental employees promoted/appointed joined between April 25, 1980 to December 31, 1980 both days inclusive.

Relaxation to the extent of 1974 Regulations may be given in functional experience.

(c) Direct recruits from outside who joined after April 25, 1980.

Relaxation of 1974 regulations not to be given."

In consequence of the relaxation granted, the Assistant Executive Engineers were promoted to the post of Executive Engineer with effect from January 1, 1984. The grievance of the petitioner is that those Assistant Executive Engineers who were shown as juniors to the petitioner in the provisional seniority list prepared on April 1, 1979 were promoted by passing the claim of the petitioner. In the provisional seniority list prepared in the year 1982-83, the petitioner was placed at serial No. 190.

3. The Respondent No. 1 realised that there is hardship causing to those Assistant Executive Engineers who were appointed from open market after April 25, 1980 in respect of consideration of their claim for promotion to the post of Executive Engineer. The Assistant Executive Engineers appointed from open market after April 25, 1980 were required to serve for a duration of six years before they are considered in the 75% quota reserved for promotion on the strength of seniority-cum-fitness. The Respondent No. 1 thereupon decided that the functional experience period should be reduced by 1/3rd duration and as a result of which instead of six years' functional experience, Assistant Executive Engineers with an experience of four years were entitled to be considered for promotion.

It is not in dispute that in view of this relaxation, the petitioner was promoted to the post of Executive Engineer (Production) with effect from January 1, 1985 by letter dated May 31, 1986.

4. The grievance of the petitioner in this petition filed under Article 226 of the

Constitution on September 3, 1985 is two-fold. The first grievance of the petitioner is that certain adverse remarks were entered in the Confidential Report of the Petitioner and those remarks were taken into consideration while considering the claim of the petitioner for promotion. The petitioner complains that the adverse remarks were entered in the confidential report without giving an opportunity to the petitioner to show-cause. The grievance no longer survives for consideration as in the return filed by Krishna N. Saxena, Deputy Legal Adviser of Respondent No. 1, it is clearly stated that the adverse remarks were not taken into consideration as the procedure prescribed for the same was not followed. The principal contention urged by Shri Bhandare, learned Counsel appearing on behalf of the petitioner, is that the policy of relaxation adopted by Respondent No. 1 has caused serious prejudice to the Petitioner in as much as the Assistant Executive Engineers who were junior to the petitioner were promoted earlier. The gravamen of the complaint of the learned Counsel is that the relaxation was initially provided to remove stagnation of Assistant Executive Engineers who were promoted to that post from department. Shri Bhandare submits that there was no occasion to relax the functional experience in respect of those employees who were serving in the department but were appointed as a direct recruit to the post of Assistant Executive Engineers between April 25, 1980 and December 31, 1980. In other words, the grievance of the petitioner is that in category (b) which is set out herein above, the relaxation should not have been given to those Assistant Executive Engineers who were appointed between April 25, 1980 and December 31, 1980.

In our judgment, there is no merit in the grievance of the petitioner, category (b) refers to types of appointees to the post of Assistant Executive Engineer. The category, provides (i) departmental promotees, i.e. recruitment from department employees and (ii) department employees not by promotion but by mode of direct recruitment to the post of Assistant Executive Engineer between April 25, 1980 and December 31, 1980. It is obvious that category (b) set out hereinabove is distinct and different from category (c) which refers to the direct recruits from open market who were joined after April 25, 1980. The Petitioner belongs to category (c). The appointments as direct recruits referred to in category (b) are not those who are selected from open market but those who are selected from the existing employees. In our judgment, the categorisation of two kinds of employees is put on rational basis and the contention of Shri Bhandare that the categorisation in different classes leads to discrimination and is violative of provisions of Articles 14 and 16 of the Constitution, cannot be accepted. In our judgment the Petitioner cannot complain about the relaxation given to the employees covered by category (c) with effect from January 1, 1984.

As the petitioner is promoted to the post of Executive Engineer from January 1, 1985 in our judgment, the petitioner is not entitled to any relief and the petition must fail.

5. Shri Bhandare submitted that the relaxation is permissible only in respect of

educational qualification and not in respect of functional experience. We are unable to accede to the submission for more than one reason. The Regulations permit relaxation and it is not restricted to educational qualification. Secondly, the Petitioner himself got advantage of the relaxation in respect of functional experience and therefore could be appointed as Executive Engineer after a period of four years' functional experience instead of six years. The Petitioner cannot, therefore, complain about the relaxation from functional experience.

6. Accordingly, petition fails and rule is discharged. There will be no order as to costs.