
(1995) 11 GAU CK 0024
In the Gauhati High Court
Case No : Civil Rule No. 72 of 1985

Krishna Chandra Paul

APPELLANT

Vs

Oil And Natural Gas Commission

RESPONDENT

Date of Decision : 27-11-1995

Acts Referred:

Constitution of India, 1950 — Article 226, 226

Citation : (1996) 1 GLJ 219 : (1996) 1 GLT 387

Hon'ble Judges : J.N.Sarma, J

Bench : Single Bench

Advocate : S.Deb , B.Das , Advocates appearing for Parties

Judgement

1. This application under Article 226 of the Constitution of India has been filed with the following prayer :

(i) To quash the impugned portion of the ONGC Recruitment and Promotion Regulation. 1980, Annexure B to the writ application and also direct the respondents to forbear from giving effect to the said impugned portion of the Regulation in any manner whatsoever.

(ii) To issue a writ directing the respondents to allow the petitioners" promotion to the rank of Superintendent with retrospective effect from 1.4.1982 keeping their seniority over the persons who were originally Telex Operators (respondent Nos.2 to 7) and subsequently brought to the ministerial discipline and also to allow the petitioners all benefits of service including the salaries as Assistant Grade I at the first instance and then as Superintendent.

2. The brief facts of the case are as follows.

3. The 8 petitioners herein joined the service of ONGC as Assistant Grade III and since their entry into the service, they are performing their duties faithfully in the organisation. The petitioners were promoted to the post of Assistant Grade II in the year 1982. A Regulation was brought into existence in the name and style of

Oil and Natural Gas Commission (Recruitment and Promotion) Rules. 1974 and that was published in the Gazette of India on 25th January. 1975. According to the Regulation of 1974, the petitioners had a chance of promotion from Assistant Grade III to Assistant Grade II and then to Assistant Grade I and then to the post of Superintendent on completion of certain period of service in each cadre. These posts were cent percent promotional posts and there was no scope for direct recruitment under the said Regulation. Three years experience was necessary as Assistant Grade III for promotion to the post of Grade II and the petitioners become eligible for promotion to the post of Grade II after completion of three years. Although the petitioners completed the period of three years, they were not promoted though the posts were available for promotion. The petitioners became eligible for promotion to the post of Grade I in the year 1980 and promotion to the post of Superintendent in the year 1983, but they were not promoted. That on 25.4.1980, a new Recruitment and Promotion Regulation of the ONGC namely, the Recruitment and Promotion Regulation, 1980 came into force and certain new provisions were incorporated in the said Regulation and that put a serious fetter and embargo in the service career of the petitioners. The copy of the relevant portion of the Regulation is enclosed as Annexure B to the writ application. It is submitted that the cadre from Assistant Grade III to Superintendent are in the ministerial discipline and there are other disciplines also in the service under the ONGC. It is stated that on 1.4.79, the ONGC revised the scale of pay of Telex Operator, Telecom Operator and Wireless Operator and it was made equal to the scale of pay of Assistant Grade II but before that the scale of these three posts was lower than the scale given to the Assistant Grade II. By 1980 Regulation, the designation of Telex Operator was changed to the designation of Assistant Grade II and although essentially the duties and responsibilities of the post of Telex Operator are technical, the incumbent of the post of Telex Operators were brought to the post of Assistant Grade II and they were also made eligible for promotion to the next higher Grade in the ministerial discipline. The benefit which was given to the Telex Operators is stated to have been done to give certain undue privileges to particular individual to the liking of the authorities. It is stated that the redesignation and merger narrows and limits the future chance of promotion of the petitioners and it is submitted that this Telex Operator will also be senior to the petitioners because the seniority of these persons will be counted with effect from the date on which they got appointments to the rank of Telex Operators. It is further submitted that these persons cannot be included in the discipline of ministerial staff and it is not for any genuine of public purpose but for some ulterior motive. It is stated that it is arbitrary and colourable exercise of power and as such void ab initio and this is violative of Article 14 and 16 of the Constitution of India. By the Regulation of 1980, the post of Junior Superintendent in Grade I is to be filled up by direct recruitment only. By creating this provisions for direct recruitment, the scope of promotion of the petitioners have been narrowed down without any rhyme and reason. A representation was submitted on 5.2.85 vide Annexure E to the writ application but no reply was received, and hence this writ application.

4. An affidavit in opposition has been filed. In paragraph 9, 11 and 12 of the affidavit in opposition it has been stated inter alia as follows : (not quoted : Editor)

5. I have heard Sri B. Das, learned Advocate for the petitioner and Sri S. Deb, learned Advocate for the respondents. Shri Das fairly submits that the chance of promotion, right to get promoted are not the conditions of service but he has a right to be considered for promotion.

6. Mere chance of promotion is not a condition of service and introduction of provision for direct recruitment does not prejudicially affect the conditions of service though it may affect the chance of promotion. Reduction of quotas for promotion does not affect the conditions of service but affects only chance of promotion. Any rule which affects the right to be considered for promotion is a condition of service though mere chances of promotion is not the condition. The rule making authority can change retrospectively rules defining the qualifications and suitability for promotion. Even if a rule introduces new condition for service that cannot be changed inasmuch as that new conditions will affect his chance of promotion or his right to be considered for promotion to higher post and this cannot be regarded as of retro spective effect usually given in a certain set of rules. The Regulation of 1980, in the instant case, affected the chance of promotion of the petitioners and in spite of the change of Regulation, the right or eligibility of the petitioner to be considered for promotion remained and any change did not involve in the conditions of service.

7. As a matter of fact no argument was advanced by Shri Das regarding the legality and validity of the Annexure B to the writ application and as such it is not necessary to consider that aspect of the matter.

8. Shri Deb, learned Advocate for the respondents placed before me two decisions in support of his contention that the organisation has a right to integrate the service and once the service is intergrated. the organisation also will have the necessity to make a combined seniority list. The first decision relied by Sri Deb is (1976) 4 SCC 838 (Reserve Bank of India vs. NG Palinal & others). That was a case where the Reserve Bank intergrated the service of different categories and that was challenged and the Delhi High Court quashed that integration and in paragraph 15 of the judgment the Supreme Court laid down the law as follows :

"Now, the first question which arises for consideration is whether the Reserve Bank violated the constitutional principle of equality in bringing about integration of nonclerical with clerical services. We fail to see how integration of different cadres into one cadre can be said to involve any violation of the equality clause. It is now well settled, as a result of the decision of this Court in Kishori Mohanlal Bakshi vs. Union of India that Article 16 and a fortiori also Article 14 do not forbid the creation of different cadres for Government service. And if that be so, equally these two Articles cannot stand in the way of the State integrating different cadres into one cadre. It is entirely a matter for the State to decide

whether to have several different cadres or one integrated cadre in its services. That is a matter of policy which does not attract the applicability of the equality clause. The integration of nonclerical with clerical services sought to be effectuated by the combined seniority scheme cannot in the circumstances be assailed as violative of the constitutional principle of equality."

9. The next case relied on by Sri Deb is (1989) Suppl (1) SCC 34 (SB Mathur & others vs. Chief Justice of Delhi High Court & others). In that case the Supreme Court inter alia pointed out as follows :

"The Court pointed out that the past events showed that the various departments of the Reserve Bank of India were grouped and regrouped from time to time. Such adjustments in the administrative affairs of the Bank were a necessary sequel to the growing demands of new situations which are bound to arise in any developing economy. The Court pointed out further that no scheme governing service matters can be foolproof and some section or the other of employees is bound to feel aggrieved on the score of its expectations being falsified or remaining to be fulfilled. Arbitrariness, irrationality, perversity and malafides will of course render any scheme unconstitutional but the fact that the scheme does not satisfy the expectations of every employee is not evidence of these. This decision clearly leads to a conclusion that grouping and regrouping of different categories of employees is inevitable in a large organisation with a view of meeting changing situations and needs of a live organisation. Merely because the chances of promotion of some employees are adversely affected by such grouping or regrouping, that does not lead to a conclusion that it is against the law. We may point out that in the case before us, there is no contention urged before us that the equating of posts or the combined seniority list was promoted by any malafides. We fail to see how the combined seniority list or the treating of the said posts as equal status posts can be said to be arbitrary in the absence of any material and, particularly, in view of the fact that the learned Chief Justice and the learned Judges of the Delhi High Court considered the facts and took the view that it was necessary in order to provide for transfer from one department to another and to provide adequate promotional opportunities to various sections of the employees of the Delhi High Court."

10. The Supreme Court further pointed out in that decision in paragraph 15 that on the ground of delay also the petition should be thrown out. In that case before the Supreme Court in rules came into force in 1971 and the challenge was made in the year 1979. There also representation was filed but the representation was not disposed of, in spite of that the Supreme Court held that on the ground of delay or laches apart from other considerations, the petition should be thrown out. In the instant case also the rules of 1980 came into force on 25.4.80 and this writ application has been filed on 1.7.85 after a lapse of more than 5 years. On this ground also this petition is liable to be thrown out.

11. Accordingly, I find that there is no merit in this writ application and the same is dismissed. However, I leave the parties to bear their own costs.