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**(2021) 02 GAU CK 0038**

**In the Gauhati High Court**

**Case No :** Writ Petition (C) No. 2579 Of 2016

Nurul Hasan Iftikhar Ahmed — APPELLANT

Vs

Oil India Limited And 4 Ors — RESPONDENT

**Date of Decision :** 18-02-2021

**Acts Referred:**

**Citation :** (2021) 02 GAU CK 0038

**Hon'ble Judges :** Sanjay Kumar Medhi, J

**Bench :** Single Bench

**Advocate :** U K Nair, A Boro, Sn Sarma, K Kalita

**Final Decision :** Disposed Off

## Judgement

Sl. No.,Promotion type,Criteria,"Weightage (out of 100

points)",Remarks

5.0,D to E,APR,55,

,,Service record,05,

,,Qualification,20,

,,DPC assessment,20,

,,Total,100,

11. Emphasizing on the said breakup more particularly the mode of allotting marks, the Senior Counsel for the petitioner has drawn the attention of this",,,,

Court to â??eâ? of the said break up under Serial No. 4 which prescribes for additional 1(one) mark for Diploma of minimum 1(one) year duration,,,,

and 2(two) marks for Degree/Diploma of minimum 2(two) years duration acquired in the existing Grade.,,,,

12. Though no grievance has been expressed so far as marks allotted to

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petitioner is concerned, the specific challenge is with regard to the marks",,,,

allotted to the respondent nos. 4&5.,,,,

13. As per the petitioner, so far as the respondent no. 4 is concerned, though there is no dispute with regard to the obtaining of Diploma by the said",,,,

respondent no. 4, it was in the year 2008-2009 as would be evident from the communication dated 07.09.2009 issued by the respondent-Company",,,,

wherein it has been clearly said that the said respondent no. 4 had completed the Diploma as on the said date. The specific case of the petitioner being,,,,

that the respondent no. 4 being promoted to Grade- D on 01.01.2010, such diploma cannot be treated to have been obtained in the said Grade- D",,,,

which is the requirement of the policy and as a consequence thereof, allotment of an additional mark is erroneous.",,,,

14. Coming to the challenge with regard to the marks allotted to respondent no. 5, the Senior Counsel for the petitioner has drawn the attention of this",,,,

Court to a letter dated 26.05.2015 issued by the Institute from which the said respondent no. 5 had acquired the qualification which has been treated to,,,,

be a Diploma by the authorities. The said communication clearly states that the qualification acquired by the respondent no. 5 is only a Certification,,,,

Course meant for professional enhancement and work efficiency and is not equivalent to a formal Diploma or Degree.,,,,

15. That being the position, Shri Nair, learned Senior Counsel submits that the mark allotted under the said selection so held was wholly unwarranted",,,,

by which prejudice has been caused to the petitioner. If the additional marks allotted to the respondent nos. 4 & 5 are deducted, the petitioner would",,,,

be amongst the 60% by which his promotion can be made effective from 01.01.2014.,,,,

16. Shri S.N. Sharma, learned Senior Counsel for the OIL, submits that necessary affidavit-in-opposition has been filed on 03.04.2017 denying the",,,,

case of the petitioner. The learned Senior Counsel for the Company at the outset contends that the petition itself is not liable to be entertained for the,,,,

delay in approaching this Court. The promotions were made effective from 01.01.2014, and the petitioner did not approach this Court at that point of",,,,

time and rather he chose to wait. Even after his promotion in the year 2015 under the 40 % category, he did not immediately approach this Court and",,,,

only in the year 2016, the present Writ Petition has been filed by which time, a

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right has been accrued upon the private respondents and the",,,,

promotions being connected to other promotions, the entire set up might be affected. It is further submitted that it is only the consideration for",,,,

promotion which is a legal right and promotion as such cannot be an indefeasible right and there being consideration of the case of the petitioner, he",,,,

cannot be aggrieved by the mere fact that he was not amongst the first 60 %.,,,,

17. Shri Sharma, learned Senior Counsel further points out that in the meantime the petitioner is further promoted to the rank of Grade- E as Deputy",,,,

General Manager (Civil) with effect from 01.01.2018.,,,,

18. As regards the specific challenge to the promotion of the respondent nos. 4 & 5, the Senior Counsel submits that though the Diploma by the",,,,

respondent no. 4 was for the year 2008-2009, the certificate was issued only on 13.04.2010 and therefore the said Diploma was treated to have been",,,,

obtained while the respondent no. 4 was in Grade- D as he was promoted to such grade on 01.01.2010. So far as the respondent no. 5 is concerned,",,,,

the learned Senior Counsel has submitted that the course undergone is a course in Certified Petroleum Management (CPM) and the said course,,,,

require Stringent Selection Process and a selected executive has to pursue a very exhaustive and tight curriculum pertaining to Petroleum Industry.,,,,

That being the position, no error apparent on the face of the record was committed by the Company while allotting the marks to both the respondent",,,,

nos. 4 & 5. In view of the aforesaid, the Senior Counsel for the Company submits that the instant Writ Petition does not deserve any interference.",,,,

19. So far as the point of delay is concerned, the learned Senior Counsel has placed reliance upon a decision of the Honâ??ble Supreme Court in the",,,,

case of Union of India (UOI) & Ors. vs. Chaman Rana & Ors. reported in (2018) 5 SCC, 798.",,,,

20. Rejoining his submissions, the learned Senior Counsel for the petitioner contends that the criteria for allotting marks being objective in nature, the",,,,

subjective satisfaction of the authorities cannot find any place as the said would lead to arbitrariness and lack of transparency which would ultimately,,,,

adversely affect the morale of the officers/employees of the Company. The Senior Counsel for the petitioner further submits that the respondent â?",,,,

Company have not categorically denied the allegations of additional marks allotted to the respondent nos. 4 & 5 and has only put forward some,,,,

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explanation in support of their action which has to be adjudicated by this Court. It is further submitted that the petitioner was pursuing his right in the,,,,

Department and had also filed an Appeal which was rejected on 18.02.2015.,,,,

21. The rival submission made by the learned counsel for the parties have been duly considered and the materials placed before this Court have been,,,,

carefully examined.,,,,

22. It is seen that while the petitioner has not made any grievance with regard to the marks allotted to him, his grievance is the additional marks",,,,

allotted to the respondent nos. 4 & 5. However before going to the merits of the challenge, let us first deal with the objection taken with regard to the",,,,

delay in approaching the Court.,,,,

23. The Limitation Act of 1963 per se does not have any application in a writ proceeding. However this Court being a Court of Equity, laches &",,,,

negligence are relevant factors which are required to be taken into consideration. Therefore, what is required to be seen is as to whether the delay of",,,,

2(two) years in approaching this Court would be fatal. No doubt, there is delay of about 2(two) years, the said delay in the opinion of this Court may",,,,

not be fatal for adjudication of the case of the petitioner more so, when the consequence of examining this case may only lead to giving effect of the",,,,

promotions of the parties before this Court on certain dates as would be held to be justified by this Court. Further, the appeal of the petitioner was",,,,

disposed of by the Company only on 18.02.2015. The case of Chaman Rana (supra) relied upon by the respondents may not come to their aid,,,,

inasmuch as in the said case the delay was a substantial one of 17 to 20 years and any direction to consider retrospective promotion would â?virtually,,,,

bring a tsunamiâ?? in the service resulting in administrative chaos quite apart from the financial implications for the Government.,,,,

24. The challenge is also required to be examined inasmuch as the allegation is with regard to violation of objective criteria while allotting marks to the,,,,

respondent nos. 4 & 5 and the same is not dependant on any subjective satisfaction of the authorities which may not be the subject matter of,,,,

interference by a Writ Court.,,,,

25. In the instant case, the criteria are well defined wherein the additional marks for Diploma/Degree of 1(one)/2(two) marks depending on the",,,,

duration of such Diploma or Degree are laid down. The materials before this

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Court would show that though the respondent no. 4 had obtained the,,,,

Diploma, such Diploma was not acquired in the existing Grade i.e. Grade-D and was prior to that while the said respondent no. 4 was a Grade-C",,,,

Officer. This Court has noted above that the respondent no. 4 was promoted to Gradeâ?"D on 01/01/2010 whereas the Diploma was acquired in the,,,,

year 2008-2009 as evidenced from the communication dated 07.09.2009 issued by the respondent- Company itself. In that view of the matter, the",,,,

marks allotted to the respondent no. 4 which is 83.31 has to be deducted by 1(one) mark which would therefore become 82.31. So far as the,,,,

respondent no. 5 is concerned, though a certificate was obtained by the said respondent no. 5 which in the understanding of the respondent",,,,

â?"Company involves Stringent Selection Process wherein a selected executive has to pursue a very exhaustive and tight curriculum pertaining to the,,,,

Petroleum Industry, the same has to be read with the explanation given by the Institute in the communication dated 26.05.2015 with in clear terms lays",,,,

down that such Certification Course is not equivalent to a formal Diploma or Degree. No denial of the certificate has been made by the Company and,,,,

as stated above, the respondent no. 5 has chosen not to contest the present proceedings. In view of the aforesaid finding that 1(one) mark has been",,,,

erroneously allotted to the respondent no. 5, the total marks obtained by him which was stated to be 83.30 would be 82.30.",,,,

26. The Honâ??ble Privy Council in the case of Nazir Ahmed vs King Emperor reported in AIR 1936 PC 253(2) held as follows:,,,,

â??The rule which applies is a different and not less well recognized ruleâ?" namely, that where a power is given to do a certain thing in a",,,,

certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.â??,,,,

In the instant case, when the policy has laid down the procedure, the same has to be followed meticulously to maintain fairness and transparency in",,,,

administrative action.,,,,

27. In view of the aforesaid interference to the extent of deduction of 1(one) mark each of the respondent no. 4 & 5, the petitioner would come within",,,,

the 60% and would be entitled to be promoted from 1.1.2014. Since it is the admitted case that the petitioner was given promotion in the subsequent,,,,

year i.e. from 01.01.2015 by treating him to be amongst the 40 %, such effect

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to the promotion has to be given from 01.01.2014 by recasting the",,,,

position of the 6(six) incumbents who were considered and placed in the select list dated 17.12.2013.,,,,

28. Consequently the respondent-Company would also give the effect of promotion to the other affected incumbents from the date from which they/he,,,,

would be entitled to such promotion i.e. from 01.01.2015. Since the petitioner as well as the respondent nos. 4 & 5 have been given further promotion,",,,,

the effect would only be notional and no recoveries, whatsoever be made from the respondent nos. 4 & 5. However, all other notional benefits",,,,

including Seniority has to be conferred to the petitioner by treating him to have been promoted to Grade-E with effect from 01.01.2014.,,,,

29. The Writ Petition is accordingly disposed of.,,,,

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