
(2004) 10 DEL CK 0109
In the Delhi High Court
Case No : WP (C) . 2784 of 2003

Shri Rajiv Dang

APPELLANT

Vs

ONGC and Others

RESPONDENT

Date of Decision : 05-10-2004

Acts Referred:

Citation : (2004) 114 DLT 619 : (2005) 79 DRJ 149 : (2006) 1 SLJ 475

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : M.R. Chawla, for the Appellant; R.G. Srivastava, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Sarin, J.—Rule.

With the consent of the parties, writ petition is taken up for disposal.

2. Petitioner has filed the present writ petition, seeking a direction to respondent No.1/ONGC to promote him to category E-4 as Superintending Engineer (C) with retrospective effect i.e., from or prior to the date when his first junior was promoted to that post. Petitioner also seeks a direction to the respondent to consider him for further promotion to the post of Chief Engineer (C) as may fall due prior to promotion of respondent Nos.2 to 4, who are his juniors in service.

3. This case has a chequered history. It would be appropriate to briefly recapitulate the relevant facts.

4. Petitioner, who was working as a Dy.Superintending Engineer with ONGC tendered his resignation on 2.1.1997. The said resignation was withdrawn on 22.12.1997. It is the petitioner's case that even though the resignation had been withdrawn, respondent/ONGC purported to accept the same w.e.f. 5.11.1998. Petitioner challenged the same vide W.P.(C).No.6193/98. A learned Single Judge of this Court allowed the writ petition and directed the petitioner's reinstatement. Petitioner was also held entitled to salary and other allowance

w.e.f. 22.12.1997. Cost was also quantified at Rs.10,000/-.

5. Aggrieved by the same, respondent preferred LPA NO.12/2001. A settlement was reached between the parties in LPA. It would be appropriate for facility of reference to reproduce the terms of settlement, in which the appeal was disposed of:-

1.The respondent will be re-employed in service with seniority and all consequential benefits including increments etc.

2. The salary shall be paid from the date of re-employment.

3. The re-employment shall be done within one week from today.

4. The respondent shall be paid full salary for the period 22.12.1997 to 5.11.1998.

5. The respondent shall not be paid any salary from 6.11.1998 till the date of re-employment.

6. There shall be no break in service of the respondent.

7. This shall not affect gratuity, pension and other terminal benefits."

6. The Court also gave its approval to the said terms. In the event, petitioner was reemployed. The disputes that arose between the parties with regard to the payment of salary and other benefits, increments etc., have since been settled and are no longer in issue in the present writ petition.

7. Mr.M.R.Chawla, learned counsel for the petitioner while referring to paras 1 and 6 of the terms, reproduced above, submits that petitioner has been granted seniority with all consequential benefits, including increments. Further provision has been made that there will be no break in service. Relying on this, Mr.Chawla submits that a legal fiction is sought to be created by which petitioner has been deemed to be in service without a break. The period of such deemed service does not deserve any different treatment than the actual service. He, Therefore, submits that petitioner should be taken as having completed the requisite years of service and experience required as a Dy.Superintending Engineer for being promoted to the post of Superintending Engineer. Based on this, Mr.Chawla submits that petitioner is entitled to be promoted with retrospective effect on the dates his juniors got promoted as Superintending Engineer and as a Chief Engineer. Further, that petitioner would also be entitled to the pecuniary benefits, as admissible on such deemed promotion. Mr.Chawla further contends that petitioner is entitled to the benefit of the unamended scheme for promotion, in respect of which there is an office order dated 13.1.1987 (Annexure X), appearing at page 214 of the paper book, which provides for a period of three years as the requisite period for promotion to the rank of Superintending Engineer.

8. Mr.R.G.Srivastava, learned counsel for the respondent in opposition submits that promotion to the post of Superintending Engineer and Chief Engineer is not

based on seniority alone. The criteria is seniority-cum-fitness (up to E-1 level), Under the quantification scheme (E2 to E4 level) it is assessment by Selection Committee based on qualification, experience, performance and appraisal. He emphasised this to urge that promotion was not merely on the basis of completed years of service. Under the quantification scheme, it is the qualification experience performance appraisal etc., which are taken into consideration. From E-3 to E-4 the period is four years experience. He submits that petitioner had worked as Dy.Superintending Engineer from 1.1.1994 to 1.1.1997, which would be three years. He was reemployed on 31.1.2001 and would complete four years on 31.1.2002. Thus, he would be eligible for consideration only after completing four years of service and experience as Dy. Superintending Engineer for promotion to Superintending Engineer. He submits that the period during which petitioner was not actually serving, cannot be computed and taken into consideration for meeting the experience criteria. It is another thing that petitioner may be entitled to have the said period counted in for the purposes of determination of qualifying period for pension and retiral benefits. However, neither under the compromise settlement nor under service jurisprudence, the said period can meet the criteria of actual experience. There is also no merit in the submission of petitioner that the modified recruitment scheme would not be applicable to the petitioner. The regulations are made effective from 1.1.1997 and are applicable to all the employees.

In view of the foregoing discussion, writ petition has no merit and is dismissed.