

(1994) 12 GUJ CK 0001
In the Gujarat High Court
Case No : L.P.A. No. 182 of 1994

Sunil Kumar and Others

APPELLANT

Vs

Oil and Natural Gas Commission and Others

RESPONDENT

Date of Decision : 02-12-1994

Acts Referred:

Constitution of India, 1950 — Article 144

Citation : (1996) 2 GLR 781

Hon'ble Judges : B.N. Kirpal, C.J.; Akbar Nanjibhai Divecha, J

Bench : Division Bench

Judgement

B.N. Kirpal, C.J.—This is an appeal against the judgment of the learned single Judge who had dismissed the writ petition filed by the appellants who were challenging the decision of respondent No. 1 regarding the respondents No. 4, 5, 6 and 8 as being senior to the appellants.

2. Briefly stated, the facts are that in ONGC (respondent No. 1), there are 15 different disciplines categorised under three main headings of Engineering, Geoscience and administrative and other support services. In each such discipline, there are sub-divisions of Class-I, Class-II Class-III and Class-IV. In the present case, we are concerned with the discipline of Chemistry which falls under the category of Geo-physics. The hierarchy of the post in Chemistry department as per the Recruitment and Promotion Regulations, 1980, is as under :

E-5 Chief Chemist 3 years Selection Post E-4 Supdt. Chemist 4 year Merit-3 years Seniority-cum-Fitness 25% 50% 25% induction E-3 Dy. Supdt. Chemist Seniority-cum-Fitness 5 years Merit-3 years 75% 25% E-2 Senior Chemist Seniority-cum-Fitness 6 years Merit-4 years 75%. 25% E-I Chemist Seniority-cum-Fitness 2 years 50% Induction Q-1 50% Promotion Q-2 4 years E-O Asst. Chemist (Class-II)

3. These regulations came into effect on April 25, 1980. Prior to that date an

advertisement for recruitment of direct recruits for the post of Chemists (E1) has been issued in the year 1979. After the promulgation of the Rules of 1980, the candidates for the post of E-1 were selected and the selection committee recommended 74 persons to be suitable for appointment to E-1 post and 71 persons suitable for appointment to E-O post. Out of the said 74 persons, those at serial No. 1 to 49 were appointed as Chemists. Due to non-availability of E-1 posts, the other persons on the select list could not be appointed. At that time, there were large number of vacant posts in E-O category and the department candidates who were duly qualified for a promotion were not available. The Commission accordingly decided, apparently in exercise of the power to relax the recruitment rules, to fill-up the vacant E-O posts from amongst these candidates who had been selected. Accordingly, 25 persons from the E-1 select list (from serial No. 50 to 74) and 71 persons (Including respondents No. 4 to 6 and 8) were appointed to E-O post. The appointments were made after these candidates had been offered that they could be appointed at E-O level and it is only after they had accepted this offer that their appointments were notified.

4. At the time when the aforesaid appointments of E-O Officers were made in September/October 1980, the pay scale of Chemist (E-1) was Rs. 820-1680 and the pay scale of E-O was Rs. 750-1500.

5. On August 10, 1981, posts of E-1 were advertised. It is not in dispute that according to the R. & P regulations, 50% of the posts of Chemist (E-1) were to be filled in by promotion from E-O posts and 50% of the vacancies were to be filled in by direct recruitment. It is these advertised posts which were in direct recruitment quota for which the petitioners applied. An all India written test was held and after the interviews, 62 persons including the petitioners, were selected for appointment as Chemists (E-1). It appears that some of the E-O Officers who had been recruited in the year 1980 also took part in this competitive examination and two of them, namely, Dr. V. Tripathi and Shri A. K. Mittal were selected in direct recruitment and were placed above 60 fresh recruits in the select list for appointment as Chemists. The direct recruits, so selected, including the petitioners, joined the service as Chemists in July-August, 1982.

6. In May 1983, a Departmental Promotion Committee was held for making selection for promotion to E-1 level and that all the eligible candidates existing in E-O level were considered and were promoted to E-1 post w.e.f. 1983. No eligible departmental E-O Officer was left without promotion inasmuch as the respondents No. 4 to 6 and 8 had been promoted with effect from January 1, 1983 to E-1 post and as the petitioners were appointed to E-1 post w.e.f. 1982. The petitioners were shown senior to the respondents in the seniority list dated September 1, 1984 and an earlier seniority list of October 1983 had not contained the names of the said respondents but in the list published on September, 1984, after all the objections had been taken into consideration, the petitioners were shown senior to respondents No. 4 to 6 and 8.

7. In October 1984 some of the E-O recruits who had been promoted to E-1

w.e.f. January 1, 1983 filed a Regular Civil Suit No. 375 of 1984 in the Court of the Civil Judge (S.D.), Mehsana against ONGC. The contention of the plaintiffs there was that they should have been appointed/recruited to the post of Chemists (E-1) and they should be treated as being senior to the direct recruits of 1982. The ONGC, in the written statement filed by it, took the stand that the plaintiffs had been rightly recruited at E-O level and they were eligible for promotion to E-1 level only from January, 1983. On November 10, 1989, the said suit was dismissed. The Court came to the conclusion that pursuant to the advertisement of 1979 the plaintiffs had been selected for the post of Assistant Chemist (E-O) and not to the post of Chemist (E-1); there had been no violation of R. & P. rules; the plaintiffs had been given a chance to appear in the open recruitment by the advertisement of 1981 and some of them who had appeared had not been selected the plaintiffs were not entitled to be placed senior to the E-1 direct recruits who had been selected after the advertisement of 1981. With effect from January 1, 1987 the appellants as well as the respondents were appointed to the next higher post of Senior Chemist (E-2). In the seniority list dated March 1, 1988 of Senior Chemist, the appellants were shown senior to the said respondents.

8. It seems that the E-O recruits of 1980 were making attempts to gain seniority over the direct recruits to the E-1 level. Anticipating some problems, Suit No. 192 of 1991 was filed by some of the E-1 Officers in the Court of the Civil Judge, Dehradun. During the pendency of this suit, the appellants as well as the aforesaid respondents were promoted to E-3 post (Deputy Superintendent Chemist) with effect from January 1, 1992. The said suit which was filed was decreed by the Civil Court on November 30, 1992. The permanent injunction was issued inter alia directing the ONGC not to give promotion to the Officers like the respondents herein before the plaintiffs in violation of the seniority which had already been determined.

9. The ONGC, because of the representation of E-O Officers, had been appointing a number of Committees to look into their grievances. The last Committee which was appointed was headed by one Shri Kuldeep Chandra. It submitted its report in March 1993. The relevant extract of the report has been placed on record. It came to the conclusion that E-O level Officers were rightly recruited on the basis of the competitive examination even though the posts which were advertised were of E-1. It did not accept the various contentions which have been raised by the association representing the interest of the respondents. It has specifically considered the seniority list which had been prepared and after taking into consideration the decision of the Civil Judge at Dehradun. The said Committee observed as follows :

"The seniority lists for E-O and E-1 were finalised after circulation of provisional lists prepared through joint effort of P & A function and senior level Officers of each discipline. In the considered disciplines final seniority lists and revised provisional lists are operational. These lists have been applied for E-2 level

promotions. None of the Courts have held seniority lists as invalid. Rather, Courts have admonished ONGC to go ahead promoting Officers without infringing with the operative seniority of the recruited Officers as far as inter se seniority of Officers is considered vide case, 1/191 and 1/192 of 1991 of Civil Judge, Dehradun."

10. The Committee also took note of the fact that E-O Officers who had been recruited in the year 1980 do not always spell out in clear terms that they should be treated as E-1 from the date of joining. Another important observation of the Committee pertained to the aspect of delay and in regard thereto in paragraph 10 of its report it had held as follows :

"10. The so-called "anomalies" arose during the transition period of 1979-80 when the old R. & P. regulations were changing over to the new. The recruitment process for 1980 was initiated in 1979. Whatever the learned Selection Boards wisely decided to empanel the time-tested system of recruitment for cost-effectiveness and to sustain competitive spirit in executives for efficiency, and maintaining vibrant hierarchy is no more open for review and in the light of various verdicts of other Courts it has become respectable in totality,"

11. The Committee reiterated its view against the change in seniority as under :

"The situation is complex if inter se seniorities obtaining through due process of seniority fixation are allowed to be altered. Predating E-O to E-1 from the date of appointment would vitiate inter se seniorities. Additionally, such an action involves alteration of panels drawn by Selection Boards and thus not at all feasible."

"All the E-O Officers in these disciplines of Pre-1980 period from the department, all E-O Officers empanelled and recruited during the period 1980-82 and joining during 1983 are the affected Officers and they are all included in the duly prepared and duly circulated seniority lists for several disciplines. Any change in their appointment dates would affect practically equal number of E-1 Officers. The number of such Officers is around 1,193 (vide Annexure 8)."

"The seniority lists have been accepted for promotion and appointment from E-O to E-1 and E-1 to E-2."

"The Officers so promoted from E-O to E-1 & E-2 and from E-1 to E-2 accepted the promotions and joined the posts and there is no evidence of single or en masse attempt not to accept promotions"

12. The reading of the aforesaid relevant extracts of the Kuldeep Chahdra Report clearly shows that the said Committee did not want to upset the seniority which had already been fixed of all the Officers including the petitioners and the respondents. In the present case, the petitioners and the respondents had been promoted to E-3 level with effect from January 1, 1992. If the solution as given by the said Committee would have meant that the appellants as well as the respondents No. 4 to 6 and 8 would have been deemed to have been promoted

to E-3 level with effect from 1990, 1991 and 1992, their respective seniority would have been changed. As we shall presently see what the respondent-Commission did, and which led to the filing of the writ petition was to antedate the promotion of the respondents alone to 1990 level E-3 which would make them two years senior to the appellants even though for a period of over 10 years they were junior.

13. How the aforesaid result was achieved make interesting reading. Unfortunately, it does not reflect as a whole in the manner in which the Executive Committee of the Commission appears to have been misled. On the record the agenda approved by the Member (Personnel) of the Commission has been placed. In the said note, a reference has been made to Kuldeep Chandra Committee and the following statement was made in paragraph 2 of this note :

"2. After examination of various documents, the Committee has put forward the opinion that these so-called anomalies arose during the period of transition from the R. & P Regulations, 1974 to R. & P. Regulations, 1980 as a result of need-based implementation of organisations recruitment and promotion policies, without any malicious intention. However, the Committee has opined that psychological sense of loss has been felt by the various Officers recruited at E-O level during the period under reference and has suggested the following solutions to alleviate this feeling of differential treatment :

(a) All E-O level Officers existing before April 25, 1980 possessing Q. 1 qualification should be treated as E-I from 1980 and promoted to E-3 after 9 years plus i.e. January 1, 1990.

(b) All E-O level Officers recruited in 1980 should be treated as E-1 from that year and promoted to E-3 after 9 years plus i.e. January 1, 1990.

(c) All E-O level Officers recruited in 1981 should be treated as E-1 from 1981 and promoted to E-3 after 9 years plus i.e. January 1, 1991.

(d) All E-O level Officers recruited as such in 1982 should be treated as E-1 from that year and promoted to E-3 after 9 years plus i.e. January 1, 1992."

14. It will be seen that the opening portion of the note only partly reproduces a passage from the Kuldeep Chandra Report, relevant portion of which has been quoted hereinabove. What has not been reproduced in the agenda note is that the decision of the Selection Board was "no more open for review and in the light of various verdicts of other Courts it has become respectable in totality." Furthermore, in the said agenda note suggestions of the Committee have also wrongly been represented. The Committee, in the solution which has been quoted hereinabove had sought to rationalise the E-O Officers of pre-1980 and who had been inducted in the years 1980, 1981 and 1982 in the immediately subsequent years from January 1, 1981, January 1, 1982 and January 1, 1983. On the other hand, in the agenda note it has been stated that the Committee had recommended the rationalisation of such Officers in those very years. At no

place in the agenda note was it stated that Kuldeep Chandra Committee had recommended that the seniority list should not be altered as they had become final. It was also not stated in the agenda note that the predating of the promotion to E-3 level should be in respect of the Officers "as per the operative seniority lists." 15. On the basis of the said agenda note, on June 6, 1993, the Executive Committee of the respondent-Commission, while purporting to review the anomaly of E-O level Officers who were recruited and promoted within the period 1977 to 1982, passed the following resolution. "Agreed subject to the condition that its implementation to all the affected executives in the disciplines concerned will not violate any of Court's orders in any way and also subject to para (d) of the agenda note."

15. It is after the aforesaid resolution was passed that the appellants filed the writ petition being Special Civil Application No. 6276 of 1993. During the pendency of the said petition, the operation of the order was stayed but the petition came to be dismissed vide its judgment dated April 11, 1994. It was held by the learned single Judge that in the present case the Commission had merely undertaken an exercise of annual cadre readjustment of various disciplines. It was further held that the attempt on the part of the Commission was to see that when recruitments were made during the transitory period from 1974 to 1980 regulations irrespective of the level at which induction as permissible need based recruitments were made and wherever required powers under regulation No. 4 were exercised and that in exercise of this power of cadre adjustment a policy decision had been taken.

16. From the facts enumerated hereinabove, we have no manner of doubt that the action of the respondent-Commission in altering the seniority and giving benefit to respondents No. 4 to 6 and 8 is arbitrary, to say the least. At the outset, we would like to record the submission of Mr. Mohit Shah, learned Advocate appearing on behalf of the appellants, that the appellants have no grievance as far as respondent No. 7 is concerned. The said respondent No. 7 is senior to the appellants and this seniority is not being challenged. It is for this reason that no reference is being made with regard to service particulars of the said respondent No. 7 who was really neither necessary nor a proper party in these proceedings. In fact, it is on his application that he was impleaded as a respondent to the writ petition.

17. In the present case, the seniority was fixed between the appellants and respondents No. 4 to 6 and 8 when a joint seniority list was first prepared with effect from January 1, 1984. This list has been preceded by a provisional seniority list as on January 1, 1983, objections had been invited to the same and thereafter the final list as on January 1, 1984 was prepared. It may be stated that E-O Officers were agitated and were making representations which has led, we were informed by the learned Advocate General, to the constitution of about five different Committees to look into these grievances. Nevertheless, since the time of their recruitment promotions were being made on the said seniority list

which had been finalised and for a period of more than a decade the appellants were shown senior to the said respondents. Suddenly, the seniority has been altered. The seniority list as on January 1, 1984 was required to undergo a change because of the said decision taken by the Commission on June 16, 1993.

18. We are in agreement with the learned Counsel for the appellants that the principle of laches would apply in case like the present. Our attention was drawn to the decision of the Supreme Court in the case of K.R. Mudgal and Others Vs. R.P. Singh and Others, . In this case, a petition had been filed challenging the inter se seniority of the Officers belonging to Intelligence Bureau 18 years after to issuance of the seniority list. While dismissing the writ petition on the ground of laches, the Supreme Court observed as follows :

"Satisfactory service conditions postulate that there should be no sense of uncertainty amongst the Government servants created by the writ petitions filed after several years as in this case. It is essential that any one who feels aggrieved by the seniority assigned to him should approach the Court as early as possible as otherwise in addition to the creation of sense of insecurity in the minds of the Government servants there would also be administrative complications and difficulties."

19. It is no doubt true that the aforesaid observations of the Supreme Court related to the filing of a writ petition in the Court long after the cause of action has arisen whereas, in the present case, we are concerned with the administrative action which has been taken after a considerable lapse of time. We, however, feel that there should be no difference in principle. All employee who has joined the service is entitled to feel secure at least as far as his seniority is concerned once the seniority list has been finalised after objections to it have been considered by the authorities concerned. As already noticed, a provisional seniority list was issued on January 1, 1983 and it is after objections had been invited and had been considered that a final seniority list was issued with effect from January 1, 1983 and in fact the said list was issued in September 1984. In the earlier provisional list, the said respondents names were not included but when the list was finalised in September 1984 the said respondents had already, been in service for one year and their names were included at appropriate place in the seniority list below the appellants. Furthermore, it is on the basis of this seniority list that promotions were granted. In addition thereto, at least on two occasions, once before the Civil Court at Mehsana and secondly before the Civil Court at Dehradun, the categorical stand of the Commission was that the said seniority has rightly been fixed. The Commission having thus assured the appellants and other similarly placed Officers about its stand with regard to the finality, of the seniority list, cannot be permitted to change its opinion after a considerable lapse of time. The principle of laches has also been applied by the Supreme Court with regard to administrative delays. In this connection, a reference may be made to the case of Commissioner of Income Tax, Calcutta Vs. Braithwaite and Co. Ltd., . In that case, a person had been appointed as a Medico

Social Worker with effect from September 25, 1979. Respondent No. 4, in that case, had been appointed in the same capacity with effect from April 11, 1980 and had been shown junior to the appellant in the provisional seniority list circulated on July 25, 1984. On March 15, 1987 said respondent No. 4 had submitted a representation and his date of appointment was antedated to, September 25, 1979 on the ground that he had wrongly been denied the appointment in 1979. This antedating had resulted in granting him ad hoc promotion in preference to the appellant. This was challenged by the appellant and having failed before the Central Administrative Tribunal, an appeal was filed before the Supreme Court. Accepting the appeal, the Supreme Court observed that the correction of the date of appointment, even if it was desired was impermissible in law when it was sought to be done 10 years after selection list for the post had been prepared and when the inclusion of the appellant and non-selection of respondent No. 4 in that selection list had remained unquestioned by any mode known to law. It was precisely for this reason that the said appeal was allowed by the Supreme Court observing that the action of the respondents therein in antedating the appointment of respondent No. 4 after a lapse of more than 10 years was clearly arbitrary.

20. In the present case, as already noted, the appellants as well as respondents No. 4 to 6 and 8 were promoted to E-3 level in 1993 and their seniority was fixed from January 1, 1992. As a result of the impugned decision instead of antedating the appointment of all, the Commission has antedated the appointment of the said respondents only to January 1, 1990. It has been submitted by Shri Mohit Shah while placing the reliance on the decision of the Supreme Court in the case of State of Bihar and others Vs. Sri Akhouri Sachindra Nath and others, that promotion with retrospective effect which adversely affects others is impermissible. We are in agreement with this submission. The effect of antedating the promotion of respondents No. 4 & 6 and 8 is that they have been given promotion with retrospective effect. They were actually promoted in 1992 along with the appellants but their promotion is now sought to be regularised with effect from January 1, 1990. The ratio of the aforesaid decision in Akhotiri Sachindra Nath case (supra) would be clearly, applicable to the instant case wherein it was held, in no uncertain terms, "It is well settled that no person can be promoted with retrospective effect from a date when he was not borne in the cadre so as to adversely affect others." To the same effect is the decision of the Supreme Court in the case of State of M. P. and Anr v. Prem Prakash and Ors. reported in 1994 (1) SCC 432. It was observed in that case, while considering the action of antedating the date of appointment, as follows :

"This Court has repeatedly struck down and decried any attempt on the part of the appointing authority to give a national seniority from a retrospective date, especially, when this process affects the seniority of those who have already entered into the service."

On this ground also, in addition to the ground of laches, the appellants are

entitled to the relief claimed for.

21. Even on merits, we find that the action of the respondents is clearly arbitrary and violative of Art. 14 of the Constitution of India. It is not in dispute that the said respondents though they had appeared in the examination for selection to E-1 post were in fact offered appointments in the E-O post. No doubt, 25 of such Officers were on the select list for E-1 post but because their number was beyond serial No. 49 and only vacancies existed for direct recruitment in E-1 post they could not be appointed. 71 other Officers were even found suitable for being placed on the select list of E-1 post and they, along with these 25 Officers, were then offered appointment to E-O post. This appointment offer was also made because sufficient number of persons who were Class-III were not available for promotion to Class II (E-O post) and it was in exercise of the powers of the relaxation that the said offer was made. The incumbent willingly and voluntarily accepted the offers of appointment and were appointed on probation. The pay scales to which they were appointed were less than the pay scales of E-1 of officers whereas the E-1 posts are Class-I posts E-O posts are Class-II posts. The Commission now sought to deem or record the said E-O Officers who were so appointed more than a decade ago as having been validly appointed to E-1 posts. Such a decision is clearly arbitrary and illogical. The question of there being any anomalies, as has been contended by the respondents does not arise in view of the fact that the parties have acted voluntarily and had accepted a lower post than what they had appeared for. We do not see as to what anomalous situation had arisen which was sought to be rectified. Therefore the concerned respondents were not found suitable for being appointed to E-1 post which were available within the quota of direct recruitment and having failed to secure, such an appointment they sought to be inducted to E-1 post by back-door method. Such circumvention of statutory regulations cannot be permitted. It is pertinent to note that at least two Officers who were similarly situated as the said respondents namely, Dr. Tripathi and Shri Mittal, once again took the examination and were; found to be meritorious enough to be included in the select list E-1 and were appointed along with the appellants. These Officers were shown senior to the appellants and there is no grievance in this regard. It is immaterial whether the said decision has been taken on the basis of the recommendations by one Committee or the another because of the representations of the respondents. What is to be seen is whether such a decision is arbitrary or not. From the facts enumerated hereinabove, it appears that the said decision is devoid of any logic and is only arbitrary.

22. The matter may be viewed from another angle and this is what causes some concern. On two occasions the question of seniority and the validity of appointment to E-O level was adjudicated upon by the Court of competent jurisdiction. The Civil Judge at Mehsana as well as the Civil Judge at Dehradun had decided that the appointments of E-O Officers have been validly made and the seniority has rightly been determined. The Commission was a party to these proceedings. Bypassing the impugned resolution the Commission has shown

scant respect to a judicial order. If the decision of the Courts were not correct, it was open to the Commission to challenge the same by way of appropriate proceedings. But the Commission could not do so for the simple reason that the written statements filed by them in those cases were in support of the appellants herein. The Commission has now shown volute face and has reversed its earlier stand and completely ignored the decisions of the Civil Courts. The decree which was passed by the Civil Court at Dehradun is by way of mandatory injunction and the impugned decision is clearly contrary to the said mandatory injunction.

23. As yet another illegality which has been committed in regularising the E-O Officers at E-1 level is that the said decision is clearly in violation of the quota rule. According to the recruitment regulations, appointment to E-1 level post can be made from two sources, namely, by promotion from E-O Officers and by direct recruitment by open competition. The petitioners and said respondents had sought induction into the service through direct recruitment. In 1980 there were only 49 vacancies in the quota of direct recruits to E-1 level to which appointments were made. By now, regularising those E-O Officers who were appointed in September/October 1980 in E-1 post can only by deeming them to be direct recruits and their induction at this late stage is in violation of quota rule. From the agenda note it is obvious that there has been no application of mind of the Commission to this aspect.

24. With the aforesaid reasons, this appeal and the writ petition filed by the appellants are allowed. A writ of Mandamus is issued quashing and setting aside the decision of the Executive Committee of the respondent-Commission taken on June 16, 1993 at item No. 113.10 as circulated by the letter dated June 21, 1993 insofar as seniority of the appellants/petitioners is being adversely affected. All E-O Officers appointed pursuant to advertisement No. 7 of 1979 including respondents No. 4 to 6 and 8 shall not be shown as senior to the petitioners/appellants in the seniority list upto E-3 level and the final seniority list as on September 1, 1983 shall be given effect to. There will be no order as to costs.