

(2013) 08 GAU CK 0023

Gauhati High Court

Case No: Writ Petition (C) No. 3911 of 2010

Sri Atul Chandra Baruah

APPELLANT

Vs

Oil and Natural Gas Corporation
(ONGC) Ltd., Regional Director,
General Manager and Deputy
Manager

RESPONDENT

Date of Decision: Aug. 2, 2013

Hon'ble Judges: Arup Kumar Goswami, J

Bench: Single Bench

Advocate: B. Chakraborty, for the Appellant; P.K. Roy, Standing Counsel, ONGC, for the Respondent

Final Decision: Allowed

Judgement

Arup Kumar Goswami, J.

Heard Mr. B. Chakraborty, learned counsel for the petitioner and Mr. P.K. Roychoudhury, learned Standing Counsel, ONGC. The relevant facts for the purpose of disposal of the writ petition are that the writ petitioner joined service in the Oil and Natural Gas Corporation Ltd. (ONGC) as Helper Grade (Electrical) in 1984. He was, thereafter, selected and appointed to the post of Asstt. Technician (Electrical) in the year 1986 as a departmental candidate. Under the promotion policy of ONGC, the petitioner was promoted as Junior Technician (Electrical) w.e.f. 01.01.1993.

2. On 28.12.1994, an order was passed invoking Regulation 14(5) of ONGC Leave Regulation holding that the petitioner was absent from duty in an unauthorized manner and thus, he deemed to have resigned from service.

3. The petitioner had put to challenge the order dated 28.12.1994 by way of filing a writ application, registered and numbered as WP (C) No. 4022/1995. The stand taken before this Court by the petitioner in the said writ petition was that he was suffering from tuberculosis and he had informed the authority about his illness and also prayed for leave along with medical certificate. This court recorded a finding in its

judgment dated 24.08.2000 that materials on record demonstrate that the authority was informed about the illness of the petitioner and the order dated 28.12.1994 was passed in an arbitrary and whimsical manner. Accordingly, the writ application was allowed setting aside and quashing the order impugned with a direction to take back the petitioner in service with all past benefits including back wages.

4. A writ appeal was preferred against the said judgment and order dated 24.8.2000 being W.A. No. 486/2000. Initially, there was an interim order dated 04.12.2000 staying the payment of full back wages. However, the petitioner was directed to be reinstated in his service. Pursuant to the said order dated 24.08.2000 of the writ appellate court, the petitioner was reinstated in service on 09.02.2001. W.A. No. 486/2000 was dismissed by an order dated 05.12.2002 holding that there was absolutely no merit in the appeal. Thereafter, by order dated 20.06.2003, the competent authority paid back wages to the petitioner w.e.f. 30.10.1994 to 08.02.2001.

5. It is the case of the petitioner in this petition that under the time-bound promotion scheme, the petitioner was entitled for promotion w.e.f. 01.01.1999 and accordingly, his case was also considered for promotion w.e.f. 01.01.1999. But by letter dated 17.12.2009 he was informed that though he was considered for promotion to the post of Chargeman (Electrical) (A-IV) by way of holding personal interview on 16.11.2009, the Departmental Promotion Committee (DPC) did not promote him w.e.f. 01.01.1999. By the said letter it was also indicated that he would be again be considered for promotion w.e.f. 01.01.2000 through personal interview. He was, thereafter, promoted by an order dated 09.04.2010 to the post of Chargeman (Electrical) (A-IV) w.e.f. 01.01.2007, but not from 01.01.2000.

6. Mr. B. Chakraborty, learned counsel for the petitioner submits that when the DPC had considered the case of the petitioner for promotion w.e.f. 01.01.1999 and also as on 01.01.2000, there could not have been any justification for promoting the petitioner w.e.f. 01.01.2007. The learned counsel submits that the stand taken in the affidavit that the petitioner did not have functional experience for 6 years for time-bound promotion scheme cannot be sustained. He submits that most illegally and arbitrarily the petitioner was removed from service and this court, while setting aside the order of removal, directed grant of consequential benefits to the petitioner. The learned counsel submits that in view of adjudication made by this court, the petitioner must be deemed to have been in service all along and now the respondent authorities cannot take the plea that petitioner did not have 6 years of functional experience. The learned counsel submits that petitioner had served in the feeder post for 2 years and therefore, basing on the evaluation and performance of the petitioner for the aforesaid period, the authority could have take a decision to promote the petitioner. Learned counsel also submits that petitioner was not informed that his case could not be considered because he did not complete the functional period of 6 years but impression was given through the letter dated

12.02.2009 that his case was considered on merit and he was not found suitable. In the affidavit-in-opposition only, for the first time, it was disclosed that rejection of the petitioner was on the ground that he had not fulfilled the period of 6 years of functional experience. The learned counsel also wonders assuming that petitioner had completed 6 years on 01.01.2007, what prevented the authorities from considering the case of the petitioner in the year 2007, thus depriving him of so called functional experience for 3 years.

7. Mr. P K Roy, learned standing counsel, ONGC submits that DPC has to take into consideration the Personal Appraisal Reports (PAR) for the relevant period of 3 years preceding the date from which promotion is sought to be effected. Admittedly, there was no PARs of the petitioner for the relevant period of 1996, 1997 and 1998 and therefore, the case of the petitioner could not be considered for promotion w.e.f. 01.01.1999 or 01.01.2000. The petitioner was reinstated in service on 09.02.2001 and thus he had completed requisite period of 6 years in 09.02.2007 and therefore, the DPC had accorded promotion to the petitioner w.e.f. 01.01.2007.

8. I have heard the learned counsel for the parties and have perused the materials on record.

9. Eligibility criteria for promotion (qualification/experience) in the Modified Recruitment & Promotion Regulation, 1980, for short, the Regulation, as appearing in Schedule-1 thereto provides that experience/qualification of 6 years as Junior Technician (Electrical) is required for promotion to the post of Charge men (Electrical) (A-IV level).

10. Letter dated 17.12.2009 (Annexure-6) to the writ petition, on which much reliance has been placed by Mr. Chakraborty, to the extent relevant is extracted for ready reference:

Sub:-Consideration for Promotion to the post of Chargeman (Electrical)

Sir,

Kindly refer to the personal interview held on 16.11.2009 for consideration for Promotion to the post of Chargeman (Electrical) w.e.f. 01.01.1999.

It is informed that you have been considered for promotion to the post Chargeman (Electrical) w.e.f. 01.01.1999 by the departmental promotional Committee and it is regretted that, you have not been promoted as Chargeman (Electrical) w.e.f. 01.01.1999.

However, you will subsequently be considered for promotion as Chargeman (Electrical) w.e.f. 01.01.2000 through personal interview. The date of interview will be intimated in due course.

11. A perusal of the letter makes it abundantly clear that the case of the petitioner was considered with reference to 01.01.1999. The letter also categorically states that

the petitioner will again be considered for promotion w.e.f. 01.01.2000. If he was not eligible to be considered, then there would have been no occasion for him to be considered for promotion w.e.f. 01.01.1999 or again on 01.01.2000.

12. In paragraph 5 of the affidavit-in-opposition, the respondents had stated as follows:

...Thus his absence from 30.10.1994 to 08.02.2001 cannot be counted as functional experience for the purpose of promotion. Accordingly, DPC did not recommend the promotion of the Petitioner till he acquires the requisite functional experience in the post of Junior Technician (Electrical) required for promotion to next higher level. However, the DPC held on 06.04.2010 recommended the petitioner to be eligible for promotion w.e.f. 01.01.2007, as the petitioner on that date has met with the actual functional experience of the post of Junior Technician (Electrical) and accordingly, the petitioner was promoted to the post of Chargeman (Electrical). Thereafter, the promotion order to the post of Chargeman (Electrical) w.e.f. 01.01.2007 was issued on 09.04.2010 and the petitioner has joined the said promoted post on 07.05.2010. The DPC is an expert body and the said body has taken into consideration all the relevant factors/criterions while dealing with the case of the petitioner for consideration for promotion and as such the petitioner cannot find fault on its recommendation....

13. Apparently, the period of 6 years as computed by DPC is wrong. The DPC proceeded on the assumption that as the petitioner was reinstated in service on 09.02.2001, he will be eligible w.e.f. 01.01.2007 but while doing so, it lost sight of the fact that petitioner had rendered service in the feeder post for a period of almost 2 years w.e.f. 01.01.1993 to 28.12.1994. Ex facie, the calculation based on which the order dated 09.04.2010 promoting the petitioner w.e.f. 01.01.2007 was passed is not correct. Even on the parameter of functional experience which the respondents have emphasized in their affidavit, the petitioner had acquired the functional experience by the beginning of the year 2005. There is no reference to any functional experience in the Regulation. All that is required under the regulation is a period of 6 years as Junior Technician.

14. There is no dispute that this court has set-aside the order of dismissal with grant of all consequential benefits as well as payment of back wages for the entire period of dismissal.

15. On their own showing, retrospective promotion was granted to the petitioner to the post of Chargeman (Electrical) (A-IV level). Certainly the respondents cannot contend later on that the period from 01.01.2007 till the date of passing of the order dated 09.04.2010 will not count for the purpose of his service as Chargeman (Electrical) (A-IV level).

16. In the aforesaid backdrop, only logical conclusion that can be drawn by this court is that the petitioner must be deemed to have continued in service as a Junior

Technician. If that be so, this court has no hesitation to hold that the petitioner was eligible to be considered for promotion with effect from 01.01.1999, on which date, he had completed the period of 6 years. In fact, he was also considered for promotion accordingly as testified by the letter dated 17.12.2009. Subsequent stand of the respondents that the petitioner could not be considered favourably as he did not fulfill the minimum eligibility criteria of 6 years of functional experience 01.01.1999 cannot be sustained. The materials on record brought by way of additional affidavit by the respondents would go to show that integrity of the petitioner was beyond doubt and it is also recorded therein that if promoted, he would be able to discharge his duties.

17. In view of the discussions above, there is no escape from the conclusion that the order dated 09.04.2010 promoting the petitioner to the post of Chargeman (Electrical) (A-IV) w.e.f. 01.01.2007 is vitiated.

18. Accordingly, I set aside the order dated 09.04.2010 and direct the respondent authorities to consider the case of the petitioner for promotion to the post of Chargeman (Electrical) (A-IV level) w.e.f. 01.01.2000 as the petitioner has only prayed for his promotion w.e.f. 01.01.2000 and not from 01.01.1999. The respondents are also directed to consider the case of the petitioner for consequential promotion from the post of Chargeman (Electrical) A-IV level) in terms of the Regulation. The entire exercise shall be carried out within a period of 4 (four) months from today.

19. It is made clear that notwithstanding setting aside of the order dated 09.04.2010, till the aforesaid exercise is carried out, the petitioner will continue as Chargeman (Electrical) (A-IV). The writ petition stands allowed as indicated above. No cost.