

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5828 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

K C MISHRA & ANR.

Versus

O N G C

Appearance:

MR ARUN H MEHTA for Petitioners
MS VASUBEN P SHAH, Sr.Adv., assisted by
MS KG BRAHMBHATT, for Respondent No.1 & 2
MR SHALIN MEHTA for Respondent No.4

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 29/08/97

ORAL JUDGMENT

#. Two petitioners who were working as Chargeman at the relevant time in the Oil & Natural Gas Commission ("ONGC" for short), Production Department, filed this Special Civil Application in representative capacity. This Court, on 1st March 1989, granted leave to the

petitioners to file this petition in representative capacity.

#. The facts of the case briefly stated are as under:

The respondent No.1-ONGC is a statutory Corporation. It is an instrumentality of the Union of India and is therefore, a State within the meaning of Article 12 of the Constitution of India, on which there is no dispute. The recruitment and other service conditions of the ONGC are regulated under the regulations framed in exercise of powers as conferred upon it by Section 32 of the Oil and Natural Gas Commission Act, 1959. It is not in dispute that promotion to the post of Assistant Engineer (Production) is provided from two sources, i.e. from the post of Junior Engineer (Production) and Chargeman (Production), in the ratio of 1:1. It is also not in dispute between the parties that the eligibility for promotion from the post of Chargeman (Production) to the post of Assistant Engineer (Production) is six years' experience, whereas the eligibility for promotion to the said post from the post of Junior Engineer (Production) is four years' experience on that post. The parties are also not on issue on the point that the post of Chargeman has to be filled in 100% by promotions from the post of Assistant Technician which post in turn has to be filled in again in 100% by promotion. So, even the persons having non engineering qualifications can be promoted to the post of Chargeman. The post of Junior Engineer, on the other hand, has to be filled in 100% by direct recruitment and the minimum qualification for recruitment on this post is Diploma in the concerned discipline. Another fact on which there is no dispute is that the pay scale for the post of Chargeman is lower than the pay scale prescribed for the post of Junior Engineers. These facts are clearly borne out from the Special Civil Application itself as given out on page No.5 thereof.

#. The dispute has arisen when the ONGC enunciated a policy known as Policy for Relieving Against Stagnation, hereinafter referred to as 'policy'. Admittedly this policy has been formulated pursuant to the memorandum of settlement. A copy of this policy has been produced on record of this Special Civil Application as annexure 'C'.

#. So as per this policy, those Chargemen and Junior Engineers who have completed 22 years' total service as well as one year service in the cadre concerned, were eligible for fitment to the post of Assistant Engineer. Certain relaxation has been provided in the contingency and one of that is where the senior has not completed 22

years service and a junior has completed the same, then this restriction of qualification has been relaxed. Therefore, the petitioners, i.e. Chargemen as well as the Junior Engineers who acquired the eligibility as provided under the policy have been given fitment in the cadre of Assistant Engineer. But the Junior Engineers were en-block put senior to the Chargemen in the cadre of Assistant Engineer in the seniority which gave rise to this Special Civil Application by the persons belonging to the category of Chargemen.

#. The learned counsel for petitioners contended that the seniority in the cadre of Assistant Engineer (Production) should have been with reference to the continuous length of service and not as it has been done by giving en-block seniority irrespective of the length of service which has been put by Junior Engineers.

#. On the other hand, the learned counsel for the ONGC, Ms.V.P.Shah, Sr.Advocate, assisted by Ms.Kalpna Brahmbhatt, contended that the Commission has not acted arbitrarily in giving seniority to the Junior Engineers above the Chargemen. The length of seniority no doubt may be one of the considerations but it is not the only consideration. Seniority has been given to this category of persons by taking into consideration the facts, viz., (i) the Junior Engineers are having engineering qualifications, (ii) the pay scale on the post of Junior Engineer is much higher than the pay scale on the post of Chargemen, (iii) the eligibility criteria for promotion to the post of Assistant Engineer in the regular channel of promotion is also different, and (iv) the Junior Engineer only requires four years' experience for promotion to the post of Assistant Engineer whereas the Chargeman has to put six years' service before acquiring the eligibility for promotion.

#. Mr.Shalin Mehta, learned counsel for respondent No.4 though adopted the arguments advanced by learned counsel for ONGC, he added one more argument to the arguments aforesaid. Mr.Mehta contended that substantial number of Chargemen, in fact got the benefit of this policy though they were not having 22 years' service to their credit. Mr.Mehta contended that in all 428 Chargemen were given fitment in the category of Assistant Engineer under the aforesaid policy out of which only 12 persons were having 22 years' service to their credit. So, 416 Chargemen though were not having 22 years' service to their credit, got the benefit of this policy only on the ground that their juniors have been given fitment in the category of Assistant Engineer. So, this is another consideration

which found favour with the ONGC to give en-block seniority to the Junior Engineers in the category of Assistant Engineers above Chargemen.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. I find sufficient merits in the contentions raised by learned counsel for ONGC that the length of service is not the only criteria for determining the seniority. All other relevant facts have to be taken into consideration and then the seniority has to be assigned. I find that the basis for giving seniority en-block to the Junior Engineers above Chargemen in the category of Assistant Engineer cannot be said to be arbitrary or perverse. The fact that the Junior Engineers are the persons possessing engineering qualifications cannot be lost sight of. They have been appointed after open market selection, i.e. by direct recruitment and in a higher pay scale. A person who has been given appointment in the higher pay scale, and for the reason of some policy, he is to be given fitment in the higher post of promotion alongwith the person working in lower pay scale, then it may be a reasonable and good criteria for giving weightage for seniority. Equally it is a fact that under the regulation, in the regular channel of promotion, two different eligibilities are provided for Junior Engineers and Chargemen. The Chargemen have to travel more years of service to gain eligibility for promotion to the post of Assistant Engineers in comparison to Junior Engineers. So in case while giving benefit of fitment and simultaneously fixing the seniority it may also be one of the important and good consideration. Lastly, I find sufficient merits in the contention of Mr.Mehta that it is a case where substantial number of Chargemen got benefit because they were fortunate enough that some of their juniors have acquired the qualification and accordingly were given fitment in the category of Assistant Engineers. Taking into consideration the totality of the facts of the case, I do not find any substance in this Specail Civil Application.

##. In the result, this Specail Civil fails and the same is therefore dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated. No order as to costs.

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