

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3629 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
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? : NO

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ML PAREEK

Versus

O.N.G.C & ANOTHER

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Appearance:

MR BB NAIK for Petitioner

MR RAJNI H MEHTA for Respondent No. 1

SERVED BY RPAD - (N) for Respondent No. 2

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CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 30/07/1999

(C.A.V. JUDGMENT)

By means of filing this petition, the petitioner sought for quashing the final seniority list dt. 15th February 1983 of Assistant Engineers (Auto) showing the position as on 1st April 1978 and to direct the respondents to prepare a fresh Seniority List according to the rules and regulations prescribed therefor and for a direction to the respondents to place the petitioner at

Serial No. 22 in the Seniority List of Assistant Engineers (Auto) showing the position as on 1st April 1978 and to give the deemed date to the petitioner to the post of Assistant Engineer (Auto) earlier than 14th January 1980 and to promote the petitioner to the post of Executive Engineer although with effect from 1st January 1984 with all consequential benefits and by amendment, to promote the petitioner to the post of the Dy. Superintending Engineer (Auto) with effect from 1/1/1989 with all consequential benefits.

2. The petitioner was appointed as Foreman, Grade II (Auto) in O.N.G.C. as on 17th April, 1965 according to Oil and Natural Gas Commission (Recruitment & Promotion) Regulations, 1974. The persons working as Foremen, Grade II (Auto) were entitled to promotion to the next higher post of technical Assistant, Grade I (Auto) just after completing 10 years of service and ratio of recruitment to the post of Technical Assistant, Grade I (Auto) was 50% by promotion and 50% by direct recruitment. Pursuant to the court's order dt. 4th November 1980 in Letters Patent Appeal No. 203 of 1978, the petitioner was given the promotion with effect from 17th April, 1975 to the post of Technical Assistant (Auto). Lateron, a provisional seniority list was circulated with effect from 1st April, 1978. On the basis of the court's order, the petitioner was placed at Serial No.16-C in the Seniority List. Lateron New Oil and Natural Gas Commission (Recruitment & Promotion) Regulations 1980 was introduced, whereby the post of Technical Assistant, Grade I (Auto) was abolished and that was equated with the post of Assistant Engineers/Foremen (Auto), and the petitioner was treated as Assistant Engineer accordingly. The petitioner came to know lateron that one I.M.Rayudu whose name was shown at Serial No.20 and who was junior to the petitioner was promoted to the higher post of Assistant Executive Engineer. Hence the petitioner sent a representation -cum -notice to the respondents on 18th July 1982. The petitioner received reply to the representation -cum -notice dt. 16th July 1982 from the Joint Director (R & P) on 10th August, 1982 wherein it was stated that since the recruitment and promotion regulation in 1974 and 1980 provide that the persons having a degree in Automobile with experience of two years and having experience of four years and holding Diploma in Automobile only can be promoted to the post of Assistant Executive Engineers (Auto). As the petitioner did not possess the Degree or Diploma, hence he was not promoted. The petitioner further asserted that various persons who were not having the Degree or Diploma in requisite branch, had been promoted not only to the post

of Assistant Executive Engineer but also to the higher post of Deputy Superintending Engineer and above. In that respect, the petitioner sent a letter dt. 13th November, 1982 to the respondent but no response. Later on a revised seniority list dt. 15th February 1983 was circulated. In that seniority list, the petitioner was shown at Serial No.29, and that the petitioner was not given opportunity of hearing before placing him at Serial No.29 and no notice was issued to the petitioner. The persons namely Shri S.K.Sharma, Shri S.C.Mukerjee, Shri S.Roy, Shri I.M.Bayudu, Shri R.Subramani, Shri A.K.Bansal and Shri R.S.Marya who were juniors in the earlier seniority list were placed senior to the petitioner in the revised seniority list. Shri Shardul Singh and Shri V.K.Sarkar were also promoted with effect from 1/4/1981 and 22/12/1979 respectively to the post of Assistant Executive Engineers (Auto), though Shri V.K.Sarkar was not holding the Decree or Diploma in Automobile Engineering. The petitioner was next to Shri Shardul Singh in the seniority list of Assistant Executive Engineer (Auto), hence the petitioner was also entitled to the promotion to the post of Assistant Executive Engineer (Auto). One Shri G.D.Chutia was promoted as Foreman, Grade-II (Auto) on 26th May, 1965 and he was promoted as Assistant Engineer/Foreman (Auto) on 21st August, 1980 and another person named Shri Jagmohan Dhar was appointed as Foreman, Grade-II (Auto) on 2nd January, 1967 and he was promoted as Assistant Engineer/Foreman (Auto) on 30th July, 1960. Both these persons were juniors to the petitioner but they were promoted to the higher post and both of them were not only juniors to the petitioner but also not holding any Degree or Diploma in Automobile Engineering, and that was against the principles mentioned in the reply dt. 10th August, 1982 given to the petitioner. That the petitioner was not holding any Degree or Diploma in Automobile Engineering. The petitioner made representation to the respondents to that effect and the petitioner received the reply dt. 17th May, 1984 on 15th June, 1984, wherein it was suggested that the case of the petitioner was considered by the Departmental Promotion Committee referred to it on three occasions and he was not found fit for promotion to the post of Assistant Executive Engineer (Auto). The petitioner moved Special Civil Application No. 3103 of 1984 and during the course of hearing of that petition, the petitioner was promoted to the post of Assistant Executive Engineer (Auto) with effect from 1st October, 1982 by order dt. 1st February, 1985. Hence the petitioner had then withdrawn that petition with a liberty to file a fresh representation to the Department concerned for redressal of his grievances.

This petition has been filed on the ground that the revised seniority list is null and void and is violative of principles of natural justice and he was senior to the direct recruits. The juniors were given promotion of higher post, while the petitioner was denied the same. Hence the action of the respondents was highly discriminatory, arbitrary, and violative of provisions of Articles 14 and 16 of the Constitution.

3. The respondents filed affidavit-in-reply. The petitioner having known the court's view that the petition being Special Civil Application No. 3103 of 1984 was being dismissed, hence the petitioner requested the court to withdraw the petition with a liberty to make a fresh representation to the Chairman and accordingly, the order was passed. It was further stated that in the petition being Special Civil Application No. 3103 of 1984, the petitioner sought a direction to the respondents to promote him to the post of Assistant Executive Engineer (Auto) from 1st October, 1982. The relief was granted to the petitioner by order dt. 2nd January, 1985 and as such the petitioner cannot agitate again by filing this writ petition that he should be promoted to the post of Assistant Executive Engineer (Auto) earlier than 1st October, 1982. The criteria for promotion from the post of Assistant Executive Engineer (Auto) to the post of Executive Engineer (Auto) has been laid down with a condition of four years' experience with merits and six years for seniority-cum-fitness as Assistant Executive Engineer (Auto). The petitioner was not qualified to be promoted to the post of Executive Engineer (Auto), as per statutory regulations contained in O.N.G.C. (Recruitment and Promotion), Regulations, 1980. The claim of the petitioner at the stage of his promotion to the post of Assistant Executive Engineer (Auto) to be placed as senior to Mr. Chutia and Mr. Dhar cannot be considered at this belated stage as that question which had already been agitated in the earlier petition, cannot be agitated in the present petition. The petitioner had not challenged the seniority list as well as any relief regarding the same in the earlier petition which cannot now be considered at this belated stage in this petition. The provisional seniority list in which the petitioner was shown at Serial No. 16-C below Shri M.R.Joshi and Shri S.K.Sharma was incorrect, and after considering the objections received against the provisional seniority list, the list was finalised on 15th February, 1983. The seniority list circulated on 24th July, 1979/1st September, 1979 by circular dt. 7th/13th April, 1982 and final seniority list of Assistant Engineers (Auto) as on 1st April, 1978 was

published on 15th February, 1983 and was given notice thereof to the persons concerned. The same contention was taken by the petitioner in Special Civil Application No. 3103 of 1984 which was withdrawn by the petitioner and that point cannot be agitated again belatedly in this petition, and the petitioner placed in the final seniority list was shown at Serial No.29 and he has been promoted to the post of Assistant Engineer (Auto) with effect from 17th April, 1975. Shri I.M.Rayudu who was shown at Serial No.20 and was promoted to the post of Assistant Engineer (Auto) with effect from September, 1974, and therefore, he was senior to the petitioner and was promoted with effect from 17th April, 1975. So far as Shri A.K.Bansal is concerned, he was shown at Serial No. 22 in the final seniority list and was considered to be promoted to the post of Assistant Engineer (Auto) with effect from 7/4/1975 i.e. earlier than the petitioner. Hence Shri A.K.Bansal was not junior to the petitioner. More over, Shri Rayudu and Shri Bansal were Diploma holders in Automobile Engineering and therefore, were entitled to be promoted earlier than the petitioner. Shri Bansal has already been promoted to the higher post of Executive Engineer (Auto), and Shri Rayudu was also considered for promotion to the post of Executive Engineer (Auto) with effect from 1st January, 1984. The Seniority List is considered from the date of selection and not from the date of joining the promoted post. As such Shri Rayudu and Shri Bansal were promoted correctly according to the seniority list and with merits. The provisional seniority list was made final as per prevailing seniority principles and the petitioner has not made any grievance against his position at Serial No.29 in the final seniority list. In the provisional seniority list, placement of the petitioner at Serial No. 16-C was incorrect, and he was placed at Serial No.29 in the final seniority list, and the petitioner has not made any representation against his placement in the final seniority list dt. 15th February, 1983. Mr. Sardul Singh and Mr. U.K.Sarkar were senior to the petitioner, and they were found fit and promoted to the higher posts of Assistant Executive Engineer (Auto). Shri Sardul Singh found his place at Serial No.27 and Shri Sarkar found his place at Serial No.24, and as such they were senior to the petitioner. In Special Civil Application No.3103 of 1984, the petitioner requested for the promotion with effect from 1st October, 1982 i.e. from the date when his juniors were promoted. He did not claim promotion prior to 1st October, 1982 and did not claim his seniority in the cadre of Assistant Engineer (Auto) at the place other than one already placed in the final seniority list, though the copy whereof was in his

possession at the time when he filed Special Civil Application No.3103 of 1984. Shri U.K.Sarkar and Shri V.N.Saxena were admittedly senior to the petitioner and they have been placed at Serial Nos. 24 and 25 in the final seniority list, and they were wrongly placed in the provisional seniority list at Serial Nos. 12A and 12B. Shri A.K.Bansal was selected on 4th February, 1975 as he was possessing a degree of B.Sc. and was holding Diploma in Automobile Engineering. Shri S. Roy and Shri Rayudu had also been holding the requisite qualifications for promotion, while the petitioner was not holding a Degree or Diploma in Automobile Engineering, and therefore, he himself cannot equate as senior to the aforesaid persons. The petitioner's representation was also considered in regard with the seniority in the revised seniority list. Shri Sarkar was holding a Diploma in Mechanical Engineering and Shri Sardul Singh was also holding a Diploma in Mechanical Engineering. As such he cannot be equated to them. So far as Shri R.S.Marya is concerned, he was also a Diploma Holder in Automobile Engineering, while the petitioner was not having such qualifications, and hence he was junior to the aforesaid persons and his case was considered thrice by the respondents in which the petitioner was not found fit for promotion. The aforesaid persons have already been promoted to the higher post of Executive Engineer (Auto) prior to the filing of Special Civil Application No.3103 of 1984. Hence the petitioner is estopped from taking such plea at belated stage in this petition. The post of Executive Engineer (Auto) is filled in by 75% by seniority-cum-fitness and 25% by merit under the existing regulations. The petitioner was granted promotion and order was passed to that effect by giving relaxation in educational qualification and A.C.R. gradings. He was not having requisite experience to be considered for promotion to the post of Executive Engineer (Auto), and the petitioner cannot be given deemed date while considering his representation dt. 22nd February, 1985 and his representation was rejected by the Chairman. Shri Marya was selected on 4th February, 1975 and seniority was fixed from the date of selection and not from the date of joining the post. Moreover, he was a Diploma Holder in Automobile Engineering. It is also stated that on the facts and circumstances stated above, this petition is not entertainable and is liable to be dismissed. The petitioner also filed his rejoinder reply and the respondents filed their affidavit-in-sur-rejoinder, wherein it is stated that Shri Shardul Singh and Shri Sarkar were as W.E.E. (Auto) on 1st April, 1981 and 22nd December, 1979 respectively. Shri Shardul Singh was possessing Diploma in Mechanical

Engineering which is the requisite prescribed qualification for promotion as A.E.E. (Auto) and Shri U.K.Sarkar was possessing qualification of Metric training in Automobile and other allied course conducted by Airforce Ground Training School and I.T.I. in Motor Mechanic Trade which appears to have been considered by D.P.C. which is equivalent to Diploma in Mechanical Engineering. The petitioner is holding the qualification as "High School Automobile Engineering Trade" which is equivalent to trade certificate and was, therefore, underqualified for promotion as AEE (Auto). It was asserted that in order to give a fair opportunity to the officers who could not be promoted even after granting conditional relaxation in educational qualification, and as a result of lower ACR gradings, it was decided that in such cases as a special case and as one time measure after grant of conditional relaxation, these officers may be interviewed by the D.P.C. to assess their suitability for promotion to the next higher grade. The petitioner was given a fair chance of consideration to the post of A.E.E. (Auto) after conducting D.P.C. interview and was accordingly promoted as A.E.E. (Auto) with effect from 1st October, 1982. The petitioner was considered for promotion by the respondents on 27th January, 1989 but unfortunately, the petitioner's ACR gradings for the relevant years were not upto the requisite standard for promotion and as such the petitioner's name was not approved for empanelment for promotion with effect from 1st January, 1989. The petitioner was again found unfit for promotion with effect from 1st January, 1990. Later on the petitioner was considered and found fit for promotion. Accordingly, he was promoted as A.E.E.(Auto) with effect from 1st January, 1991 by order dt. 18th/19th March, 1991. The petitioner was promoted to the post of A.E.E. (Auto) with effect from 1st October, 1982 along with Shri Jagmohan Dhar and Shri G.D.Chutia and he was placed senior to Shri Chutia and Shri Dhar in the seniority list of A.E.E. (Auto) as circulated on 29th October, 1988 for the period from 1st April, 1982 to 31st December, 1984. The petitioner has been promoted to the post of E.E. with effect from 1st January 1991 and to the post of Deputy Superintending Engineer with effect from 1st January, 1996. Shri Chutia and Shri Dhar were promoted to the post of Executive Engineer with effect from 1st January, 1989 and to the post of Deputy Superintending Engineer with effect from 1st January, 1990. Shri Chutia and Shri Dhar were promoted to the post of Executive Engineer (Auto) with effect from 1st January, 1989 as their performance was better than the petitioner as reflected from their A.C.R. Gradings. Hence the petitioner could not be promoted with effect

from 1st January, 1989 and 1st January, 1990. As the petitioner's ACR Gradings was not upto the marks and he was not empaneled for promotion with effect from 1st January, 1989 or 1st January, 1989, one Shri Nam Prakash was Foreman Grade II (Auto) from 6th February, 1965, while the petitioner was Foreman, Grade-II (Auto) with effect from 17th April, 1965. Thus Shri Nam Prakash was senior to the petitioner who was promoted to the post of Assistant Engineer (Auto) with effect from 7th April, 1975 and as Assistant Executive Engineer (Auto) with effect from 1st October, 1982. The revised seniority list was circulated on 13th October, 1987 wherein the petitioner's name was shown at Serial No.28, and the name of Shri Nam Prakash was shown at Serial No.25. There was no discrimination or arbitrariness in promoting other persons, as Oil & Natural Gas Commission (Recruitment & Promotion) Regulations 1980 required 50% post reserved for direct recruits and 50% post for promotees. The qualification for promotion is two years experience with Engineering Degree graduates and four years for diploma holders as Assistant Engineer (Auto)/Foreman (Auto). It is also asserted that any change in the seniority or promotion will unsettle the settled things which cannot be done at this belated stage, particularly when the petitioner had not challenged further promotion of those officers who are direct recruits against whom the petitioner is not claiming the seniority.

4. I have heard the learned counsel for the parties at length for several dates and perused the relevant papers and considered carefully with the help of the case laws cited by the learned counsel for the parties in support of their claim. It is the case in which one petition was filed earlier and that was dismissed by the learned Single Judge of this Court. Later on Letters Patent Appeal was filed before this Court. In that Letters Patent Appeal, the High Court set aside the order of the learned Single Judge and allowed the prayer made by the petitioner. Thereafter the petitioner filed another Special Civil Application No.3103 of 1984 in which the seniority list was not challenged. The seniority list of 1983 which had already been circulated to the persons concerned, had not been challenged by the petitioner in the aforesaid writ petition being Special Civil Application No.3103 of 1984 and subsequently when he was promoted to the higher post, he withdrew that writ petition, subject to the liberty to file a representation before the appropriate authority for redressal of his grievances. It transpires from the record that after publication or circulation of the seniority list of 1983, the matter had already been finalised and the petitioner



had not challenged that seniority list and he had not empanneled the persons who were placed above his name, and he was made junior to other persons. Thus the petitioner cannot challenge the seniority list of 1983 in which other persons who have been shown earlier placed before him, and he was placed later on at Serial No.29 or 30, and for the seniority list in which those other persons were shown seniors to the petitioner, the petitioner had no grievance against the seniority list which had already been published and circulated. In Special Civil Application No.3103 of 1984, the petitioner prayed for his promotion with effect from 1st October, 1982 i.e. from the date when the juniors to the petitioner were promoted, and therefore, he cannot now claim that he should be promoted on any deemed date prior to 1st October, 1982. He did not even claim his seniority in the cadre of Assistant Engineers (Auto) at the place other than one already fixed in the final seniority list which was in the possession of the petitioner at the time when he filed Special Civil Application No.3103 of 1984. The petitioner made a representation dt. 22nd February, 1985 which was rejected on 19th April, 1985. Thereafter he has filed this writ petition in which he has prayed for quashing of the seniority list dt. 15th February, 1983, and prayed for a direction to place him at Serial No. 22 in the seniority list dt. 15th February, 1983 and for promotion as A.E.E. (Auto) earlier on 1st April, 1980 when Shri S.A.Raj who is junior to the petitioner was promoted as A.E.E. (Auto) and direction for promotion to the post of A.E. (Auto) from 1st January, 1984. The final seniority list of Assistant Engineer (Auto) dt. 15th February, 1983 as on 1st April, 1978 was not challenged when earlier petition being Special Civil Application No. 3103/84 was filed in July, 1984. The similar relief for his placement in the seniority list at higher place was not prayed for. The promotion to other persons as A.E.E. (Auto) was also not challenged in the earlier petition and a direction for promotion to the post of A.E. (Auto) with effect from 1st January, 1984 was not also prayed for in the earlier petition, and those questions cannot be challenged at belated stage in this petition. Even the persons who were to be effected, had not been joined as party in the present petition. As the seniority list of 15th February, 1983 was not challenged in the earlier petition being Special Civil Application No. 3103/84, the same cannot be challenged subsequently in the present petition. From the quota in respect of other persons had already been interviewed and rights of other persons had already been ascertained which cannot be set aside at the belated stage in this petition. The request of the

petitioner for his placement at Serial No.22 in the final seniority list which was not claimed in the earlier petition, cannot be granted now without joining the effected parties. The promotion of Executive Engineer (Auto) with effect from 1st January, 1984 was not claimed in the earlier petition. Hence such a relief cannot be considered without joining those effected parties in this petition and without giving an opportunity of hearing to them. Similarly the seniority of Shri S.Roy and his promotion was not challenged in the earlier petition being Special Civil Application No.3103 of 1984 which cannot be challenged now at the belated stage. The petitioner's promotion with effect from 14 January, 1980 cannot be considered without joining several other persons who are effected persons and without giving opportunity of hearing to them. The seniority list of A.E.E. (Auto) dt. 13th October, 1987 superseded the seniority list dt. 15th February, 1983. The seniority list dt. 29th October, 1988 showing 37 Assistant Executive Engineers (Auto) were appointed/ promoted from 1st April, 1982 to 31st December, 1984 wherein the persons at Serial Nos. 7,8,9,14,15 and 17 were promoted from 1st October, 1982 as A.E.E.(Auto). Shri Chutia and other were also given promotions as A.E. (Auto) with effect from 1st January, 1989, while the petitioner was given promotion with effect from 1st January, 1991. The petitioner filed Civil Application for amendment on 2nd April, 1993 which was granted on 8th October, 1996 claiming his promotion to the post of Deputy Superintending Engineer (Auto) with all consequential benefits and promotion to the post of Superintending Engineer (Auto) and the petitioner was promoted to the post of Deputy Superintending Engineer (Auto) with effect from 1st January, 1996 and Civil Application No.10099 of 1998 which was filed on 4th November, 1998 for joining one Shri Naseem Ahmad who was initially promoted as A.E. (Auto) with effect from 1st January, 1989 and subsequently promoted as Superintending Engineer (Auto) with effect from 1st January, 1994, was granted on 14th December, 1998. The existing seniority list of A.E.E (Auto) as on 1st April, 1978 dt. 13th October, 1987 has not been challenged which superseded the seniority list dt. 15th February, 1983. The same cannot be challenged at the belated stage in this petition. The petitioner has got two promotions after filing this petition viz. as Executive Engineer (Auto) with effect from 1st January, 1991 and as Deputy Superintending Engineer (Auto) with effect from 1st January, 1996. The petitioner cannot claim his promotion as Deputy Superintending Engineer (Auto) with effect from 1st January, 1989 instead of 1st January, 1996. In the

petition filed in the year 1985, the amendment challenges action in 1989 as the alleged cause action has arisen in the year 1989, all the persons are likely to be effected on 1st January, 1989 and subsequently had not joined as parties and without giving an opportunity of hearing to them, such relief cannot be considered by this court at the belated stage. The petitioner is estopped from challenging the seniority in subsequent petition having not challenged in the earlier petition when the seniority list dt. 15th February, 1983 has already been superseded by the seniority list dt. 13th October, 1987. Besides principles of estoppel, the principles of equities do not permit the petitioner to challenge the settled rights which have already been settled and all the persons who would be effected have not been joined as parties in this petition. Thus such reliefs cannot be granted without joining those persons who would be effected for considering such relief and without giving an opportunity of hearing to them. The petitioner's name shown in the earlier seniority list at Serial No. 16-C was not correct, but the same was considered by the authorities concerned at the relevant time and thereafter he was placed at appropriate place at Serial No.28 or 29 and the persons who were seniors to him were given promotion to the higher post. The promotion is not as a matter of right. Any person can claim for consideration of his promotion. That the D.P.C. has considered the promotion thrice at the relevant time according to the rules and he was not found fit, so that he was not promoted at the relevant time and he cannot challenge the same when he was not promoted to the higher post at the relevant time. Subsequently the petitioner has been promoted to higher grade.

5. In view of the discussions above, this petition has no merits and is liable to be dismissed. Accordingly the petition is dismissed with no order as to costs.

Date: 30/07/1999. ----- Sd/-

(Kundan Singh,J.)

(ccshah)