

**HIGH COURT OF TRIPURA
AGARTALA**

W. P.(C) No.401 of 2013

Shri Babul Chandra Paul, Sr. Foreman (D)
PF Account No.45728
Oil & Natural Gas Corporation Ltd. (for short ONGC),
Presently at Agartala working in the Drilling site at Konaban,
Sepahijala.

.....Petitioner

- Vs -

1. Oil & Natural Gas Corporation Ltd.,
represented by its Chairman & Managing Director
Tel-Bhavan, Dehradun,
Uttarakhand
2. The Director (HR)
Oil & Natural Gas Corporation Ltd.(ONGC),
Jeevan Bharti Buildings Tower-II,
124, Indira Chawk, Cannaught place,
New Delhi – 110 001
3. Chief Manager,
Central Regional Business Centre, ONGC Ltd.,
41, Chowringhee Road, Kolkata – 700 071
4. Asset Manager, Agartala Asset,
ONGC Ltd.,
Badharghat, Agartala.

.....Respondents

**B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA**

For the petitioner	:	Mr. D. K. Biswas, Advocate
For the respondents	:	Mr. P. B. Dhar, Advocate
Date of hearing	:	18.11.2014
Date of delivery of Judgment and order	:	28.11.2014
Whether fit for reporting	:	YES / NO

Judgment and Order

The petitioner is a Sr. Foreman (Drilling) borne in the supervisory cadre working under the respondent No.1, Oil & Natural Gas Corporation Ltd.(ONGC Ltd., in short). He has entered

in the service of the ONGC Ltd. admittedly before Sri Vinod Kumar, Sri Birbal Prasad and Sri R. P. Sahi who were promoted to E0 (the executive cadre) on 01.01.2001 whereas the petitioner on the same date was promoted to 'S' (supervisory cadre). The petitioner has discovered such fact sometime in 2012 and submitted a representation to the Director (HR), ONGC Ltd., the respondent No.2 herein for promoting him to the executive cadre w.e.f. 01.01.2000 on 04.10.2012. In the said representation, Annexure-2 to the writ petition, the petitioner has asserted as under:

"With the prior permission from ONGC I appeared in Diploma course and came out successfully in the year 2005 which has been included to my personal file.

Since my joining in ONGC particularly as Rigman/Topman or at present post my dedication and devotion can be assessed from the competent authority.

In view of above, I earnestly request to your good office to kindly review and consider my case for promotion to the "executive cadre" w.e.f. 01.01.2000 at par with my other colleagues as mentioned above.

Awaiting for natural justice from your good self to mitigate the frustration and mental agony."

02. Since the said representation dated 04.10.2012 did not fetch any positive yield, the petitioner through the office of his lawyer sent a notice, Annexure-3 to the writ petition, on 05.09.2013 stating that the said action of depriving the petitioner from promotion to E0 is discriminatory and as such unless such discrimination is removed the petitioner would be compelled to approach the court of law for redress. As no action was taken on the said notice, the petitioner has filed the instant writ petition.

03. The respondent Nos.1, 2, 3 and 4 filed the counter affidavit stating that since the petitioner did not have the requisite qualifications in terms of the Modified Recruitment & Promotion Regulations, 1980, he was not considered for promotion on 01.01.2000 along with the other qualified officers. On 13.12.1990 the petitioner was below Q3 qualification and accordingly he was considered promotion in 'S' (Supervisory level). For his subsequent acquisition of higher qualification i.e. Diploma in Mechanical Engineering from IME in 2005 he cannot be considered for promotion to E0. However, the respondents have stated that "there is no anomaly in the career progression of Shri Paul after acquiring Diploma in Mechanical Engineering from IME in 2005. His qualification has been duly treated as Q2 and accordingly his promotion from Foreman (Drilling) (S-II level) to Senior Foreman (S-III level) has been considered in 5 years instead of 6 years i.e. he has been given the benefit of diploma qualification in his subsequent promotion." Thus, the respondents have categorically denied the allegation of discrimination by stating that "Be it stated that ONGC Modified Recruitment and Promotion Rules 1980 specified that the career path from Topman (drilling) can be either to the post of Asstt. Foreman (drilling), which is a class III post in the Supervisory Cadre or to the post of Assistant Engineer (Drilling) which is a class II post in the Executive cadre. The option to grow in the Executive Cadre is available to only employees who possess the Q3 qualification as laid down in ONGC MRPR 1980. Employees not possessing the above qualification are automatically promoted

to the post of Assistant Foreman (Drilling) which is a class III post in the supervisory cadre."

04. Mr. D. K. Biswas, learned counsel appearing for the petitioner having regard to the additional counter affidavit as filed by the respondents has submitted that the petitioner was not called for appearing in the job linked test for consideration of promotion to E0 level. For this purpose Mr. Biswas, learned counsel has referred to the following passage from the additional counter affidavit filed by the respondents.

"In his case Shri Paul would have been considered for E-0 level promotion had he acquired the Diploma prior to 1.1.2000. As on 31.12.1999 Shri Paul was only Q-3 qualified which is certainly below Q-2 qualification, and he has nowhere stated that he had qualified for the job linked test for consideration of promotion as E-0 level. Hence his career progression was considered in Supervisor level. He cannot be considered for promotion to Executive Cadre thereafter because of his subsequent acquisition of higher qualification."

05. Mr. Biswas, learned counsel has further submitted that clause (e) below Rule 7 under category III Class III (other than 'S' category), the following provision has been made.

"The 'existing employees' with Q-1 and Q-2 qualification in A-IV level will be eligible for promotion to E-0 level after 6 years of service, subject to trade/proficiency test etc. as prescribed in Schedule-I under SCF criteria.

The employees with Q-3 qualification will be given two consecutive opportunities to appear in the Job Linked Test and in the event of their qualifying the same, such personnel will be considered for executive cadre through assessment by interview. However, those who qualify the test in the first attempt but fail to be selected in the interview shall not be given another opportunity to appear in the interview. Persons who are not found suitable will be considered for growth in the Class-III channel only. Those who do not opt for shifting to executive cadre or those employees having

less than Q.3 qualification will continue to be in Class-III.

Having regard to that provision Mr. Biswas, learned counsel has emphasised that the respondents have not given the petitioner 'two consecutive opportunities' even though he was possessing Q-3 qualification at the relevant point of time and as such the respondents are under obligation to promote the petitioner to the executive cadre w.e.f. 01.01.2000 along with those persons who are juniors to the petitioner.

06. In response to the said contention as raised by Mr. Biswas, learned counsel for the petitioner, Mr. P. B. Dhar, learned counsel appearing for the ONGC Ltd. has submitted that under the same category clause (b) provides as under:

"Existing Q-3 qualified employees shall exercise the option, indicating their choice for career progression in executive cadre or 'S' category."

He has further referred to the provisions of clause (c) which provides that:

"'Existing employees' with below Q-3 qualification will have growth in 'S' category only."

07. The option has to be exercised in the format as provided in Annexure-1 to the said MPRR, 1980. Mr. Dhar, learned counsel has succinctly submitted that the petitioner had neither exercised the option nor appeared for the job linked test. As such, he was promoted to the supervisory cadre w.e.f. 01.01.2000. Therefore, the ONGC Ltd. has not acted arbitrarily as alleged neither had they indulged in any discrimination as alleged.

08. The petitioner has nowhere stated that he had exercised option in terms of the Annexure-1 appended to MRPR, 1980 indicating that he should be considered for executive cadre. It is more than apparent from the provisions as reproduced that unless such indication is made it cannot be stated the petitioner could have been provided two consecutive opportunities to appear in the job linked test. Moreover, from the representation dated 04.10.2012, Annexure-2 to the writ petition, it appears that the petitioner's claim is based on his acquisition of diploma in Mechanical Engineering which he admittedly acquired in the year 2005. The qualification which has been acquired 5 years after the relevant promotion to the executive cadre cannot have any relevance for consideration of the career progression which has taken place w.e.f. 01.01.2002. Apart that, since the petitioner did not exercise the option as stated, the respondents were not under any obligation to provide the petitioner two consecutive opportunities as provided in clause (e) below category-III of MRPR, 1980.

09. Having held so, this petition stands dismissed. However, there shall be no order as to costs.

JUDGE