



\$~J-

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment delivered on: 23.07.2026

+ W.P.(C) 9014/2011

JAGANNATH TIKARAM MAHAVAR

.....Petitioner

Through: Mr. Hrishikesh Baruah with Mr.
Utkarsh Dwivedi, Mr. Kumar Kshitij
and Mr. Anurag Mishra, Advocates.

versus

OIL AND NATURAL GAS CORPORATION LTD AND ANR

.....Respondents

Through: Mr. Chetan Sharma, ASG with Mr. S.
Sirish Kumar, Mr. Amit Gupta, Mr.
R.V. Prabhat, Mr. Vinay Yadav, Mr.
Shubham Sharma, Mr. Naman and Mr.
Vikram Aditya Singh, Advocates for
R-1.

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI J.

By way of the present writ petition filed under Article 226 of the Constitution of India, the petitioner *inter-alia* seeks issuance of the writ of mandamus, directing the respondent No.1 corporation to notionally promote the petitioner to the post of Group General Manager of respondent No.1 corporation *with effect from 02.01.2003* and grant to the petitioner all consequential benefits arising therefrom.

2. Notice on this petition was issued on 23.12.2011; pursuant to which counter-affidavit dated 21.09.2012 was filed by respondent No.1 corporation. Since respondent No.2 is a *pro-forma* party, no pleadings



on its behalf were required. Rejoinder dated 04.03.2013 was also filed by the petitioner. Written submissions have also been filed on behalf of both contesting parties.

3. The court has heard Mr. Hrishikesh Baruah, learned counsel appearing for the petitioner; as well as Mr. Chetan Sharma, learned Additional Solicitor General appearing for respondent No.1 corporation, at length.

BRIEF FACTS

4. The brief factual background necessary for deciding the present petition is set-out below:
 - 4.1. The petitioner was working with respondent No.1 corporation since 14.07.1975 as an Assistant Engineer (Mechanical) (E-1 level) and was promoted to the post of General Manager (Mechanical) (E-7 level) with effect from 01.01.1997.
 - 4.2. The next promotion for the petitioner was to the post of Group General Manager (E-8 level).
 - 4.3. The Board Sub-Committee on Departmental Promotions of respondent No.1 ('Board Sub-Committee'), also called the Departmental Promotion Committee or 'DPC', convened on 11.12.2002 and 26.12.2002 to empanel candidates for the post of Executive Directors/Group General Managers. On 26.12.2002, the Executive Committee of respondent No.1 held a meeting and decided the postings of 25 candidates out of a total of 31 empaneled candidates. However, the petitioner, along with 5 others, was not promoted to the post of Group General Manager.
 - 4.4. Subsequently however, *on 10.03.2006*, the petitioner was promoted to the post of Group General Manager (E-8 level).



- 4.5. The petitioner's essential grievance is that he ought to have been promoted on *02.01.2003*; and is accordingly seeking notional promotion *w.e.f. 02.01.2003* and all consequential benefits arising therefrom.
- 4.6. Despite repeated representations to various authorities, the petitioner's grievance of alleged wrongful delay in granting him promotion was not addressed by the requisite authorities, leading to the filing of the present petition.

SUBMISSIONS ON BEHALF OF THE PETITIONER

5. In the above backdrop, Mr. Hrishikesh Baruah, learned counsel appearing for the petitioner has made the following essential submissions:
- 5.1. It has been submitted that the petitioner has had a successful career, being regularly promoted at the first opportunity; and has even been awarded by respondent No.1 corporation for his performance in the course of his tenure.
- 5.2. Placing reliance on the Oil and Natural Gas Corporation Limited Modified Recruitment & Promotion Regulations, 1980 ('Regulations'), learned counsel has submitted that Regulation 7(1) thereof envisages the constitution of a 'Promotion Committee' responsible for considering all cases relating to promotions. It has been pointed-out that Regulation 7(6) provides that the promotion committee must submit recommendations on the basis of 'merit' (where the criterion for promotion is merit) and 'seniority' (where the criterion for promotion is seniority-cum-fitness); and Regulation 7(7) empowers the Appointing



Authority to consider the recommendations made by the promotion committee and pass orders as per the authority's discretion. It has been submitted that in case the Appointing Authority does not accept the recommendations made by the promotion committee, the Appointing Authority is required to record the reasons for its decision in writing. Counsel has further relied upon Regulations 7(8), 7(11) and 7(25)(a), which also govern the process of promotion.

- 5.3. It has been submitted that the proposed criteria for selection of Executive Directors/Group General Managers was, that first a 'Preliminary Eligible list' was to be prepared in order of merit, for consideration of candidates for the post. The preliminary eligible list would comprise of the names of individuals who score at least 70% of a maximum of 30 marks *i.e.*, 21 marks; which list would then be put-up before the Board for approval. Thereafter, the Executive Committee would rate the candidates in the preliminary eligible list on a 3-point scale, and after taking an average of 10 attributes set-out in a list, a 'final eligible list' was to be prepared. This final eligible list of candidates, as recommended by the Executive Committee, was to be then placed before the Departmental Promotion Committee ('DPC') final consideration and selection.
- 5.4. It is the petitioner's case that this stage-wise process was not followed by respondent No.1 corporation. It has been argued that after the preliminary eligible list, a final eligible list is required to be prepared, which renders the preliminary list irrelevant; and that



therefore, the reliance placed by respondent No.1 on the 'preliminary eligible list' as the 'merit list' is completely misconceived.

- 5.5. It has been submitted that as recorded in the meeting of the Board Sub-Committee, the DPC gave their final recommendations on 11.12.2002 and 26.12.2002; and in the said recommendation list, the petitioner's name appeared at Serial No. 3 in the category of Group General Manager (E-8 level). Therefore, it is the petitioner's contention, that as per the 'merit list' prepared in terms of the recruitment rules, the petitioner's name was at Serial No. 3 as per his merit. It is further asserted, that as per Regulation 7(7), the Appointing Authority has to consider the recommendations of the DPC. It is the petitioner's submission, that in the present case, the DPC recommendations were duly approved by the Chairman & Managing Director of respondent No.1 corporation ('CMD' or 'CMD-ONGC'); which in turn implies that the petitioner's position at Serial No. 3 of the merit list was duly recommended and approved by the Appointing Authority.
- 5.6. It has been argued that on 02.01.2003 the Executive Committee of respondent No.1 (which, according to the petitioner, is neither the DPC nor the Appointing Authority) issued an order communicating the postings and assignments of persons who were on the merit list; but no promotion or posting order was given to the petitioner despite the fact that the petitioner was at Serial No.3 on the merit list and a total of 29 other individuals were promoted



and assigned to various posts. According to the petitioner, of these 29 individuals, 23 were junior to him. It has been vehemently argued, that this was in complete violation of the recruitment rules; and therefore, aggrieved by this action, the petitioner made several representations to the higher authorities from 12.02.2005 onwards.

- 5.7. It has further been argued, that the Executive Committee could not have subverted the recommendations of the DPC; and since the Appointing Authority had accepted the recommendations of the DPC, the Executive Committee was bound to issue promotion/assignment orders in terms of the recommendation made by the DPC as approved by the Appointing Authority. Relying on *Union of India & Ors vs. Sangram Keshari Nayak*¹, it has been submitted that a person whose promotion has been approved has a *right* to be promoted in terms of the merit list. It has been further submitted that any digression from that principle reflects favouritism and discriminatory behaviour, and moreover, it was not within the remit of the Executive Committee to negate a *duly approved* promotion. It has been further argued, that the act of not promoting the petitioner resulted in hostile discrimination against him, which is violative of his rights guaranteed under Part III of the Constitution of India, as held in *Major General H. M. Singh, VSM vs. Union of India and Anr.*². Emphasis has also been placed on Rule 19B(iii)(a) of the Oil and Natural Gas

¹ (2007) 6 SCC 704, para 12

² (2014) 3 SCC 670, paras 22 & 25



Corporation Limited Service Rules, 1995 ('Service Rules'), to submit that the said rule specifies that the DPC shall prepare a list on the basis of merit; and that promotions can *only* be made from such list in the order in which the names have been arranged.

- 5.8. It has been submitted that since the petitioner belongs to a Scheduled Caste, aggrieved by the aforesaid action, *vidé* letter dated 27.01.2006 the petitioner approached the National Commission for Scheduled Castes ('NCSC') with his grievance. Referring to the Minutes of the Meeting dated 11.11.2008, it has been pointed-out that upon considering the petitioner's grievance, Chairman NCSC questioned the CMD-ONGC and Director (HR) about the case and recorded the following observations:

"5. After having the submission by the petitioner, the Hon'ble Chairman in his chamber asked the CMD-ONGC and Director (HR), ONGC about the case. The petitioner handed over a copy of his complete case papers to CMD-ONGC. The Chairman asked the CMD-ONGC that while in January 2007 officials from ONGC had shown other documents to Commission instead of original proceedings where different facts are revealed. CMD-ONGC submitted that promotion were made on the basis of relative marks and since Shri Mahavar scored low marks; he could not be given promotion.

"6. Petitioner submitted that DPC once approved, promotions are to be given in the order of names in the panel. He submitted that ONGC Service Rules, Promotion Regulations and Govt. instructions on DPC promotion which are also adopted in ONGC promotion regulation mandate that promotion are to made from the panel prepared by DPC in the same order. Hon'ble Chairman observed that it is apparent that wrong has been done by ONGC and desired ONGC to take corrective action to rectify it. The CMD-



ONGC promptly agreed and assured that it will be done today itself i.e. on 11-11-08. Shri Mahavar was advised to meet and apprise his case to CMD as per the convenience of the CMD, ONGC.”

(emphasis supplied)

- 5.9. In light of the above, it has been submitted that the NCSC had recommended that respondent No.1 must rectify its impugned actions, and the CMD-ONGC had agreed to do so promptly. It has been submitted however, that despite the assurance given by the CMD-ONGC to the Chairman NCSC, no action was taken to remedy the wrong done to the petitioner. Subsequently, the Chairman of the NCSC changed, whereupon respondent No.1 shifted its stand; and *vidé* letter dated 17.11.2008 addressed by respondent No.1 corporation to the section officer of NCSC, they took the stand that pursuant to the meeting held on 11.11.2008, the petitioner was given a patient hearing and that the petitioner “*was apparently satisfied with management view*” and that the case may be treated as settled.
- 5.10. It has been argued, that subsequent to the aforementioned letter dated 17.11.2008 sent by respondent No.1, the petitioner made a representation dated 08.07.2009 to respondent No.1 vehemently denying the apparent settlement mentioned in that letter, reiterating that the petitioner was not satisfied by the management’s view and that no corrective action had been taken by respondent No.1.



- 5.11. Relying on *State Bank of India vs. The National Commission for Scheduled Castes and Ors.*³, it has been submitted that a Co-ordinate Bench of this court has held that the recommendations made by NCSC should not be ignored.
- 5.12. It has been further submitted, that curiously, thereafter the NCSC also ‘reviewed’ its own decision, and in an order recorded at the proceedings held on 01.11.2011 the NCSC closed the matter noting that “... *no deviation of rules was reported. Hence the matter is closed*”. Relying on *IIT, Delhi vs. National Commission for SC & ST & Anr.*⁴, it has been argued that the NCSC has no power to review its own decision in terms of Article 338(8) of the Constitution of India.

SUBMISSIONS ON BEHALF OF RESPONDENT NO.1

6. Contesting the writ petition, Mr. Chetan Sharma, learned Additional Solicitor General appearing for respondent No.1 corporation has made the following principal submissions:
- 6.1. At the outset, it has been argued that the present petition is infructuous, since the petitioner superannuated on 31.12.2011 from the post of Executive Director (E-9 level), which is the highest post to which an executive can be promoted in respondent No.1 corporation, and which post is just below the level of the Board of Directors. The present petition has been described as ‘luxury litigation’ and an ‘academic exercise’.

³ 2016 SCC OnLine Del 5217, para 12

⁴ 2004 (74) DRJ 109, paras 13 & 18



6.2. It has further been argued, that as can be seen from the records, the petition is also barred by gross delay and laches, which disentitles the petitioner from claiming any relief under Article 226 of the Constitution of India. It has been submitted that *vidé* its letter dated 21.12.2005, respondent No.1 had declined the petitioner's representation dated 12.02.2005; and that therefore, any alleged cause of action had arisen on that date *i.e.*, 21.12.2005; however, the petitioner chose to approach this court only in 2011, for which reason the present petition should be held as being barred by delay and laches.

6.3. Additionally, it has been submitted that the petitioner had already availed an equally efficacious alternative remedy by filing a complaint on identical facts before the NCSC on 27.01.2006, seeking the same relief as in the present petition. It is pointed-out that the said proceedings were concluded by the NCSC *vidé* communication dated 15.03.2007 with the following finding:

“..... the action taken by the ONGC is in order and is in the larger overall interest of the company and the Nation and the ONGC has taken decision in accordance with the prevailing policies and guidelines.”

6.4. It has been submitted that owing to the aforesaid decision, *vidé* a handwritten letter dated 01.06.2007 addressed to the Chairman NCSC, the petitioner expressed that he had decided not to pursue the case and to close his complaint, stating as follows:

*“Sir,
I do not wish to follow up the case further & hence further action in this case may be stopped/closed.”*



6.5. It has been further submitted that thereafter, on the petitioner's insistence, the complaint was even re-opened by the NCSC on 06.10.2007; but after rehearing the case at length, the Chairman, NCSC disposed-of the complaint *vidé* order dated 01.11.2011 opining that the promotions made at respondent No.1 in 2003:

“ have been made as per rules and no deviation of rules was reported.”

6.6. It has been argued that the petitioner is indulging in forum-shopping, since the aforementioned order dated 01.11.2011 of the NCSC has attained finality, and has not been challenged by the petitioner even in the present petition. Furthermore, it has been pointed-out that the present petition has been filed in the same month in which the petitioner superannuated *i.e.*, in December 2011.

6.7. It has been further submitted that the petitioner is also disentitled from getting any relief in the present proceedings since the petitioner had lodged an FIR dated 04.04.2012 in Mumbai under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, in which the allegations were substantially identical to those in the present petition and in the complaint made before the NCSC. It has been argued that the petitioner's approach of seeking parallel relief from different forums, through different proceedings, also disentitles him from being granted any relief in the present writ proceedings.

6.8. Additionally, it has been submitted that the petition is liable to be dismissed for the reason that the petitioner has failed to make the



officers of respondent No.1 corporation who would be affected by the decision, as party-respondents, thus denying them of the opportunity of being heard; which is yet another ground for dismissal of the present petition.

6.9. It has been argued that even on merits, the petition is misconceived and unsustainable, since no rule or regulation was violated, nor has the petitioner been discriminated against in any manner. It has been submitted that promotions are required to be made at respondent No.1 corporation in terms of Rule 20(2) of the Service Rules and the relevant provisions of the Regulations, *inter-alia* Regulations 7(1), 7(4), 7(6), 7(7), 7(8) and 7(11)(iii) of the Regulations which read as follows:

“ 7. Filling up of vacancies by promotion:

“(1) All promotions to posts shall be considered by a Promotion Committee duly constituted by the Appointing Authority in accordance with the orders issued by the Corporation from time to time and it shall consist of not less than three members.

* * * * *

“(4) In cases where the criterion for promotion is merit, the Promotion Committee, before selecting the employees:

(a) shall consider the service records and annual confidential reports;

(b) may hold a written examination or practical test or interview or any combination of these;

(c) Shall follow the procedure for determining merit as laid down by the Corporation at least two months in advance of the date of the said selection.

* * * * *



“(6) The Promotion Committee shall submit its recommendation to the appointing authority after arranging the names in order of merit in cases where merit is the criterion and in order of seniority in cases where seniority-cum-fitness is the criterion.

“(7) The appointing authority shall consider the recommendations of the Promotion Committee and pass such orders as it thinks fit:

Provided that where the appointing authority does not accept any recommendation of the Promotion Committee, it shall record the reasons therefore in writing.

“(8) After issue of promotion orders according to the availability of vacancies, the names of remaining candidates shall be kept in the list for further use to fill up vacancies which may arise in future:

Provided that the period of validity of the said list shall be six months from the date of its acceptance by the appointing authority.

* * * * *

“(11) The promotions will be carried out on the following three criteria:-

* * * * *

(iii)(b) Merit Promotion by Selection—Corporate Promotions (E-5 level and above):

(1) The promotions at Corporate level (E-5 level and above) are based on Merit and quantification scheme.

(2) The marks awarded for quantification, experience, PARs, and performance in the interview.

(3) The qualifying marks are 60% in the interview as well as overall for general candidates and 40% for SC/ST candidates.”

(emphasis supplied)



- 6.10. It has been submitted that in accordance with the above referred scheme for promotions at respondent No.1, *first*, the Executive Committee assesses the potential of the executives *eligible* for occupying key positions; and based on this assessment and other transparent criteria as prescribed, a list of *qualifying candidates* is prepared and presented before the DPC. The DPC then makes its *recommendations*; and the Executive Committee is *authorised to release a list of promotions* against suitable vacant positions to which the recommended executives may be posted *in order of merit*. Accordingly, it is the Executive Committee that decides the suitability of the empaneled candidates for promotion against vacant positions from the list of recommendations made by the DPC. It is argued that since these positions are at the senior-most levels, particular care is exercised in filling these positions.
- 6.11. It has been further submitted that in its 92nd Meeting held on 30.05.2002, the Board of Directors of respondent No.1 corporation approved the criteria for selection for the post of Executive Director (E-9 level) and Group General Manager (E-8 level), which criteria were adopted and applied in the meeting of the Board Sub-committee or DPC held on 11.12.2002 and 26.12.2002 for empanelling candidates for the posts of Executive Director and Group General Manager. It has been submitted that in accordance with the laid-down criteria, the DPC decided that even though the selected executives were being *empaneled*, their promotions would be released by the Executive Committee



subject to vacancies and suitability of the empaneled executives, within the approved Corporate Rejuvenation Campaign structure.

6.12. It has been argued that for promotion to the post of Group General Manager, two lists of preliminary eligible officers were prepared and those names were considered by the DPC. Further, in the list of preliminary eligible officers upto 01.01.1997, the officers who had scored at least 70% of 30 (maximum) marks were included for consideration for the post of Executive Director or Group General Manager. This preliminary eligible list was drawn-up in order of merit/ranking. It has been argued that the *petitioner had scored only the bare minimum of 21 marks* specified for consideration for promotion, which is why his name was at Serial No. 43 in a list consisting of 46 candidates. Against 25 available vacancies, the DPC recommended 31 candidates for empanelment for the post of Group General Manager. It has been further argued and clarified, that the list being referred to by the petitioner, in which his name appears at Serial No. 3 was the list drawn-up in order of seniority and not merit.

6.13. Furthermore, it has been argued that the executives empaneled by the DPC for the post of Group General Manager were for the composite requirement of all functional disciplines, like Geology, Reservoir, Geophysics, Chemistry, Finance, Human Resources, Mechanical Engineering, Drilling, Production *etc.*, which require varied competencies for each discipline. Hence, even though several executives were empaneled for promotion, *only those with suitable competencies for the vacant positions were promoted,*



which can be substantiated by the empanelment of 31 executives against 25 positions. It was also decided by the DPC, that while the selected executives were being empaneled, promotions would only be made *subject to the availability of vacancies and suitability of the executive as per specific assignments* within the approved Corporate Rejuvenation Campaign structure.

- 6.14. It has been further argued that the Executive Committee released 25 promotions to the E-8 level from the empaneled list, taking into account the merit of the executives, and based on the marks/rank secured. It is clarified that the *petitioner belonged to the mechanical engineering discipline*, where the number of recommended candidates exceeded the vacancies available for that discipline. It has been submitted that there were 6 General Managers from different disciplines, (including the petitioner's discipline), who could not be posted against the vacant posts and remained on the panel in terms of Regulation 7(8).
- 6.15. It has been argued that since the petitioner, who was a mechanical engineer, had secured only the *minimum* qualifying marks *i.e.*, 21 marks, he was placed *almost towards the bottom of the preliminary eligible list*; and all other executives who were promoted in the mechanical engineering discipline had better performance appraisal ratings than the petitioner, for which reason they were promoted in accordance with Regulation 7(6).
- 6.16. It has been submitted, that for the aforementioned reasons the petitioner could not be promoted in the year 2003.



6.17. It is clarified however, that the petitioner was eventually promoted to the post of Group General Manager *w.e.f.* 10.03.2006; and subsequently, to the post of the Executive Director *w.e.f.* 16.05.2008, which is the highest executive level post in respondent No.1 corporation, just below the position of the Board of Directors. The petitioner superannuated from the post of Executive Director on 31.12.2011.

REJOINDER SUBMISSIONS BY PETITIONER

7. In rejoinder, learned counsel for the petitioner has made the following additional submissions to specifically address the contentions raised on behalf of respondent No.1:

7.1. With respect to respondent No.1's contention that the present petition is infructuous, since the petitioner has long retired from the post of Executive Director, it has been submitted that the petition was filed prior to the petitioner's retirement, and he is challenging the action of respondent No.1 in not promoting the petitioner *w.e.f.* 02.01.2003 to the post of Group General Manager. It has been argued that the petitioner is entitled, in law and in equity, to all benefits that would have accrued to him if he had been promoted to the said post with effect from the said date. It has been submitted that the petitioner's claim to receive those benefits from the back date, based on a notional promotion from the said date, still survives; and the petition is therefore not infructuous.

7.2. With respect to respondent No.1's contention that the petition suffers from delay and laches, it has been submitted that the



petition was filed on 21.12.2011 raising the petitioner's grievance about a promotion which was not granted on 21.12.2005, and the interim period of 06 years is fully explicable, and therefore, the petitioner cannot be blamed for not having approached the court earlier. It has been submitted that since the petitioner approached the NCSC on 27.01.2006 but his case before the NCSC was closed only on 01.11.2011, the cause of action for filing the present writ petition arose only thereafter. It has been argued that the cause of action to file the present writ petition arose only after the petitioner had exhausted all statutory and Constitutional remedies available to him. In support of this submission the petitioner has placed reliance on *Raghubir Jha vs. State of Bihar & Ors.*⁵; *Jogi Jha vs. State of Bihar & Anr.*⁶ and *S.S. Rathore vs. State of Madhya Pradesh*⁷. Furthermore, relying on *State of U.P. & Ors. vs. Raj Bahadur Singh & Anr.*⁸ it has been argued that, in any case, no limitation period is prescribed in law for filing a writ petition.

- 7.3. Accordingly, it has been argued, that it is only the issue of laches that needs to be examined; and whether the petition suffers from laches of the kind that would disentitle him from claiming relief.
- 7.4. Even in regard to the issue of laches, it has been argued, that there are no laches on the petitioner's part in filing the present petition, since Articles 335 and 338 of the Constitution of India provide a

⁵ 1986 (Supp) SCC 372, para 2

⁶ 1995 Supp (4) SCC 400, para 2

⁷ (1989) 4 SCC 582, paras 17, 18, 20 & 22

⁸ (1998) 8 SCC 685, para 2



separate mechanism to investigate and inquire into complaints relating to the rights and safeguards available to persons belonging to a Scheduled Caste. The argument is that the inquiry conducted under those statutory mechanisms form part of the remedies available to a public servant under the relevant service rules; and therefore, the cause of action for filing the present writ petition arose only after the dismissal/closure of the case by the NCSC. *i.e.* on 01.11.2011; and the petitioner filed the present petition promptly thereafter on 21.12.2011.

- 7.5. It has been argued that there has been no delay on the petitioner's part in seeking redressal of his grievances at any stage, neither before the departmental authorities of respondent No.1, nor before the NCSC, nor even before this court. It has been submitted that therefore, the present petition does not suffer from any delay or laches.
- 7.6. Insofar as respondent No.1's contention that the petitioner has already availed his equally efficacious remedy before the NCSC, and since that body has not considered it fit to grant him any relief the matter should be deemed to be closed, the petitioner has submitted that the NCSC only gives 'recommendations' and does not pronounce 'decisions' in cases placed before it. For explaining the role of the NCSC under Article 338 of the Constitution, the petitioner has placed reliance on *Union of India & Anr. vs. National Commission for Scheduled Castes & Anr.*⁹, where it

⁹ 2014 SCC OnLine Del 3324, paras 16, 17



was held that the NCSC is not an adjudicatory body; and that its reports are only recommendatory in nature and cannot be equated with decrees/orders passed by civil courts. It is pointed-out that the said judgment also holds that the NCSC's reports are not an alternative to the hierarchical judicial system. Furthermore, it has been argued that in ***Dr. Jaishri Laxmanrao Patil vs. Chief Minister & Ors***¹⁰ the Supreme Court has also held that the reports made by the NCSC are subject to judicial scrutiny.

- 7.7. With respect to respondent No.1's contentions relating to the merits of the petitioner's case, it has been argued that respondent No.1 has made a misleading submission that the petitioner's name figured at *Serial No. 3 in order of seniority and not merit*. It has been submitted that the Minutes of Meeting of the DPC held on 11.12.2002 and 26.12.2002 show that the list drawn-up by the DPC was in *order of merit*. It has been argued that the preliminary eligible list, which was drawn based on seniority, was superseded when the DPC made a list in accordance with Regulation 7(6) and Rule 19B(iii)(a). It has been argued that respondent No.1's claim that there was no suitable vacancy in the petitioner's discipline, viz., mechanical engineering, is also false and incorrect. It has been further argued, that the vacancies available were only as per merit, and ordinarily for E-8 level posts, there are no discipline-specific vacancies. It has been argued that respondent No.1's refusal to grant promotion to petitioner in 2003 was in violation

¹⁰ (2021) 8 SCC 1, para 513



of Rule 19B(iii)(a) of the Service Rules and Article 16 of the Constitution of India.

DISCUSSION & CONCLUSIONS

8. Upon a conspectus of what has been stated in the pleadings before this court, and based on the submissions made by learned counsel appearing for the parties, in the opinion of this court, the following considerations are relevant for deciding the present case:
 - 8.1. The petitioner, who has been in service of respondent No.1 corporation since 14.07.1975 and was promoted to the level of General Manager (Mechanical) (E-7 level) with effect from 01.01.1997, is challenging the *timing* of his further promotion to the post of Group General Manager (E-8 level) in the corporation.
 - 8.2. It is the petitioner's case that though he was promoted to the post of Group General Manager *w.e.f. 10.03.2006*, he *should have been* granted that promotion *w.e.f. 02.01.2003*. It is the petitioner's contention that he fulfilled all criteria that were required for his promotion in 2003 itself. He further contends that since he did not get his promotion from 02.01.2003, he should now be granted notional promotion from that date alongwith all consequential benefits, since he was wrongfully denied promotion from the said earlier date.
 - 8.3. Considering the large number of persons that respondent No.1 corporation employs, the corporation has a detailed and complex promotional policy governed *inter-alia* by the ONGC Modified Recruitment and Promotion Regulations, 1980 and ONGC Limited Service Rules, 1995, which have been referred to



respectively as ‘Regulations’ and ‘Service Rules’ in this judgment.

- 8.4. It is pertinent to note that Rule 20(2) expressly says that “*Promotion shall be made in accordance with the relevant provisions in the **ONGC Modified Recruitment and Promotion Regulations 1980.***”
- 8.5. It is the undisputed position that the petitioner’s case is covered by Regulations 7(6), 7(7), 7(8) and 7(11) and by Rule 20(2). The relevant Regulations and Rules have been extracted above. The scope, purport and operation thereof are paraphrased hereinafter.
- 8.6. Regulation 7(1) provides that all promotions at respondent No.1 corporation would be considered by a Promotion Committee to be constituted by the Appointing Authority in accordance with orders issued from time-to-time by respondent No.1.
- 8.7. Operationalising this rule, the Appointing Authority (in this case the Chairman & Managing Director) constitutes a Board Subcommittee of Departmental Promotions, also called the Departmental Promotion Committee or the DPC, which is tasked *inter-alia* with the role of vetting candidates for promotion within the various departments of the corporation.
- 8.8. The DPC draws-up a list comprising its recommendations for promotion and forwards it to the Appointing Authority in two forms: *one*, in *order of merit* for posts for which *merit* is the



criterion for promotion; and *two*, in *order of seniority* for posts for which *seniority-cum-fitness* are the criteria.¹¹

8.9. The Appointing Authority is then required to consider the recommendations of the DPC and pass such orders *as it thinks fit*. If the Appointing Authority does not accept any recommendation(s) of the DPC, they are required to record reasons for such non-acceptance in writing.¹²

8.10. Promotion orders are finally issued *subject to availability of vacancies*, and the names of officers who are not promoted are kept in a list for filling-up vacancies that may arise in the future.¹³ Such a list is however valid only for a period of 06 months from the date of its acceptance by the Appointing Authority, unless that period is extended by the said authority.¹⁴

8.11. **Promotions to E-5 level and above are to be “merit promotion by selection”**.¹⁵

8.12. Under Regulation 7(11)(iii)(b) the scheme for merit promotion by selection is further parsed-out in the following words, which bear repetition:

“(11) The promotions will be carried out under following three criteria:-

** * * * **

“(iii)(b) Merit Promotion by Selection – Corporate Promotions (E-5 level and above):

¹¹ Regulation 7(6), ONGC Modified Recruitment and Promotion Regulations, 1980

¹² Regulation 7(7), ONGC Modified Recruitment and Promotion Regulations, 1980

¹³ Regulation 7(8), ONGC Modified Recruitment and Promotion Regulations, 1980

¹⁴ *ibid.*

¹⁵ Regulation 7(11)(iii)(b), ONGC Modified Recruitment and Promotion Regulations, 1980



(1) *The promotions at Corporate level (E-5 level and above) are based on Merit and qualification scheme.*

(2) *The marks are awarded for quantification, experience, PARs and performance in the interview.*

(3) *The qualifying marks are 60% in interview as well as over all for general candidates and 40% for SC/ST candidates.”*

9. The petitioner's name was considered for promotion to the post of Group General Manager by the DPC at its meetings held on 11.12.2002 and 26.12.2002 in the backdrop of the aforementioned policy and procedure of 'merit promotion by selection'. The petitioner has obtained the minutes of the said meetings through RTI/other official channels. Copies of the minutes have been appended to the petition.
10. In the "*Preliminary Eligible list of GMs upto 01.01.1997 secured at least 70% of 30 maximum marks*" drawn-up by the DPC for considering promotions to the post of Group General Manager, the petitioner's name stood at Serial No.43 out of 46 candidates, since he had secured 21 marks, which was the minimum number of marks that he needed to score to be on that list.
11. On considering his candidature at the meeting of the DPC held on 11.12.2002 and 26.12.2002, the DPC placed the petitioner's name at Serial No.3 for substantive promotion to Group General Manager (E-8 level) with the following opening narration as contained in the minutes of the said meetings:

“1. The following criteria for selection has been adopted on the basis of approval accorded by the Board in the 92nd meeting held on 30th May 2002-



a)

* * * * *

e) Executives securing at least 70% of 30 maximum marks i.e. 21 marks will form the “preliminary eligible list” to be put up before the DPC in order of seniority.

* * * * *

“3. The DPC decided that while selected executives are being empanelled, promotions are to be released with the approval of the Executive Committee, subject to availability of vacancies and suitability of empanelled executives for specific assignments within the approved CRC structure.

“4. DPC specifically advised that assignments/positions are not to be created merely to accommodate any empanelled executive.

* * * * *

“9. The following executives are recommended for empanelment as per the criteria mentioned above. The inter-se seniority of the executives will be maintained on promotion.”

(emphasis supplied)

12. Some confusion has arisen essentially for the reason that the corporation drew-up two separate lists:

12.1. *One*, the “Preliminary Eligible list of GMs upto 01.01.1997 secured at least 70% of 30 maximum marks for consideration for the post of ED/GGM”, which was based on the number of marks awarded to the various officers *based on their merit*, wherein the petitioner stood at *Serial No. 43* out of a total of 46 candidates; and

12.2. *Two*, the empanelment list which was part of the “Proceedings of meeting of the Board Sub Committee on Departmental Promotions on 11th & 26th December, 2002 to empanel candidates for the post of Executive Directors and GGMs”, which list was derived after shortlisting candidates from the ‘preliminary eligible list’, and which showed their names *arranged in order of their inter-se*



- seniority* in the corporation, wherein the petitioner was placed on *Serial No. 3* out of 31 empaneled officers on the basis of his *seniority*.
13. The aforesaid two lists were *not independent of each other*, and the second list based on *inter-se seniority* was derived from the first list, which was based on *merit*. As per policy, in relation to an E-8 level post, an officer is to be promoted based on merit, without however upsetting the *inter se* seniority of two officers who may be of the same merit. The petitioner's argument that once the 'final eligible list' is drawn-up, it renders the 'preliminary eligible list' irrelevant, is accordingly misconceived and cannot be accepted. The second list referred to above is intended only to reflect the *inter-se* seniority; however this list does not efface the clear requirement of regulation 7(11)(iii)(b), which mandates that promotions to posts of level E5 and above are to be made *on the basis of merit*.
 14. The petitioner's name appears at Serial No. 3 in the list arranged *as per his seniority*. However, promotion to the level of Group General Manager (E-8 level) was required to be made *on the basis of merit*; and based on merit the petitioner was placed at Serial No. 43. Furthermore, the corporation has explained that there were 25 vacancies at the relevant time, against which a list of 31 officers had been empaneled for promotion. To be sure, not only the petitioner, there were also 5 other officers who did not get promoted.
 15. Respondent No.1 has also clarified that all officers promoted in the mechanical engineering discipline had better performance appraisal ratings and marks compared to the petitioner.



16. It may further be observed, that in the opinion of this court, it is sound policy that promotions to the level of Group General Manager (E-8 level) be made on the basis of merit, since those positions are positions of high responsibility in the corporation. Merely because a list was *also* drawn-up on the basis of *inter-se* seniority of the officers would not detract from the policy of merit-based promotions.
17. In any case, subsequently the petitioner *was* promoted to the post of Group General Manager E-8 level *w.e.f.* 10.03.2006; and he eventually superannuated from the post of Executive Director (E-9 level) on 31.12.2011.
18. Upon a conspectus of the submissions made by learned counsel for the parties, and upon a close analysis of the documents filed with the petition, this court is persuaded to accept respondent No.1's contentions.
19. As a sequitur to the above, this court does not find any merit in the petitioner's challenge.
20. In light of the view taken by this court above, it is not considered necessary to delve into any of the other submissions made on behalf of the parties, including the submission relating to the scope and ambit of NCSC's role in matters of promotions; or on the issue of delay or laches; or on the matter of interference by the court in administrative matters, including promotions.
21. The present writ petition is accordingly dismissed.
22. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

JULY 23, 2026/ds