

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.893/2013
Saeed Ahmed Khan
Versus

Oil & Gas Development Company Limited and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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21.10.2019	Mr. Yasser Rahim Bhatti, Advocate for the petitioner Mr. Khalil-ur-Rehman Abbasi, Advocate for respondent No.1 Mr. Tanveer Ahmad, Senior Human Resource Officer, Human Resource Department, O.G.D.C.L.	
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Through the instant writ petition, the petitioner, Saeed Ahmed Khan, seeks a declaration to the effect that his supersession was in violation of the protection afforded to him under Section 5 of the Oil and Gas Development Corporation (Reorganization) Ordinance, 2001.

2. It is not disputed that the petitioner was employed in the erstwhile Oil and Gas Development Corporation as an Assistant Technician (Mechanical) on 15.07.1989. The petitioner was promoted to EG-I with effect from 01.12.1993 and to EG-III with effect from 01.07.1999. The petitioner promoted as Principal Technical Officer (Mechanical) (EG-IV) with effect from 01.07.2007.

3. The petitioner asserts that he should have been considered for promotion to EG-V in accordance with the promotion criteria-1994 but instead he was considered for promotion in accordance with the promotion criteria-2004 which could not have been applied to the petitioner.

4. The record shows that the departmental promotion committee had considered the

petitioner along with other officers for promotion as Chief Technical Officer (Mechanical) (EG-V) and had recommended the petitioner for promotion subject to vacancy. The departmental promotion committee had given 74 marks to the petitioner. The other officers who were promoted to EG-V had admittedly obtained more marks than the petitioner.

5. During the course of the arguments, learned counsel for Oil and Gas Development Company Limited ("O.G.D.C.L.") sought some time to take instructions whether the departmental promotion committee had considered the petitioner for promotion to EG-V under the promotion criteria-1994 or the promotion criteria-2004.

6. Mr. Tanveer Ahmad, Senior Human Resource Officer, O.G.D.C.L. tendered appearance and submitted that the departmental promotion committee had considered the petitioner for promotion to EG-V under the promotion criteria-2004.

7. It is an admitted position that the criteria for promotion under the promotion criteria-1994 and promotion criteria-2004 are different.

8. Since the petitioner was in O.G.D.C.L.'s employment since 1989, he was entitled to the statutory protection under Section 5 of the Oil and Gas Development Corporation (Reorganization) Ordinance, 2001 which is reproduced herein below:-

"5. Transfer of employees from the Corporation to the Company:-

(i) All officers, workmen or other employees of the Corporation (hereinafter referred to as the employees) shall, as on the date of incorporation of the Company, be deemed to be employees of the Company on the same remuneration and other conditions of service, rights and

privileges including, but not limited as to provisions to the pension, provident fund and gratuity, if any, and other matters as were applicable to them before the conversion of the Corporation into Company.

(Emphasis added)

9. The Hon'ble Supreme Court, in the case of Oil and Gas Development Company Vs. Nazar Hussain (2010 SCMR 1559), held as follows:-

"10. With regard to the question whether the Service Regulations framed in 1994 under the repeal of Oil and Gas Development Corporation Ordinance, 1961, were still in vogue and have statutory force, this Court in C.Ps.1359 to 1361 of 2009 (which is a case of appellants' Company), specifically observed as under:-

"We have heard the learned counsel for both sides and agree with learned counsel for the petitioners that the High Court did not take into account the provisions of Section 5 reproduced above. After having gone through the said provisions, we are not left in any manner of doubt that the Rules governing the petitioners in matters of employment, were the Rules of 1994. Since the said Rules have been incorporated into law through reference made by section 5 of the Ordinance, the said Rules, if anything, are elevated to a status even higher than that of mere statutory rules, which are framed under rule making powers granted by a statute."

10. In the case of Nizar Muhammad and others Vs. The O.G.D.C.L. through its M.D. the Board of Directors, OGDCL decided on 17.11.2009 in Civil Petitions No.1359 to 1361 of 2009, the Hon'ble Supreme Court held as follows:-

"3. "We have heard the learned counsel for both sides and agree with learned counsel for the petitioners that the High Court did not take into account the provisions of Section 5 reproduced above. After having gone through the said provisions, we are not left in any manner of doubt that the Rules governing the petitioners in matters of employment, were the Rules of 1994. Since the said Rules have been incorporated into law through reference made by section 5 of the Ordinance, the said Rules, if anything, are elevated to a status even higher than that of mere statutory rules, which are

framed under rule making powers granted by a statute.”

11. In the case of Noor Alam Vs. Secretary, Ministry of Petroleum and Natural Resources, decided on 25.06.2012 in civil petitions No.147 and 152/2012, the Hon'ble Supreme Court, after making reference to Section 5 of the Oil and Gas Development Corporation (Reorganization) Ordinance, 2001, held as follows:-

“...It is a case where all the rights of the employees of the Corporation were protected under Section 5 of the Ordinance. Petitioners at times may have acquiesced to the enforcement of the latter law while receiving certain benefits but this could not come in their way of enforcing their rights they acquired under the rules of 1994. For there can be no estoppel against the statute. The case of the petitioner (in Civil Petition No.147 of 2012) which mainly relates to eligibility was required to be dealt with under the Rules of 1994. There is no doubt that the case of petitioner (in Civil Petition No.152 of 2012) was also to be dealt with under the same rules. But what weighed with the Departmental Promotion Committee for not recommending his case for promotion notwithstanding he qualified the benchmarks should have been stated in clear and unambiguous terms. Where neither the Departmental Authority nor the High Court appreciated and adjudicated upon the cases of the petitioners in their proper perspective, their remand for just decision would be but imperative.”

12. In view of the fact that the petitioner, having been employed in O.G.D.C.L. in 1989, was entitled to the protection afforded to him by Section 5 of the Oil and Gas Development Corporation (Reorganization) Ordinance, 2001 as interpreted in the aforementioned orders/judgments of the Hon'ble Supreme Court. The petitioner was therefore entitled to be considered for promotion to EG-V under the promotion criteria-1994 and not by applying promotion criteria-2004. Since it has been confirmed by respondent No.1 that the petitioner was considered for promotion under the promotion criteria-2004, this petition is

allowed and respondent No.1 is directed to reconsider the petitioner for promotion to EG-V with effect from 01.07.2012 (when he was considered for promotion under the promotion criteria-2004) in accordance with the promotion criteria-1994.

**(MIANGUL HASSAN AURANGZEB)
JUDGE**

Ahtesham*