

GAHC010011112014



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : WP(C)/2975/2014

BASAB DUTTA TALUKDAR.

S/O- LT. RABINDRA NATH TALUKDAR, LAND OFFICER, LAND DEPTT., OIL INDIA LTD., DULIAJAN- 786602, DIBRUGARH, ASSAM.

VERSUS

THE OIL INDIA LTD. and 3 ORS

A GOVT. OF INDIA ENTERPRISE, REP. BY CHAIRMAN and MANAGING DIRECTOR, CORPORATE OFFICE, PLOT NO. 19, NEAR FILM CITY, SECTOR 16A, NOIDA, 201301.

2:THE DIRECTOR HUMAN RESOURCES and BUSINESS DEVELOPMENT
OIL INDIA LTD.

CORPORATE OFFICE
PLOT NO. 19
NEAR FILM CITY
SECTOR 16A
NOIDA
201301.

3:THE RESIDENT CHIEF EXECUTIVE
OIL INDIA LTD.
DULIAJAN
DIBRUGARH
ASSAM- 786602.

4:THE HEAD-PERSONNEL
OIL INDIA LTD.
PERSONNEL DEPTT.
DULIAJAN
DIBRUGARH
ASSAM- 786602

Advocate for the Petitioner : MR.P P MEDHI

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

Judgment & Order (Oral)

Date : 28.03.2024

Heard Mr. R. M. Deka, learned counsel for the petitioners. Also heard Mr. K. Kalita, learned counsel appearing for all the respondents.

2. The petitioner, by way of instituting the present proceeding has challenged the impugned Clause 6.3.1 (a) of the Executives' Promotion Policy, 2012, with a further prayer for a direction upon the respondent authorities to promote the petitioner to the next higher salary grade with effect from the date on which the similarly situated persons were so promoted.

3. At the outset, it is to be noted that the present writ petition was instituted by two petitioners, however, vide order dated 04.11.2022, passed by this Court in IA(C)/3051/2022, the name of the petitioner no. 2 was deleted. Accordingly, the present proceeding is limited to Sri Basab Dutta Talukdar as the sole petitioner.

4. The petitioner, in pursuance to an advertisement issued by the Oil India Limited in the year 2009, inviting applications from eligible candidates for filling up the post of Assistant Land Officer, Grade-A, having possessed the mandated qualifications as prescribed in the said advertisement, submitted his application in response thereof, for the post involved. The petitioner, thereafter, participated in the selection process and on conclusion of the said selection process, the respondent authorities informed the petitioner vide an e-mail dated 09.10.2010 that he was selected for the said post and was asked to appear for the pre-medical fitness examination scheduled on 09.11.2010. The petitioner, accordingly, underwent the said medical examination and was declared to be medically fit for recruitment to the posts involved. Thereafter, vide the appointment order dated 23.11.2010, the petitioner herein was appointed as Assistant Land Officer, Grade-A. In terms of the said order of appointment, the petitioner joined his services.

On successfully completing the probationary period, the respondent authorities vide communication dated 29.12.2011, confirmed the services of the petitioner herein with effect from 30.11.2011. Thereafter, it is contended that the petitioner on completion of the required span of service of three years in Grade-A, being entitled for promotion to Grade-B, appeared in the written test followed by personal interview conducted by the company. On conclusion of the said recruitment process, the petitioner was informed that he was selected for promotion to OIL Grade-B Level-1 as Land Officer w.e.f. 01.01.2014, subject to the conditions as mentioned

therein. On receipt of the said communicated dated 02.01.2014, the petitioner herein submitted an appeal before the competent authority, requesting therein to re-consider the date of effect of his promotion to Grade-B and to effect the same w.e.f. 01.01.2013 as was done in case of similarly situated persons selected from the same selection process. The entreaties made by the petitioner for giving retrospective effect to his promotion w.e.f. 01.01.2013, having not being considered by the respondent authorities, the petitioner has instituted the present proceeding.

5. Mr. R. M. Deka, learned counsel for the petitioner submits that the manner and method of effecting promotions at the relevant point of time from Grade-A to Grade-B was governed by the Executives' Promotion Policy, 2012. In terms of the said promotion policy, more particularly, Clause-7 thereof, for promotion from Grade-A to Grade-B, the required span period of services in the feeder cadre was mandated to be 03/05 years. It is contended by Mr. Deka, learned counsel for the petitioner that the persons similarly situated like the petitioner, recruited from the same selection process were initially appointed on 01.06.2010, 31.05.2010 and 02.06.2010 respectively and they would have completed their span of three years of services on 01.06.2013, 31.05.2013 and 02.06.2013 only. Accordingly, in terms of the provisions of Clause-7 mandating the eligibility conditions for promotion from one Grade to the other the said persons could not have been promoted to Grade-A to Grade-B w.e.f. 01.01.2013. It is submitted by Mr. Deka, learned counsel for the petitioner that the said promotions were effected by the respondents by reckoning the provisions

of Clause-6.3.1 (a) of the said Promotion Policy, 2012, wherein it has been provided that all promotions for Level 1(Grade A to E) will be effected once in a year i.e. on 1st January. The provisions of Clause 6.3.1 (a) further provides that the Executives completing the span period between 1st January and 30th June will be considered for promotion to next higher grade w.e.f. 1st January of the same year and those completing the span period between 1st July and 31st December will be considered for promotion w.e.f. 1st January of the next year.

6. It is the contention of Mr. Deka, learned counsel for the petitioner that the provisions of Clause 6.3.1 (a) is in clear violation of provisions of Clause-7 of the said Promotion Policy, 2012 and accordingly, Clause-7 being the provision laying down the requisite eligibility criteria for promotion from one grade to another, the said condition has to be given preference over the said Clause 6.3.1 (a) of the said Promotion Policy, 2012. It is the further contention of Mr. Deka, learned counsel for the petitioner that the persons similarly situated and recruited from the same selection process as well as the petitioner herein having completed their required span of service of three years after 01.01.2013, all the persons recruited from the same selection process ought to have been promoted w.e.f. 01.01.2014 and not from 01.01.2013 inasmuch as w.e.f. 01.01.2013, none of them had completed their required residency in Grade-A. Mr. R. M. Deka, learned counsel for the petitioner, further contends that the said promotion as effected in the case of the petitioner w.e.f. 01.01.2014 would affect his seniority, which would not be redressed till the petitioner reaches

Grade-E and above of the service.

7. Per contra, Mr. K. Kalita, learned counsel for the respondents submits that in pursuance to the advertisement dated 28.04.2009, three candidates were selected for appointment on the basis of merit and two other candidates were also empanelled on the basis of merit complying with the statutory resolutions for ST & SC. The first three candidates so empanelled were accordingly appointed and they have joined in their services on 31.05.2010, 01.06.2010 and 02.06.2010. After the joining of the said three selected candidates, there arose a requirement in the department for two additional posts. Accordingly, there being two candidates empanelled in the select list i.e., the petitioner herein and one other, the local management sought approval of the competent authority for filling up those two posts by the two empanelled candidates, creating two additional posts for them. Accordingly, the competent authority, on consideration of the matter, proceeded to sanction the creation of two additional posts vide a communication dated 15.09.2010 to meet the immediate requirement of man-power in the Land Discipline Department and the petitioner herein along with one other, on completion of the requisite formalities came to be appointed against the said two additional posts so created. The petitioner had joined his services on 30.11.2010.

8. Mr. Kalita, learned counsel for the respondents, by referring to the provisions of Executives' Promotion Policy, 2012 has submitted that there is no contradiction between the provisions of Clause-7 and Clause-6.3.1

(a) of the said policy. While Clause-7 lays down the span requisite for promotion from Grade-A to Grade-B, Clause-6.3.1 (a) only mandates that any such promotion shall be done once in a year and also mandates that the persons completing the requisite span of service between 1st January and 30th June will be considered for promotion to next higher grade w.e.f. 1st January of the same year and those completing the span period between 1st July and 31st December will be considered for promotion w.e.f. 1st January of the next year. Mr. Kalita, learned counsel for the respondents submits that the said provision is applied across the board in the Company and such a provision is beneficial to the persons, to whom the said policy applies.

9. It is further submitted by Mr. Kalita, learned counsel for the petitioner that the date of joining of the petitioner being 30.11.2011 and he having completed his span of three years on 30.11.2013, in terms of Clause 6.3.1 (a) of the said Promotion Policy, 2012, the petitioner was rightly promoted to Grade-B w.e.f. 01.01.2014. Mr. Kalita, learned counsel for the respondents by drawing the attention of this Court to Paragraph-18 of the affidavit filed by the Company in the matter, refers to the table as available therein, wherein the particulars of the employees recruited to Grade-A post in pursuance to the advertisement dated 28.04.2009 has been set out and contents that the petitioner and others whose name figure therein were so promoted as per their turn.

10. Mr. Kalita, learned counsel for the respondents submits that given the date of joining of the employees in the said table, the persons who had joined by 30th June, 2010, on completion of their three years period before 30th June, 2010, were in terms of Clause- 6.3.1(a) of the Promotion Policy, 2012, promoted to Grade-B w.e.f. 01.01.2013, the petitioner having completed his span of three years only w.e.f. 30.11.2013, he was so promoted in terms of the said provisions of Clause- 6.3.1(a) of the Promotion Policy, 2012, w.e.f. 01.01.2014. Mr. Kalita, learned counsel for the respondents submits that the promotions as effected in the matter being strictly in accordance with the Promotion Policy, 2012 in place, does not call for any interference by this Court.

11. I have heard the learned counsels appearing for the parties and also perused the materials available on record.

12. The grievance of the petitioner is with regard to the provisions of Clause- 6.3.1(a) of the Promotion Policy, 2012. The said provision being relevant is extracted herein below:-

"6.3.1 (a) All promotions for Level 1 (Grade A to E) will be effected once in a year i.e. on 1st January. The executives completing the span period between 1st January and 30th June will be considered for promotion to next higher grade w.e.f. 1st January of the same year and those completing the span period between 1st July and 31st December will be

considered for promotion w.e.f. 1st January of the next year."

13. The eligibility for promotion in terms of the said Promotion Policy, 2012 is spelt out in the provisions of Clause-7. Clause-7.1 of the said Promotion Policy mandates that the executives shall be considered for promotion to the next higher salary grade only after confirmation in the present grade, as applicable, on serving the specified span of service in each grade, and meeting the other conditions laid down. The span of service requisite to be met by a Grade-A officer for promotion to Grade-B is 03/05 years in Grade-A. The petitioner herein being a direct recruit Grade-A officer, the requisite span for promotion in his case from Grade-A to Grade-B would be three years. On a close reading of the provisions of Clause-7, it is revealed that the same only lays down the requisite eligibility criteria for promotion from one salary grade to the next higher salary grade. Clause-6.3.1 (a) as quoted herein above, on a closer examination reveals that it takes into its fold the provisions of Clause-7 and thereafter, in view of the policy prevalent in the company for effecting promotions only once in a year i.e. on the 1st January of the concerned year, proceeds to provide that the executives completing the span period between 1st January and 30th June will be considered for promotion to next higher grade w.e.f. 1st January of the same year and those completing the span period between 1st July and 31st December will be considered for promotion w.e.f. 1st January of the next year.

14. The provisions of Clause-6.3.1 (a) does not undermine in any

manner the eligibility requirement as spelt out in Clause-7 of the said Promotion Policy, 2012. The provisions of Clause-6.3.1 (a) only mandates the effective dates on which an officer, who is held to be eligible for such promotion from one salary grade to next higher salary grade would be promoted in terms of Clause-7 of the said Promotion Policy, 2012. The provisions of Clause-6.3.1 (a) applies to all grades from A to E, uniformly and the same, in no manner, prejudices the rights of any officer on account of the prescription of completion of span period for services as requisite to two halves, i.e. from 1st January to 30th June and 1st July to 31st December.

15. The petitioner herein, having been appointed much after the date of appointment of the three persons initially recruited in pursuance to the advertisement dated 28.04.2009 is junior to the said three persons in Grade-A and he would continue to be junior to such persons even after promotion to Grade-B. The conclusions as drawn by this Court with regard to the intent of the provisions of Clause-7 and Clause 6.3.1 (a) of the Promotion Policy, 2012 and it being concluded that the said two provisions are not contradictory to each other, the contentions raised by the petitioner contrary to the above position does not merits acceptance.

16. It is to be noted that while the petitioner contends that the three persons promoted to Grade-B w.e.f. 01.01.2013, could not have been so promoted in view of the provisions of Clause-7 of the said Promotion Policy, 2012, has not impleaded the three respondents as party

respondents in the present proceeding. Accordingly, this Court would not, otherwise also, be in a position to pass any direction in the matter prejudicial to the interest of the said persons.

17. The petitioner has also not prayed for grant of retrospective effect to the order of his appointment to Grade-A, effected vide an order dated 23.11.2010. As such, the petitioner cannot be deemed to have been in the service of the company from a date prior to 23.11.2010 and accordingly, he would be completing his span of three years of service in Grade-A only on 30.11.2013, reckoning the date of joining of his services as on 30.11.2010.

18. Accordingly, the challenge as presented by the petitioner to the provisions of the Clause- 6.3.1 (a) of the Executives' Promotion Policy, 2012 stands rejected.

19. In view of the conclusions reached herein above with regard to the application of Clause 6.3.1 (a) of the Executives' Promotion Policy, 2012, this Court concludes that the promotion of the petitioner to Grade-B w.e.f. 01.01.2014 was so effected in terms of the promotion policy in place and the said promotion in view of the prescriptions made in the provisions of Clause-6.3.1 (a) of the Executives' Promotion Policy, 2012, cannot be given retrospective effect from 01.01.2013.

20. With the above observations and directions, the writ petition stands disposed of.

JUDGE

Comparing Assistant