



OIL & NATURAL GAS CORPORATION (WOU) KARMACHARI SANGHATANA

AFFILIATED TO - PETROLEUM & GAS WORKERS' FEDERATION OF INDIA

Reg. No. (By - II - 8268)

Tel. : 022-26274102

Flat No.102, 1st Floor, Acme Harmony-I, Poonam Nagar, Off. JV Link Road, Andheri (E), Mumbai - 400 093.

Website : www.ksmumbai.com

REF. : ONGC/KS/ 199 /20 22

DATE : 19/12/2022

To,
The ED- Chief ER,
ONGC,
Deendayal Urja Bhavan,
5, Nelson Mandela Marg,
Vasant Kung,
New Delhi 110070.

a/c

Subject: Request to release promotions of employees having diploma in engineering qualification involved in court case.

Respected Sir,

This has reference to our earlier letter no. **ONGC/KS/87/2022** dated **29/07/ 2022** regarding releasing the promotions of employees having diploma in engineering qualification involved in court case. Please find attached the copy of the same for your perusal.

As your authority is aware MOU-2004 was signed between recognised union's General Secretary and esteemed ONGC management in presence of Chief Labour Commissioner (CL) in the office of CLC (CL), New Delhi, one of the condition of MOS was non-executives who are involved in court case has to withdraw their cases after signing of MOS within two months i.e. 60 days.

Now the case filed by "**Diploma Engineers Technical Association**" (**DETA**) has been disposed of by the High Court, New Delhi.

The individual employees were also interested to withdraw their names from the case but due to pandemic of COVID-19 entire world was badly affected. Our offices in the Mumbai Regions were also closed, so also courts were not functioning, hence the time limit given by the management got lapsed.

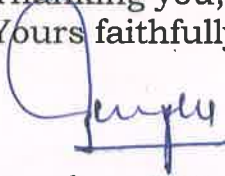
Your esteemed authority is once again requested to resolve the issue amicably and one more opportunity be extended to concerned employees by giving **three months time** following the issuance of this letter to withdraw court case against ONGC.

Contd....2

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An early action in the matter will be highly appreciated. We are ready to modify the concerned clause of MOU 2004, if it is required to initiate the case for the promotions of these employees.

Thanking you,
Yours faithfully,




a/c

(Pradeep Mayekar)
General Secretary

Copy to:

1. ED- HRO, ONGC, WOU, NBP Gr. Hts, BKC, Bandra (E), Mumbai-51.
2. GGM- Head ER, ONGC, Green Hills, Tel Bhavan, Dehradun.
3. GM- I/c IR, ONGC, WOU, NBP Gr. Hts, BKC, Bandra (E), Mumbai-51.
4. DGM- I/c Corporate IR, ONGC, Green Hills, Tel Bhavan, Dehradun.

V. Phule
20/12/2022


20/12/2022



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Website : www.ksmumbai.com

REF. : ONGC/KS/ 87 /2022

DATE : 29/07/2022

To,
The Director (HR)
ONGC,
P D D Urja Bhavan,
5 Nelson Mandela Marg,
Vasant Kunj,
New Delhi- 110070

o/c

Subject: Request to release promotions of employees having diploma in engineering qualification involved in Court Cases

Respected Sir,

Unfortunate and most cruel compromise was done bringing down the equivalency of diploma engineering qualified employees recruited as **Jr. engineers** becoming **Asst. Engineers** from four (4) years to eighteen (18) years and they were designated as Astd. Technicians.

In the following fact-finding majority of Unions in Mumbai Region now identified as WOU we, **ONGC (WOU) Karmachari Sanghatana** won by a margin of 254 votes and were declared by the management as the only recognized union of the region.

In the very first JCM participated by us we persuaded the above issue, wherein management side was chaired by **Mr.K.S.Jamstin**, then **Director (HR)** himself, being convinced it was on his directives a committee of all General Secretaries was constituted to review the said MOS. The matter was resolved by reducing the promotion period from six years to four years, but reaching to this was taking a long time, hence some career-oriented individuals took to other measures of getting justice i.e. High Court. We need not elaborate, how an individual feels being downgraded of his position, we can term it as complete 'psychological deprivation'.

Further, in reference to the **MOS- 2004** signed between recognised Union's General Secretaries and esteemed ONGC Management in presence of **Chief Labour Commissioner (CL)** in the office of **CLC(CL) in New Delhi**, one condition of the MOS was the non-executives who are involved in Court Cases has to withdraw their cases after signing of MOS within two months i.e. 60 days.

A case was filed by "**Diploma Engineers Technical Association**" (**DETA**) in the High Court of New Delhi against ONGC regarding the **2004 MOU**. Now the said case has been disposed of by the High Court New Delhi. Please find enclosed the copy of the same for your perusal.

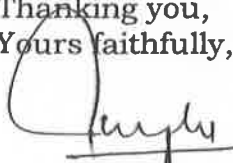
Time limit given by ONGC Management has already lapsed long back. Presently individuals involved in the court case as members of **DETA** have joined back our Union hence, we are representing for an amicable solution.

Contd....2

Your esteemed authority is requested to resolve the issue amicably giving three months' time limit from date of issue of this letter, as a onetime measure be extended so that the non-executives involved in the case can join their higher post on promotion withdrawing from court cases.

An early positive action in the matter will be highly appreciated, promotion from their joining date will give them the opportunity to work and delegate from a higher capacity, certainly a healthier working condition.

Thanking you,
Yours faithfully,

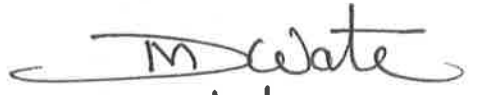


(Pradeep Mayekar)
General Secretary

ok

Copy to:

1. ED- Chief ER , ONGC,5,Nelson Mandela Marg, PDD Urja Bhavan, New Delhi.
2. ED-HRO, ONGC, WOU, WOU, Gr. Hts., BKC, Bandra (E), Mumbai- 51.
3. CGM- Chief HRD , ONGC, PDD Urja Bhavan, Vasant Kunj, New Delhi.
4. CGM(HR),Head R&P, ONGC, Green Hills, Tel Bhavan,Dehradun,Uttaranchal.
5. GM(HR)- I/c IR, ONGC, WOU, Gr. Hts., BKC, Bandra (E), Mumbai- 51.
6. DGM-Head Corporate IR,ONGC,Gr. Hills,Tel Bhavan,Dehradun,Uttaranchal


29/7/2022

V.K.
27/7/22

* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 23rd March, 2021

+ W.P.(C) 10482/2019, CM Nos. 43342/2019 & 29274/2020

ONGC DIPLOMA ENGINEERS TECHNICAL ASSOCIATION
(DETA) THROUGH: ITS PRESIDENT AND ORS.

..... Petitioners

Through: Dr. Menaka Guruswamy, Sr. Adv.
with Mr. Prashant R. Dahat,
Ms. Aishwarya Murali and
Ms. Shreyas Gacchi, Advs.

versus

OIL AND NATURAL GAS CORPORATION LTD. AND ORS.

..... Respondents

Through: Mr. Tushar Mehta, Solicitor General of
India with Mr. Abhishek Gupta, Adv.
with Ms. Ikshita Singh,
Mr. Raushal Kumar, Mr. Sunil Dutt
Mishra and Mr. Neeraj Kumar, Adv.
for ONGC

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

CM No. 29274/2020

1. By this order I shall decide this application filed by the petitioners. The prayers in the application are the following:

"In view of the facts and circumstances stated above, it is most respectfully prayed that this Hon'ble Court may be pleased to:-

A) Allow present Application for Direction;

B) Direct the Respondent No. 1, 2 & 3 to maintain parity and extend modified promotional benefits

25, 1980. Under the said regulations, Diploma holders were promoted to the executive cadre EO / AE after four years. The said regulation has been modified on March 14, 1997. However, the appointment and promotion policy of Diploma holders remained as it was in 1980 Regulation. The impugned MoU was signed between the ONGC and recognized unions of ONGC primarily for modifying R&P 1980. The MoU came into effect on January 01, 2004. In 133rd Board meeting held on October 28, 2004, the proposal for review of R & P policy was accepted.

4. It is the case of the respondents that the petitioner association is not a recognized association and not a part of collective bargaining process.

5. The writ petition was filed on September 17, 2019. During the pendency of the writ petition a Memorandum of Settlement dated February 06, 2020 ('MoS', for short) was signed between the ONGC and recognized Unions of ONGC before the Conciliation Officer under Section 18(3) (b) and (d) of the Industrial Disputes Act, 1947 ('ID Act' for short) . It is noted from the record that out of 12 recognised unions, 11 unions consented to the settlement. Be that as it may, the submission of Dr.Menaka Guruswamy, learned Senior Counsel appearing for the petitioner is that, in terms of the MoU recruitment is made at A-II level instead of Junior Engineer level and the further grades are A-III and A-IV level. From A-IV level, Diploma Engineer is promoted to EO level. The total years of service required to be promoted to EO level was increased from 4 to 18 years (A-II + six years, A-III + six years, A-IV + six years EO).

previously four years. Therefore, this difference of eight long years deprives the petitioners, their right to be considered for promotion. She states that securing a promotion is an essential element of Article 16 of the Constitution of India. Therefore, respondents increased the span of promotion from 4 years to 18 years and then 12 years have denied the petitioners the avenues for promotion.

8. On the plea of waiver of the respondents, she stated that even though the petitioners were appointed under the impugned MoU, the principle of estoppel or waiver would not apply as the respondents have a constitution obligation to create promotional avenues. She also submitted that this Court in exercise of its powers under Article 226 can create promotional avenues. In support of her submissions she has relied upon the judgment in the case of *ONGC v. Petroleum Coal Labour Union and Ors.* (2015) 6 SCC 494 that ONGC being instrumentality of State is covered under Article 12 of the Constitution of India and *M.P. Junior Engineers' Assn. & Sangarsh Samiti v. State of M.P.* 1990 Supp. SCC 229, wherein the Supreme Court while examining the subsequent amended rules which reduced the chances of the petitioners getting promoted, held that order was discriminatory to the people who were being promoted after the amendment came into being.

9. She has also relied upon the judgment of the Supreme Court in *Ajit Singh (II) v. State of Punjab* (1999) 7 SCC 209 in support of her submission that right to be considered for promotion is recognised as a fundamental right. Similarly, she has relied upon

remedy provided under the ID Act. In this regard, he has relied upon various judgments of this Court and the Supreme Court wherein it has been held that only remedy in respect of an industrial dispute for enforcement of a right or obligation under the ID Act, is to get adjudication under the Act. He has referred to the judgments in the case of *Premier Automobiles Ltd. V. Kamlekar Shantaram Wadke of Bombay, (1976) 1 SCC 496, State of Uttar Pradesh v. Uttar Pradesh Rajya Khanij Vikas Nigam Sangharsh Samiti, (2008) 12 SCC 675.*

12. He also stated that the petition is not maintainable for non-joinder of parties, inasmuch as the recognised unions who signed the impugned MoU, 2004 which is a statutorily enforceable settlement, have not been made a party in the present writ petition. He stated that the petitioners / Association were not party to the aforesaid MoU, as it is not a recognized Union and was admittedly formed only in the year 2013. However, all the workmen were represented through recognized Unions who executed the MoU, 2004. In view of this, the prayer with regard to setting aside the MoU 2004, cannot be granted unless the recognized Unions who are signatory to the aforesaid MoU, 2004 have been made party in the present writ petition.

13. In this regard, he has relied upon the judgment of the Supreme Court in *State of Orissa v. Madan Gopal Rungta, reported in 1952 SCR 28.* Even on merit he contested the plea of Dr. Menaka Guruswamy by stating that right of promotion is in terms policy alone. If the policy contemplates a particular

benefit under the same, are governed by the terms and conditions of the MoU and as such they are estopped from challenging the same. In this regard, he has referred to the judgment in the case of *Union of India v. N. Chandrasekharan, 1998 (3) SCC 694*. He also relied upon the judgment of the Supreme Court in the case of *Ashok Kumar v. State of Bihar, (2017) 4 SCC 357*. On merit, it is his submission that the petitioners cannot seek parity with the Diploma holders recruited prior to MoU, 2004, who were recruited in a different post i.e. JE under a different Recruitment and promotion policy. The aforesaid post of JE was neither advertised, nor did the petitioners applied, competed or selected against the said post. The employees possessing similar or same qualification but inducted in different posts at different point of time under different Recruitment and Promotion policies cannot be compared.

16. He stated that Article 14 has no applicability in the instant case, inasmuch as the Diploma holders recruited prior to and post MoU, 2004 form distinct categories in a class of service on account of the variance in their nature, mode and manner of recruitment, nature and character of the posts and promotional avenues and terms and conditions of service. He has relied upon the judgment in the case of *Air India v. Nergesh Meerza, (1981) 4 SCC 335* and *Dilip Kumar Garg v. State of U.P., (2009) 4 SCC 753*.

17. That apart, he stated that mere possession of any qualification does not give entitlement for induction at a particular level. The promotion policy is for those inducted in a particular post and not merely on possessing a qualification.

22. Suffice to state that on February 23, 2021, Mr.Mehta on instructions has submitted before the Court that the order dated November 27, 2020 by which the respondents were proceeding to make promotions, shall be kept in abeyance till the next date of hearing. The said statement continued thereafter.

23. Having said that the first submission of Mr. Mehta on the application is that in the present petition the petitioners impugns the MoU dated August 19, 2004 which has been executed by the ONGC with the recognised unions and even the subsequent MoS dated February 06, 2020 was entered between the management of the ONGC and 11 recognised unions before the Conciliation Officer under the provisions of the ID Act and the remedy for the petitioners is to challenge the MoU / MoS under the provisions of ID Act by raising an industrial dispute. This submission of Mr. Mehta is appealing.

24. A perusal of prayer clause reveal that the petitioners are seeking quashing and setting aside of the MoU dated August 19, 2004 and also the minutes of the Board meeting held on October 28, 2004 with regard to recruitment and promotion policy of the Diploma holders.

25. That apart, I find from the submissions filed on behalf of the petitioners, they are also challenging the MoS dated February 06, 2020 to contend that the same has deprived the petitioners promotion after four years by increasing the span to 12 years. It is the stand of the respondents that even the MoS dated February 06, 2020 was entered between the ONGC and 11 recognised unions

5. In *National Engg. Industries Ltd. v. State of Rajasthan* it was observed as follows: (SCC p. 24, para 393)

“Settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements it could be the subject-matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the Conciliation Officer must be fair and reasonable.”

(Emphasis supplied)

27. Even a Coordinate Bench of this Court in the case of *PTI Employees Union v. Press Trust of India Ltd.*, 2020 SCC OnLine Del 1216 has in para 39 to 45 held as under:

“39. The petitioners have challenged the retrenchment of 297 employees by the respondent on 29th September, 2018. However, 78 out of 297 retrenched employees have accepted their retrenchment and have applied for withdrawal of their statutory benefits including gratuity etc. during the pendency of these writ petitions.

40. The retrenched employees have a statutory remedy to raise an industrial dispute under the Industrial Disputes Act. The petitioners have based their claims on the alleged violation of the provisions of the Industrial Disputes Act. There are no exceptional circumstances for exercise of the writ jurisdiction under Article 226 of the Constitution in these writ petitions.

41. This case is squarely covered by the principles laid down by the Supreme Court in U.P. State Bridge

petition in view of statutory remedy to the employees under the Industrial Disputes Act. The Supreme Court dismissed the writ petition with liberty to the employees to approach the Tribunal in accordance with law. Relevant portion of the said judgment is reproduced as under:

“50. In our considered view, however, all such actions could be examined by an appropriate court/tribunal under the industrial law and not by a writ court exercising power of judicial review under Article 226 of the Constitution. If the impugned action of the Corporation of retrenchment of several employees is not in consonance with law, the employees are certainly entitled to relief from an appropriate authority.”

44. This case is also covered by Transport and Dock Workers Union v. Mumbai Port Trust (supra) in which the Bombay High Court allowed the writ petition in respect of an industrial dispute. The Supreme Court held that the High Court should have dismissed the writ petition on the ground of existence of alternative remedy under the Industrial Disputes Act. The Supreme Court further observed that an over liberal approach was unnecessarily adding to their load of arrears instead of observing judicial discipline in following settled legal principles. Relevant portion of the judgment is reproduced hereunder:

“14. In our opinion the writ petition filed by the appellants should have been dismissed by the High Court on the ground of existence of an alternative remedy under the Industrial Disputes Act. It is well settled that writ jurisdiction is discretionary jurisdiction, and the discretion should not ordinarily be exercised if there is an alternative remedy available to the appellant. In this case there was a clear alternative remedy available to the appellants by raising an industrial dispute and hence we fail to understand why the High Court entertained the writ petition. It seems to us that some High Courts by adopting an over liberal approach are unnecessarily adding to their load of arrears instead of observing

28. The plea of maintainability of the petition has been taken by the respondents in their counter affidavit (at page 9). No rejoinder to the counter affidavit has been filed. Even the submissions made by Mr. Mehta during hearing have not been controverted or dealt with by the petitioners in their written submissions.

29. The submissions made by Dr. Menaka Guruswamy were by referring to the judgments in the case of *ONGC (supra)* to contend that ONGC is a State within the meaning of Article 12 of the Constitution of India; *M.P. Junior Engineers' Assn. & Sangarsh Samiti (supra)* that the subsequent amended rules which reduced the chances of promotion held to be discriminatory; *Ajit Singh (II) (supra)* that right to be considered for promotion is a fundamental right; *State of Tripura (supra)* that a State has a duty to provide avenues for promotion; *Food Corporation of India (supra)* when employee is denied promotion, the Court is within its jurisdiction to issue necessary direction.

30. The judgments are on the merit of the dispute whether the MoU / MoS can deprive the promotion to the petitioners by increasing the span from four years to 18/12 years. Since, I have accepted the submission made by Mr. Mehta that the remedy for the petitioners is to approach the Industrial Tribunal by raising industrial dispute, I refrain from answering those submissions, as the same need to be urged and considered by the Industrial Tribunal and any conclusion / finding will have a bearing on the final outcome of the industrial dispute to be raised by the petitioners.