

PETITIONER:
R.K. SETHI & ANR.

Vs.

RESPONDENT:
OIL & NATURAL GAS COMMISSION & ORS.

DATE OF JUDGMENT: 28/01/1997

BENCH:
S.C. AGRAWAL, FAIZAN UDDIN

ACT:

HEADNOTE:

JUDGMENT:
[WITH CIVIL APPEALS NOS. 525 OF 1987 AND 527 OF 1987]
J U D G M E N T

S.C. AGRAWAL, J:-

These appeals and the writ petition raise common questions relating to seniority in the cadre of Assistant Grade-ii (For short 'AG-II') and promotion to the higher posts of Assistant Grade-I (for short 'Ag-I') and superintendent in the Oil and Natural Gas Commission (hereinafter referred to as 'the commission').

In the Commission recruitment and promotion up to a certain level is on regional basis and thereafter it is centralised. in the personnel and Administration (P & A) Assistant Grade -III (for short 'AG-III'), AG-II and AG-I are made on regional basis and appointment and promotion to the higher posts of superintendent and above are made on centralised basis. There was separate seniority in the cadres of AG-III, AG-II and AG-I for each region while in the higher cadres it was on all India basis. We are concerned with the Central western and Headquarters regions. In early 1960s the commission felt the need of Telex Operators and employees working as AG-III were picked up to work as Telex operators. With effect from April 1, 1969 a separate cadre of Telex operators having separate seniority was created. The Telex operators were earlier having a pay scale which was higher than that of AG -III but lower than that of AG-II. With effect from April 1, 1979 the Telex operators as well as AG-II were placed at the same pay scale of Rs. 431-880. The Telex operators did not have any promotional channel. Under the Recruitment and promotion Regulations, 1980 (hereinafter referred to as 'the 1980 Regulations'), which came into force on April 24, 1980, the designations of many posts under the Recruitment and promotion Regulation, 1974 were changed the 1980 regulation did not contain the post of Telex operator. In order to implement the 1980 regulations executive instruction were issued vide office order No 2(22)/80-RP-I dated April 25, 1980, (hereinafter referred to as 'the Executive Instructions') with regard to placement at appropriate level and other connected matters for different categories of employees. In paragraph 5 of the said order fitment

principles for categories in other disciplines were set out. sub-paragraph (iii) of the said paragraph related to Telex operators and it read as under:-

"(iii) Telex operator - Rs. 370-700 (Rs. 430-880)

All existing employees in the category of Telex operator will be redesignated as Assistant Grade-II in the pay scale of Rs. 370-700/- (rs. 430-880). Total service rendered by the employee in the pay scale of Rs. 360-640/- and Rs. 370-700 (Rs. 430-880)/- will be counted for purpose of promotion to the pay scale of Rs. 470-880/- (Rs. 530-1060)".

In paragraph 1 the said order general instructions were given in respect of all the categories of employees. Sub paragraph (viii) of paragraph 1 related to fixation of inter se seniority consequent upon merger of two categories. It contained the following provision:-

"(viii) fixation of inter se seniority consequent upon merger of two categories:-

Where under R & P regulations, 1980, two or more categories have been merged, for purposes of promotions to the next higher pay scale, inter se seniority of the employee considered for promotion will be fixed on the basis of length of service put in by the individual in the respective pay scale with those in the higher erstwhile scale, being treated as senior to those in the lower erstwhile scale enbloc. Existing inter se seniority will not be disturbed."

As a result of the merger of the cadre of Telex operators with AG-II, the Telex operator in each region were placed enbloc below AG-II in the said region. On April 25, 1980 an office order No. 2/24/80-RP-I was issued to make provision for promotion on time bound basis (hereinafter referred to as 'the 12 years policy') In the said order it was stated that for employees in class III and IV equivalent, every employee will have at least two promotions if otherwise suitable and that in order to achieve this in the scale of pay between Rs. 230-308(old) [290-400 (revised)] to Rs. 650-1200 in each cadre of discipline number of higher posts will be operated in the next promotional step in the pattern of a selection grade if required and that employees in the scale of Rs. 370-700(old) [Rs. 430-880(revised)] who have completed 12 years service in the concerned region would be qualified for consideration for promotion to the scale of Rs. 470-880(old) [Rs. 530-1060 (revised)] and their fitness for promotion would be judged on the basis of procedure laid down for departmental promotion. by office Memorandum No. 2(50)/80-RP-I dated May 27 1982 the commission adopted a policy whereunder as a special one time exception. All class III employees who as on April 1 1982, had put in at least 18 years service in the present grade and in the grade immediately below in class III post were to be considered by appropriate DPCS for promotion from April, 1982 by suitable upgradation of posts

provided they had spent at least three years in their present grade and provided further that they had not been superseded on grounds of merit for promotion earlier. this concession was not to be given for the purpose of such of class III employees who had already been promoted as class III officers. It was found that certain senior employees were left out of consideration for promotion because they did not fulfill conditions Nos. (i) and (ii) of the office Memorandum dated may 27 , 1982 aforementioned while their juniors had been promoted because they fulfilled those criteria and, therefore by office memorandum no. 2(50)/80-RP-I dated February 3 1983 it was decided that such senior employees would be promoted with effect from April 1,1982. By another office memorandum no 2(50)/80-RP-I dated February 3 1983 it was decided that as a special one time exception, all class III employees who as on April 1 1982, had put in at least 18 years service in the present grade immediately below in class III posts would be considered for promotion by an appropriate DPC by suitable upgradation of posts and if they were found suitable for such a promotion the promotion will be with effect from April 1 1982 The aforementioned office Memoranda dated may 27,1982 and February 3,1983 will hereinafter be collectively referred to as 'the 18 years policy'. On the basis of the 12 years policy the Telex operators in the central and Headquarters regions who had been placed in the cadre of AG-II as a result of the Executive instruction regarding fitment of existing employees and who had completed 12 years' service were promoted as AG-I with effect from may 17,1980. Thereafter, on the basis of the 18 years policy the Telex operators, who had completed 18 years service were promoted as superintendent with effect from April 1, 1982. Regular employees who were functioning as AG-II and who were senior to the Telex operators in the cadre of AG-II and who were senior to the Telex operators were however promoted as AG-I with effect from April 1 1982, . since they were senior to telex operators who had been promoted as AG-i earlier to them by order dated February 2, 1984 the regular employee in AG-II cadre did not have 12 years service to their credit and did not fulfil the criterion laid down in the 12 years policy. Those regular employees in AG-II cadre who were thus promoted as AG-i with effect from may 17 1980 were along given the benefit of the 18 years policy and were promoted as superintendent (P & A) with effect from April 1, 1982 by order dated February 2, 1984 for the reason that Telex operators junior to them in the cadre of AG-II had been promoted as Superintendent with effect from April 1,1982. Such promotions of regular employees in AG-II cadre as AG-I with effect from may 17 1980 and as superintendent with effect from April 1, 1982 could not be given effect to in the western region for the reason that the Telex operators in the western region who were offered promotion as AG-I, did not accept such promotion and since no Telex operator junior to regular employees in AG-II cadre was promoted as AG-I with effect from a date earlier than April 1, 1982 no regular employee in AG-II cadre in the western region was promoted as AG-I with effect from a date earlier than April 1,1982 and for the same reason they could not be promoted as superintendent with effect from April 1, 1982.

Respondents Nos. 4 to 8 in civil Appeals No. 527 of 1987 (hereinafter referred to as 'the petitioners') were regular employees in AG-II cadre in the western region who were promoted as AG-I with effect from April 1, 1982 but did not get promotion as AG-I with effect from may 17,1980 and as superintendent with effect from April 1,1982 as granted

to regular employees in AG-II cadre in the central and Headquarters regions. Since seniority in the cadre of AG-I has a bearing on promotion to the higher post of superintendent which is a centralised cadre the petitioners, feeling aggrieved by their non-promotion as AG-I with effect from may 17, 1980 filed a writ petition (special civil Application No. 4811 of 1984) in the Gujarat High Court wherein they sought a writ order or direction directing the commission to give retrospective promotion to them on the post of AG-I with effect from may 17, 1980 and on the post of superintendent (P & A) with effect from April 1, 1982 on the same lines as applied to AG-II of central region Headquarters region who were also promoted initially as AG-I with effect from April 1, 1982 and alternatively they prayed for quashing of the order dated February 2, 1984 for promotion of regular employees in AG-II cadre in central and Headquarters regions and/or adjusting the promotions of the petitioners in accordance with the correct principle of seniority and correct application of promotion policy to the petitioners. The said write petition of the petitioned has been allowed by the High Court by the impugned judgment dated December 23, 1985. The high court has held that promotions that were granted to the regular employees in AG-II cadre in the central and Headquarters regions were not in accordance with law but since the persons who are likely to be effected had not been joined as parties the relief could only be granted as against the parties who were on record. The High has, therefore, set aside the orders of promotion of respondents Nos. 4, 5, 7, 8, and 9 in the writ petition respondents Nos. 9, 10, 12, 13 and 14 in civil Appeal No. 525 of 1987. The High court has however directed that if the said respondents are entitled for promotion of account of their original seniority as AG-II they will be entitled for the promotion if available. The high court has also restrained the commission from granting further promotion to the then regular employees in the cadre of AG-II on April 25 1980 of the central and Headquarters regions on the basis of their higher promotion, i.e., being senior to the Telex operators on that date till a consolidated list of all regions is prepared in accordance with law and they are found eligible for promotion in the light of the observation made in the judgment.

R.K. Sethi and B.P. Arya were regular employees in the cadre of AG-II in the Headquarters region. They were promoted as AG-I with effect from may 17, 1980 and as Superintendent (P & A) with effect from April 1, 1982 respectively on the basis of promotions given to the Telex operators in that region. Even though their promotions were not quashed by the impugned judgment of the High court but in order to give effect to the said decision the commission has passed orders dated may 21, 1986 revoking their promotion as AG-I with effect from may 17, 1980 and as superintendent (P & A) with effect from April 1, 1982. They have filed civil Appeal no. 525 of 1987 to challenge the said judgment of the high court. They have also filed writ petition No. 870 of 1986 under Article 32 of the constitution wherein they have challenged the correctness of the said judgment and have prayed for quashing of the commission on the basis of the impugned judgment of the Gujarat High court. Civil Appeal No. 527 of 1987 has been filled by the commission against the judgment of High court.

The High court has dealt with the matter by posing the following two questions:-

(1) what should be the seniority of the Telex operators when they are redesignated ?

(2) If the Telex operators are placed below the regular AG-II, can the regular AG-II in the central and Headquarters region be promoted under the policies of 12 years and 18 years so as to prejudice the chances of promotion to the petitioners ?

While Dealing with the first question the High court has observed that if the Telex-operators are placed below the existing regular employees it will amount to wiping out their service completely. The high court has considered the principles of seniority contained in annexure II to the O.N.G.C.(Terms and conditions of Appointment and service) Regulations 1975 (hereinafter referred to as the 1975 Regulations") more particularly clauses b and H of the said principles. The High court has held that clause H could not be applied and that the Telex operators must be either continued as a separate cadre or merged with the original cadre bu length of service in accordance with the principles contained in clause B.

As regards the second question, the High court was of the view that merely because the Telex operators had got the benefit of promotion policy which was in relaxation of the statutory regulations it could not be said that the persons who are above the Telex operators in the seniority in the cadre of AG-II could also get the same benefit. In view of the High court, the employees who are not qualified under the 12 years policy had to stand in the queue for promotion under the statutory regulations and their seniority could not help them and it could help them only in respect of the vacancies which were to be filled in by regular promotion . According to the High court the 18 years policy for stagnated relief could not be made available to a person who has not stagnated at all and that by resorting to this type of promotion policy the commission had committed an error prejudicial to the petitioners who were also borne on the cadre of Ag-II and were aspiring for promotion to the post of superintendent and have longer experience than the regular employees of Central and Headquarters regions. The High court has also observed that if the Telex operators in the western region refused to avail promotion under the 12 years policy and under the 18 years policy the right of the regular employees in AG-II cadre could not be whittled down and the fortuitous circumstance that some in the way of the rightful claimants and that if the commission intends to give promotions to the regular employees of AG-II in other regions, it should consider the case of the persons in the western region also on the basis that the petitioners were senior to the Telex operators in the lower cadre and were entitled to further promotion in the same way as their counter parts in other regions.

We may, at this stage refer to the relevant provisions of the principles of seniority laid down as per Regulation 19 of the 1975 Regulations :-

"PRINCIPLES OF SENIORITY.

The following principles will be followed for regulating the seniority of the employees in the oil and natural gas commission:

B. Departmental Promotees:

- (i) x x x
- (ii) x x x
- (iii) Where promotions to a grade are made either from more than one grade or from the same grade divided in to different cadres on regional project or Directorate

basis eligible persons shall be placed in separate lists in order of their inter seniority in the respective grades or cadres.

(a) x x x x

(b) If, however the promotion is to be made on the basis of seniority cum-fitness i.e. seniority subject to the rejection of unfit the Departmental promotion committee shall place the candidates from the various lists based on the total length of service rendered in that grade or cadre and make recommendations for promotion on the basis of this "consolidated list" The inter se seniority of the candidates in their respective lists will not be disturbed in the "consolidated list".

H. Fixation of seniority on absorption of employees from one cadre to another.

The fixation criteria shall be taken into account in fixing seniority of employees absorbed in a cadre other than the one to which they belong:

(i) The commission will be free to transfer employees from one cadre to another temporarily on administrative grounds, e.g. transfer of work non availability of suitable men.

(ii) such employees will retain their line and seniority in the parents cadres and will have no right for absorption in the cadres to which they are transferred temporarily.

(iii) If, as a very special case they are to be considered for absorption in the cadres in which they are temporarily transferred their seniority will count only from the date of their transfer to the cadre in which they are actually working (at the time of their absorption right and seniority of the personnel already recruited or promoted to these cadres; even those recruited and promoted to these cadres on the day the personnel from other cadres are transferred will all rank senior to the personnel transferred from the other cadres".

On behalf of the commission Shri Ashwini Kumar has urged that as a result of fitment under paragraph 5(iii) of the Executive Instructions the cadre of Telex operators was merged in the existing cadre of AG-II and the seniority of Telex operators had to be fixed in accordance with paragraph 1(iii) of the Executive Instructions read with clause H(iii) of the principles of seniority. We find considerable force in this contention. As a result of the fitment policy

maintained in paragraph 5(iii) of the Executive Instructions the cadre of Telex operators had been merged in the cadre of AG-II. The word "redesignated" in paragraph 5(iii) has to be read with the words "two or more categories have been merged" contained in paragraph 1 (viii) and it can only be construed to mean that as a result of redesignation there was merger of the cadre of Telex operators into the cadre of AG-II. The statement in paragraph 5(iii) that the total service rendered by the employee in the pay scale of Rs. 360-640/- and Rs. 370-700 (Rs. 430-880) will be counted for the purpose of promotion to the pay scale of Rs. 470-880 (Rs.530-1060) only enables the Telex operators who have been merged in the cadre of AG-II to avail the period of service rendered by them as Telex operators for the purpose of promotion. But the seniority in the cadre of AG-II will be governed by the provisions contained in paragraph 1 (viii) which lays down the principles of fixation of inter se seniority consequent upon merger of two categories. In paragraph 1 (viii) it is specified that for the purposes of promotion to the next higher scale, inter se seniority of the employees considered for promotion will be fixed on that basis of length of service put in by the individual in the respective pay scale with those in higher erstwhile scale being treated as senior to those in the lower erstwhile scale enbloc. This principle is in consonance with the principle laid down in clause H(iii) of the principles of seniority prescribed under Regulation 19 of the 1975 Regulations. The said provisions deals with the absorption of the employees in the cadre to which they are temporarily transferred and lays down that their seniority will be counted only from the date their transfer to the cadre. The merger of the cadre of the Telex operators to the cadre of AG-II and their absorption in the said cadre. Their seniority will therefor have to be determined in accordance with clause H(iii). We are unable to appreciate how clause B(iii) (b) can be made applicable. The said matter of departmental promotees where promotions to a grade are made either from more than one grade or from the same grade divided into different cadres on regional project or directorate basis. The induction of Telex Operators into the existing cadre of AG-II within the same region did not involve any promotion from more than one grade or from the same grade divided into different cadres on regional project or directorate basis. The said provision would have application in the matter of promotion of AG-I from a regional cadre to the post of Superintendent in a centralised cadre. In this context it may also be mentioned that till April 1, 1979 the pay scale of Telex operators were lower than those of AG-II and it was only with effect from April 1, 1979 that both are placed on the same scale. The earlier service of the Telex operators in a lower pay scale could not be equated with the service of regular employee in AG-I cadre in higher pay scale. The Telex operators were therefore rightly placed below the regular employees in AG-II cadre at the time of merger of the cadre of Telex operators in the cadre of AG-II. The High court in our opinion was not right in holding that the commission had committed an error in placing the Telex operators enbloc below regular employees in AG-II cadre when Telex operators were brought in the cadre of AG-II.

Once it is held that Telex operators have been rightly placed enbloc below regular employees in AG-II cadre as result of the merger of the said cadre in the cadre of AG-II on April 25, 1980 regular employees in AG-II cadre who were senior to the Telex operators could rightly feel aggrieved

if they are denied promotion while their juniors were promoted as AG-I. The "nest below rule" in service jurisprudence seeks to ensure that if a junior employee is given promotion without considering his senior then the senior then the senior employee can claim the right to be considered for such promotion with effect from the date on which the junior was so promoted. The action if the commission in extending the benefit of promotion to regular employees in AG-II cadre as AG-I. with effect from the date the Telex Operators were so promoted on account of the 12 years policy being in consonance with this principle cannot therefore held to be arbitrary or unreasonable. So also the further promotion from AG-I to the post of superintendent (P & A) under the 18 years policy. We are unable to endorse the view of the High court that since regular employees in AG-II cadre did not fulfil the criteria laid down in those policies they could not be extended the benefit of the said policies. The High court has failed to note that when it was found that certain senior employees were left out of consideration for promotion because they did not fulfil the conditions regarding 18 years service contained in the office memorandum dated May 27, 1982 the commission modified the policy contained in the said office memorandum by issuing office Memorandum dated February 3, 1983 whereby it was decided that such senior employees would be considered for promotion and if found suitable would be promoted with effect from April 1, 1982. In view of the said modification in the 18 years policy it cannot be said that regular employees in AG-II cadre could not be considered for promotion since they did not fulfil the criterion of 18 years service.

We also find it difficult to appreciate the view of the High Court that even if the Telex operators who had been offered promotion as AG-I and further promotion as superintendent in the western region had refused to avail the same regular employees in the AG-II cadre in that region including the petitioners who were senior to them in the western region should have been considered for such promotion and the failure to do so would result in denial of their rights. Regular employees in AG-II cadre in the western region could claim promotion as AG-I from a date earlier than April 1, 1982 only if a Telex operator junior to them had been promoted as AG-I from a date earlier than April 1, 1982 the petitioners could not claim a right to be promoted with effect from an earlier date. So also in the matter of promotion from AG-I to the post of superintendent because the right to be promoted with effect from April 1, 1982 could accrue to them only if a Telex operator junior to them had been so promoted from that date. Since no Telex operator junior to regular employee in AG-II cadre in the western region was so promoted the said advantage could not be extended to the petitioners we are unable to agree with the view of the High court that if the petitioners cannot be given retrospective promotion as AG-I with effect from May 17, 1980 and as superintendent with effect from April 1, 1982 the grant of such promotion to regular employees in AG-II cadre in the central and Headquarters regions was also impermissible in law. The said promotions were given to regular employees in AG-II cadre in the central and headquarters regions in view of Telex Operators junior to them having been promoted in those regions. As indicated earlier there was no infirmity in the said action of the commission.

In this context it may be mentioned that during the course of his arguments Shri Venkataramani the learned

counsel appearing for the petitioners stated that in the western region the principle of "next below rule" was not followed and that some telex operators who had accepted promotions under the 12 years policy were granted promotion while regular employees in AG-II cadre who were senior to them have not been given promotion from the date from which such Telex operators were so promoted. Although there is nothing on the record to support the said submission of the learned counsel by order dated December 10 1996, we permitted the petitioners to file an affidavit in this regard. An affidavit in this regard. An affidavit dated January 6 1997 has been filed by Ram Chand Talreja on behalf of the petitioners In the said affidavit it is stated that by order dated December 28 1983 Telex operators of western region were promoted as AG-I with effect from January 1 1983 and that the Telex Operators of western region have raised a dispute seeking promotion as AG-I with effect from may 17 1980 like their counter parts in the central and headquarters regions and that the conciliation proceeding ended in failure and thereafter they have a filed a writ petition No. 2353 of 1996 in the Gujarat High court which is still pending. This shows that no Telex operators in western region was promoted as AG-i prior to April 1 1982 and the question whether they are entitled to be promoted with effect from may 17 1980 is pending consideration before the Gujarat High court in writ petition No.2353 of 1996. In case the Telex operators of western region succeed in their writ Petition that is pending in the Gujarat High Court and are promoted as AG-i with effect from may 17 1980 or a date earlier than April 1 1982 the petitioners as well as other regular employees in AG-II cadre in the western region can claim promotion as AG-I with effect from the same date and on that basis they can also claim promotion to higher posts.

The High Court has expressed the view that the cadres in the regions should have been integrated in a unified cadre and the seniority should have been assigned to the Telex operators in the integrated cadre and has directed that a consolidated list be prepared of all regions and promotions should be made on that basis. In other words the High court has directed that AG-II cadre could be converted from a regional cadre to centralised cadre. Such a direction could not be given by the High court. It is for the commission to decide how to organise its administrative services in order to achieve efficiency in the administration. The Commission has taken a decision that cadres up to AG-I should be maintained on regional level. There is nothing to show that the said decision of the commission suffers from the vice of arbitrariness. In the circumstances the High court could not give a direction for the integration of the cadres in the regions and for preparing a consolidated list of all regions.

For the reasons aforementioned we are unable to uphold the impugned judgment of the High court and the same is liable to be set aside consequently the orders dated may 21 1986 passed by the commission revoking the promotions granted to the appellants in civil Appeal No. 525 of 1987 on the basis of the impugned judgment of the High court are also liable to be set aside.

In the result civil Appeals Nos. 525 of 1987 and 527 of 1987 are allowed the judgment of the Gujarat High court dated December 23 1985 in special civil Application No. 4811 of 1984 is set aside and the said special civil Application is dismissed. Writ petition No. 870 of 1986 is also allowed and the orders dated may 21 1986 are set aside. In the circumstances there is no order as to costs.

JUDIS