JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No.1748 of 2016

Mushtaq Ahmad
Versus
Oil and Gas Development Company Limited (OGDCL)

Petitioner by:	Mr. Abdul Rehman Khan, Advocate.
Respondent by:	Mr. Umair Majeed Malik, Advocate.
Assisted by:	Muhammad Yahya Khan Niazi, Judicial Law Clerk.
Date of Hearing:	**21.03.2025.**

INAAM AMEEN MINHAS, J:- Through the instant writ petition, the petitioner impugns the order dated 08.10.2015 **("Impugned Order")** and seeks direction to the respondent i.e Oil & Gas Development Company Limited **("OGDCL")** to consider him for ante-dated promotion in EG-IV w.e.f. 01.12.2005 instead of 01.12.2009.

2. Brief facts are that the petitioner was initially recruited as Headman (BS 14) on 13.10.1987 in OGDC. He was promoted as Assistant Driller, w.e.f 01.12.1995. Subsequently, he was promoted in EG-II w.e.f 01.12.2000. The said EG -II was treated as EG-III in view of the judgment of the Honourable Supreme Court in *Zulfiqar ul Husnain vs. OGDCL, (2003 SCMR 1115)*. Under the promotion policy, the petitioner was entitled to further promotion in EG-IV w.e.f 01.12.2005, therefore he requested for consideration on 13.09.2005, followed by another request, which was, however, declined on 11.10.2005 on the ground that the petitioner does not possess the requisite qualification of Diploma of Associate Engineer. On 18.04.2007, the other colleagues of the petitioner were promoted to EG-IV, but he was not considered. The petitioner filed a representation

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dated 04.07.2007, but to no avail. On 20.11.2009, the OGDCL circulated its Promotion policy, whereby a person with five years of service in one grade was declared entitled to be promoted in the next higher grade, irrespective of the educational qualification. The said circular substantiated the petitioner's case, but when his promotion order was passed on 02.04.2010, it was made effective w.e.f. 01.12.2009 instead of 01.12.2005. The petitioner filed numerous representations for ante-dated promotion, which were not acceded to and were dismissed, hence, this petition.

3. The learned counsel for the petitioner contended that the OGDCL, originally established under the Oil and Gas Development Corporation Ordinance, 1961 and later reorganized under Oil and Gas Development Corporation (Reorganization) Ordinance, 2001, retained its employees' terms under the Oil and Gas Development Corporation Employees (Service) Regulations, 1994 **("1994 Regulations")**; that the petitioner, with prior international drilling experience, joined OGDCL in 1987 as Headman (BS-14) and was granted one advance increment in 1995, however, upon promotion to Assistant Driller (EG-I) with retrospective effect from 01.12.1995, the said increment was unjustly withdrawn, causing a lasting financial loss, including a reduced pension; that the petitioner was subsequently promoted to EG-II in 2001 and EG-III in 2003 whereas under the 1994 Service Regulations, he was due for EG-IV promotion in 2005; that the petitioner was denied due to a management-imposed qualification bar requiring a DAE, which was later removed in 2009; that the petitioner was promoted in 2010 and subsequently to EG-V. The imposed qualification condition lacked legal backing and was applied arbitrarily, rendering the denial of promotion unlawful. He further contented that there is no restriction in the 1994 Regulations against promotion based on qualification; that the records reflect that even after the 1994 Regulations employees with just an F.A. or less were promoted to EG-IV/V; that denying the petitioner promotion despite this, violates Article 25 of the Constitution; that if there had been a valid restriction, the management could not have

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removed it in 2009 without amending the Regulations; that any internal policy that contradicts statutory rules is invalid and that the 1994 Regulations do not prohibit the promotion of retired employees, and under the law, pro forma promotion is permitted to adjust pension benefits, a practice acknowledged by OGDCL itself.

4. On the other hand, the learned counsel for OGDCL argued that the petitioner cannot claim promotion as a legal right because, under Regulation 5(4) of the 1994 Regulations, promotion is not guaranteed; that the petitioner is now retired and has no vested right of promotion, therefore, he cannot seek a writ under Article 199 of the Constitution; that the petitioner's case involves disputed facts, which this Court cannot decide in its constitutional jurisdiction; that the petitioner misrepresented the facts and approached this Court with bad faith; that following this Court's judgment dated 28.05.2015, in W.P. No. 195/2012, the petitioner was granted a personal hearing and his case was reviewed under the relevant rules, whereupon it was found that he did not meet the requisite qualification for promotion to EG-IV (Senior Driller) from 2005.

5. I have given anxious consideration to the arguments of the learned counsel for the parties and perused the record with their able assistance.

6. The learned counsel for the petitioner has referred to various judgments of the Honorable Supreme Court of Pakistan and is seeking similar relief for the petitioner. However, after perusal of the said judgments, this Court observes that the facts and circumstances of the petitioner's case differ from and are not identical to the cited judgments. Therefore, the petitioner cannot claim benefit of those judgments, as judicial decisions generally apply only to the specific parties involved in those cases unless explicitly extended to others. In particular the judgment cited as ***Zulfiqar ul Husnain vs. OGDCL, (2003 SCMR 1115)*** clearly states in paragraph 13 that the said

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judgment is only confined to the appellants of those cases and not to other employees.

7. The relevant statutory framework applicable to the case of the petitioner was the 1994 Regulations and over the years and he received a series of promotions based on his service record and experience. He was first promoted to the post of Assistant Driller (EG-I) with effect from 01.12.1995, followed by a promotion to EG-II on 01.12.2000. Subsequently, he advanced to EG-III and later to EG-IV, effective from 01.12.2009. Eventually, in 2015, he was promoted to the position of Deputy Chief Driller (EG-V), effective from 01.01.2014. These sequential promotions clearly demonstrate that between 1987 and 2015, the petitioner consistently advanced in his career, progressing from the position of Headman (BS-14) to the senior role of Deputy Chief Driller (EG-V), which reflects that OGDCL promoted the petitioner on the basis of his qualifications and experience. The petitioner is aggrieved, when he was denied promotion in year 2005 on the basis of condition of qualification of diploma engineering, however, later in year 2009 the qualification bar was removed and petitioner was promoted under the new Policy of 2009.

8. The relevant provision of the Regulations, 1994 particularly regulations 5 & 32 are reproduced as under:-

> ***"5. Appointment by promotion***
>
> *(1) Promotion to all posts in the Corporation shall be made on the recommendations of the appropriate Departmental Promotion Committee as an Appendix A to these regulations.*
>
> *(2) Only those employees who possess the qualification and experience as laid down for the purpose of promotion to a post shall be considered by the Departmental Promotion Committee.*
>
> *(3) No promotion to a post shall be made except in accordance with criteria as contained in Appendix B.*

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> *(4) Where an employee from within the Corporation possession the requisite qualifications and meets the conditions laid down for filling the post the vacancy shall first be filled in by departmental promotion and if no suitable candidate is available from within, then such vacancies may be filled in by direct recruitment. No employee shall have any claim for promotion as a matter of right, notwithstanding his qualifications and experience.*
>
> ***32. Appointment by promotion***
>
> *(1) Promotion will be made only against vacancies available in the higher posts, subject to the conditions prescribed in Schedule-III to these regulations.*
>
> *(2) All promotion cases will be considered and recommended by the Promotion Committee as constitute vide Appendix-A Chapter-III to these regulations.*
>
> *(3) Promotion shall be made on the basis of merit, fitness and seniority in accordance with the criteria as in Appendix-B.*
>
> *(4) In case a suitable person is not available for promotion to a post required to be filled by promotion the vacancy of any such post will be filled by direct recruitment, and filling that by transfer, as may he considered necessary"*

9. Upon careful examination of the above referred regulations, it is evident that the same do not contain any provision for pro forma promotion. The Hon'ble Supreme Court, in the case of ***Kashif Aftab Ahmed Abbasi vs. Federation of Pakistan through Secretary Establishment Division, Islamabad***, ***(2022 SCMR 1618)***, has held that ante-dated seniority is not a vested right. It is trite law that promotion to a higher post is contingent upon multiple factors, including but not limited to relevant experience, satisfactory Annual Confidential Reports (ACRs), availability of posts, and overall fitness. Furthermore, the Hon'ble Supreme Court has categorically held in ***Muhammad Amjad vs. The Director General, QDA Quetta and another***, ***(2022 SCMR 797)*** that promotion is not a vested right; it is dependent upon both

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eligibility and fitness, subject to the availability of a post. In the present matter, the petitioner is seeking ante-dated promotion to EG-IV, w.e.f 01.12.2005, rather than 01.12.2009. However, since the 1994 Regulations do not allow pro forma promotion, the petitioner cannot claim such relief as a matter of right. This view has been reaffirmed by this Court in the cases ***Taj Muhammad, Chief Internal Auditor OGDCL and others vs. Oil and Gas Development Company Limited through Manager Director and other, [2022 PLC (C.S.) 712]*** and ***Kaleem ul Haq vs. Oil and Gas Development Company Limited (I.C.A. No. 360 of 2018).*** The petitioner's claim, therefore, lacks legal backing and is not sustainable under the governing law and regulations.

10. The petitioner has invoked the constitutional jurisdiction of this Court, seeking judicial review of the OGDCL's decision to decline ante-dated promotion. It is a settled principle of law that the constitutional Courts possess the powers of judicial review, however, such jurisdiction is exercised only in cases where illegality, irrationality, or procedural impropriety is established. The Courts refrain from substituting their own judgment for that of the competent authority in matters of policy or administrative discretion, as enunciated by the Hon'ble Supreme Court in ***Dossani Travels Pvt. Ltd. vs. Travels Shop Pvt. Ltd., (PLD 2014 SC 1)*** *and* ***Government of Khyber Pakhtunkhwa vs. Hayat Hussain, (2016 SCMR 1021).***

11. According to the applicable policy in 2005, for promotion from EG-III to EG-IV (Senior Driller), the said policy introduced a mandatory qualification of a Diploma of Associate Engineer (DAE) in Electrical or Mechanical Technology. Since the petitioner did not possess the required diploma, his case for promotion was re-evaluated and ultimately denied w.e.f. 01.12.2005. This decision was formally communicated to the petitioner on 08.10.2015. However, it is essential to note that in 2009, OGDCL introduced a revised policy that removed the diploma requirement for promotion to the EG-IV level. Following this change, the petitioner was promoted to EG-IV, w.e.f 01.12.2009,

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and later, in 2015, he was further promoted to the position of Deputy Chief Driller (EG-V), w.e.f 01.12.2014 by accepting the 2009 Policy.

12. The regulatory framework stipulates that, where an employee within the corporation possesses the requisite qualifications and fulfills the prescribed conditions for the post, such vacancy shall, in the first instance, be filled through departmental promotion. It is evident from the record that the petitioner did not specifically challenge the 2005 Policy at any stage, which introduced the prerequisite qualification, which deprived the petitioner from promotion in 2005. Instead, when the subsequent revised policy came into effect in 2009, removing the qualification bar, the petitioner accepted the promotion. This conduct unequivocally demonstrates that the petitioner acquiesced to the 2009 Policy and availed its benefits, thereby waiving any right to claim ante-dated promotion from 2005. The Honourable Supreme Court in the case of ***Jam Pari vs. Muhammad Abdullah,*** **(1992 SCMR 786)** held that *"Waiver is an intentional relinquishment of known right and unless there is cogent evidence reflecting the respondent's conduct clearly indicative of abandonment of his right he cannot be said to have deliberately foregone his such right".* The petitioner's conduct of availing the benefit under the 2009 Policy is an intentional and conscious relinquishment of his right.

13. Moreover, waiver and estoppel, in legal parlance, are inter-related and complementary *inter se*. It is a trite principle of law that a party is bound by his conduct. The Honourable Supreme Court in the case of ***Combind Investment (PVT) LTD. vs. Wali Bhai and others***, **(PLD 2016 Supreme Court 730)** has held that where the principle of estoppel is pressed into service on the basis of some admitted/undisputed facts of the case, a party is bound by his pleadings and conduct. Hence, at any later stage, the party cannot turn around to wriggle out from the consequence of such admission and conduct of submitting to the jurisdiction of such authority. Therefore, the petitioner's act of later challenging the 2005 policy is akin to taking

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inconsistent positions, which is not permissible under law, as one cannot approbate and reprobate in the same breath. The maxim *qui approbat non-reprobat* (one who approbates cannot reprobate) provides that a person taking advantage under an instrument, which both grants a benefit and imposes a burden, cannot take the former without complying with the latter. This doctrine upholds the sanctity of procedural fairness by disallowing inconsistent positions within the same proceedings.

14. In view of the above discussion, the instant writ petition bears no merits. Consequently, the same is **dismissed.**

(INAAM AMEEN MINHAS)
JUDGE

Announced in open Court on 19.06.2025

JUDGE

M. YAHYA KHAN NIAZI, L.C

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