
(1992) 12 GAU CK 0009
In the Gauhati High Court
Case No : Civil Rule No. 55 (K) of 1991

A. Yanger AO

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision : 04-12-1992

Acts Referred:

Constitution of India, 1950 — Article 226, 309

Nagaland Civil Supplies Services Rules, 1977 — Rule 10, 11, 13, 5, 6

Citation : (1994) 2 GLR 5

Hon'ble Judges : H.K. Sema, J

Bench : Single Bench

Advocate : R.S. Bedi, for the Appellant; E.Y. Renthungo, Jr. Govt. Advocate, for the Respondent

Judgement

H.K. Sema, J.—This Civil Rule reveals a disquieting feature, as to how the authorities are making appointments/promotions in wanton and deliberate deviation from the prescribed rules. In this writ petition, the Petitioner has assailed the promotions and appointments of Respondents 5 to 11 as Inspectors of Supply.

2. I have heard Mr. R.S. Bedi, learned Counsel for the Petitioner as well as Mr. E.Y. Renthungo, learned Junior Govt. Advocate.

3. The Petitioner on the basis of selection by the Board in its meeting held on 29.4.1974, and 1.5.1974 was appointed as Sub Inspector of Supply by an order dated 17.8.74. The Petitioner joined the post on 16.9.74. Thereafter, the Petitioner obtained the degree of Graduate in the year 1976. Admittedly, there was no service rule existence in the department of Nagaland Civil Supplies when the Petitioner was appointed. However, In 1977, the Governor of Nagaland in exercise of the power conferred by the proviso to Article 309 of the Constitution was pleased to make the rules, the Nagaland Civil Supplies Services Rules, 1977 (hereinafter the rules). The said rules became effective from 29.4.1977. Therefore, the service condition of the Petitioner and the Respondents thereafter

are governed by the said rules.

4. Before I advert further it will be appropriate to deal with the provisions of rules in so far relevant for the present purpose. This tiny rules consists only 19 Rules and III Schedules. Therefore, there should be, I am of the view, no difficulties in carrying out the rules.

5. Rule 5 of the rules deals with the method of recruitment and prescribed two methods of recruitment (a) By direct recruitment by competitive examination/selection, (b) By promotion from lower grade, The quota allotted to each source of recruitment under (a) and (b) above and the minimum educational standard and condition for recruitment was provided in scheduled II to the rules. At this stage, it would be pertinent to mention that rule 6 of the rules deals with the appointment to the service and says that all the appointments to live service after the commencement of the rules shall be made by the respective appointing authority and no such appointment shall be made except after selection by one of the method of recruitment specified in rule 5. Therefore no other method of recruitment was prescribed by the rules except the methods mentioned in (a) and (b) of Rule 5. Further in schedule II, appended to the rules for appointments/promotions in category IV (Inspector of Supply) which we are concerned in this writ petition, the quota for direct recruitment and Departmental Promotion is 50% each and the qualification for direct recruitment is Graduate in arts, commerce of Science. Further for promotion to the post of Inspector of Supply a candidate must be a substantive incumbent of the immediate lower category of post with 5 years of continuous service in the category. The immediate lower category of post for promotion to the post of Inspector of Supply is t the post of Sub Inspector of Supply. In other words, Sub Inspector of Supply is the feeder post for promotion to the post of Inspector of Supply. Further, schedule II of the rules listed VII categories of posts for promotion to the various categories.

6. Rule 7, 8, 9, 10 and 11 of the rules deals with the procedure for direct recruitment by competitive examination. Besides others, it says that examination shall be conducted by the Commission and the Commission shall forward to the appointing authority the names and other details of candidates considered most suitable duly arranged in order of preference. Rule 13 deals with selection for promotion to non-Gazetted post and says that. Selection Committee consisting of (1) Director of Supply, Nagaland (2) Under Secretary to the Government of Nagaland, Supply department (3) Under Secretary to the Government of Nagaland P & AR (4) Deputy Director of Supply, Nagaland and says that the Departmental Promotion Committee for promotion to the non-Gazetted posts shall consider the promotion of the incumbent on the basis of seniority cum merit. The rule further stipulates that in the event a senior member of the service is superseded by his junior the Committee shall record its reasons.

7. Now let us see how the Respondents are promoted/appointed to the post of Inspectors in flagrant violation of the rules mentioned above. The 5th Respondent as confirmed Accountant of Directorate of Supply was promoted to

the post of Inspector of Supply by an order dated 31.3.82. In the first place the 5th Respondent was not qualified for promotion to the post of Inspector of Supply as under schedule II for promotion to the post of Inspector of Supply he must be a substantive incumbent of the immediate lower category of post with 5 years of continuous service in the category. The immediate lower category of post is Sub Inspector of Supply. This apart, no Departmental Promotional Committee was constituted for selection for promotion to the non-Gazetted post as enjoined under rule 13 of the rules. Likewise, the 6th, 7th, 8th and 9th Respondents who were Accountant/UDAs and Cashier were promoted to the post of Inspector of Supply on 8th Sept" 87 and 13th June 88 respectively in flagrant violation of the rules as stated above.

8. The appointment of 10th Respondent as Inspector of Supply is somewhat more peculiar than the others. The 10th Respondent was appointed as Inspector of Supply on ad-hoc basis for 4 months by an order dated 18th Feb"86. By another order dated 16th June" 89 the 10th Respondent was appointed again as Inspector of Supply on contract, basis for a period of one year or till the vacancy is filled up by the regular promotion or regular recruitment whichever is earlier. From the letter dated 12th Jan" 90 at Annexure-9, it appears that the post held by the 10th Respondent was already submitted to the NPSC with a requisition for selection of candidate. However, the regularisation of the service of the 10th Respondent was sought to be obtained at the instance of the Chief Minister. Accordingly, by an order dated 15th March, 1990 the contract service of the 10th Respondent was regularised with immediate effect, It is to be seen that the service rules does not stipulate either on ad-hoc appointment or contract appointment. On the other hand the vacancies clearly appears to be the quota of direct recruitment and if so the provision of Rule 7, 8, 9, 10 and 11 which deals with the recruitment by a competitive examination ought to have been resorted to.

9. Now comes to the 11th Respondent. The 11th Respondent was appointed on contract basis for one year against the existing vacancy by an order dated 8th June" 88. By another order dated 27th Feb 91 the contract appointment of the 11th Respondent as inspector of Supply was regularised with effect from the date of the Order. As said earlier, the rules prescribed two methods of appointment to the post of Inspector of Supply, one by direct recruitment through competitive examination and other through Departmental Promotion Committee. No other method has been prescribed by the rules. This apart, the appointments and promotions of Respondents 5 to 11 are made in wanton violation of mandate of Rule 6 of the rules which says that no appointment shall be made except after selection by one of the method of recruitment specified in Rule 5. At the risk of repetition, Rule 5 prescribed only two methods of recruitment, by direct recruitment by competitive examination, which means through NPSC and by promotion from lower grade, which means by selection through Departmental Promotion Committee as enjoined under Rule 13 of the rules.

10. More than once, this Court as well as the Apex Court has observed that rules are meant to be followed and not to be violated. It is high time that the authorities should discipline themselves to adhere to the rules. Violations of the rules in promotion and seniority would not only defeat the ends of justice but also create artificial disorder and frustration among the members of the services.

11. In the result, I hold that the appointment of Respondents 5 to 11 as Inspectors of Supply are in contravention of the rules and are illegal. However, considering the facts that some of them have been holding the post as far back as in 1982, I do not wish to quash their appointments. It is however, made clear that further regularisations and promotions in respect of the aforesaid Respondents shall be made only following procedure prescribed under the rules. I may also hasten to add that the conditions are attached with regard to the appointment of 10 and 11 Respondents and it would be open to the competent authorities to deal with them in accordance with the conditions of their appointments.

12. Now comes to the question as to what relief the Petitioner is entitled to. It is really a sad state of affairs that the Petitioner has been made to suffer for no fault of his. The Petitioner is a holder of Graduate Degree and was qualified for promotion to the post of Inspector of Supply either by direct recruit or through Departmental Promotion Committee. Even after the introduction of the rules which was made effective from 29.4 77 the Petitioner has served qualifying length of service in the immediate lower grade by 1982. It is unfortunate that the Petitioner has overslept Mr. Pedi has taken me to various representations filed by the Petitioner in the (sic). I am not impressed, Remedy under Article 226 of the Constitution is an equitable remedy and delay defeats equity. However, considering the facts and circumstances of the case that the Petitioner is otherwise qualified and no adverse report against him, I now direct the competent authority to consider the case of the Petitioner for promotion to the post of Inspector from the date prior to the Respondents are promoted subject to the availability of the post from promotion quota, This direction also subject to the seniority of the Petitioner, for example, if In a case of vacancies arises in a particular year from the promotion quota is filled up by an Incumbent senior to the Petitioner the same shall be adjusted against the Petitioner. It is submitted by Mr. Bodi that the Petitioner has now been promoted to the post of inspector of Supply. Even so, his seniority as Inspector of Supply shall be considered in terms of the above direction. To carry out the above direction the Respondents are directed to constitute Departmental Promotion Committee in respect of the Petitioner within two months from the date of receipt of this order.

With this observation and direction this petition is disposed off. No order as to costs.