
(2004) 02 GAU CK 0012
In the Gauhati High Court
Case No : Writ Petition (C) No. 22 of 2002

Dr. L.B. Sailo

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision : 03-02-2004

Acts Referred:

Citation : (2005) 1 GLR 557

Hon'ble Judges : P.P. Naolekar, C.J

Bench : Single Bench

Advocate : C. Lalramzauva, A.R. Malhotra, Helen Dawngliani and R. Lalduhawmi, for the Appellant; Aldrin Lallawmuala, K.V. Tlangmawia and George Raju, for the Respondent

Final Decision : Dismissed

Judgement

P.P. Naolekar, CJ.

1. This petition is filed by Dr. L.B. Sailo, who is presently holding the post of Joint Director in Animal Husbandry and Veterinary Department Mizoram, Aizawl, challenging the promotion of Respondent No. 5, Dr. C. Sangnghina by Office Memo No. A. 22012/50/94-P&AR(CSW) dated 9.1.2002 respondent No. 5 was promoted from the post of Joint Director to the post of Director, Animal Husbandry and Veterinary Department Mizoram in pursuance of the recommendation made by the departmental promotion committee. The relevant facts, in brief, are that the petitioner was promoted to the post of Joint Director vide order dated 26.2.1996 whereas the respondent No. 5 was promoted to the post of Joint Director in the same department on 1.7.1996. Thus apparently the respondent No. 5 was junior to the petitioner in the grade of Joint Director in the department. For the next promotion in the department from the post of Joint Director to the post of Director, under the eligibility criteria, 5 years of service is requisite condition. On 26.2.2001 the petitioner completed five years of service in the post of Joint Director whereas on 1.7.2001 the respondent No. 5 completed his five years of service in the post of Joint Director. At the relevant

time the post of the Director was to become vacant on superannuation of the incumbent namely, Dr. C. Lianmawia, who was to retire on 31.1.2001. However, a Government order has been issued extending his service for further period of six months. By virtue of that order the incumbent holding the post of Director in the department was to retire on 31.7.2001. The further extension given by the Government to him for four months having been stayed by the High Court, the incumbent holding the post of Director was in fact to retire on 31.7.2001 and in fact the post has become vacant on the extended period on 31.7.2001. Thus, the post of Director has become available from 1.8.2001. However, the departmental promotion committee has considered the case of the petitioner and respondent No. 5 in the DPC meetings held on 3.1.2002 and recommended the promotion to the respondent No. 5. In pursuance thereof the respondent No. 5 was promoted to the post of Director by order dated 9.1.2002.

2. The petitioner has filed the present writ petition challenging the order of promotion of the respondent No. 5 on the ground that the memorandum issued by the State Government dated 3.9.1998, 28.3.2001, 5.10.2001 and 8.10.2001 have not been properly given effect to and the ACR's which are not required to be considered by the departmental promotion committee while considering the case of the petitioner and the respondent, namely the ACRs of the year 2000-2001 have been wrongly considered and respondent No. 5 has been given promotion overlooking the seniority of the petitioner in the post of Joint Director. It is further submitted by the learned counsel for the petitioner that the ACR's which ought to have been taken for consideration by the departmental promotion committee for consideration, under the aforesaid memo issued by the State Government are for the year 1995-1996 to 1999-2000 whereas the ACR have been taken into consideration for the year 1996-1997 upto 2000-2001 and thereby an advantage has been given to the respondent No. 5 and he has been promoted to the higher post overlooking the seniority claim of petitioner.

3. To appreciate the submission made by the learned counsel for the petitioner it would be appropriate to take note of the ACR entry of the petitioner and the respondent for the year; 1996-2001 and office memorandum which reads as follows :

Various office memoranda were issued by the State Government from time to time which are to be given effect to while considering the case of the officers for promotion. The first office memorandum in point of time is dated 3.9.1998 wherein in para 3.5(ii) it is stated as follows :

"3.5(ii). In respect of all posts which are in the level of Rs. 3700-5000/- and above, the bench-mark should be "VERY GOOD", and for all the posts which are in the level of Rs. 2200-4000/- and above but less than Rs. 3700-5000/-, the bench-mark should be "GOOD". However, officers who are graded as outstanding would rank en-bloc senior to those who are graded as "VERY GOOD" and placed in the select panel accordingly up to the number of vacancies, officers with same grading maintaining their inter-se-seniority in the feeder post. Further,

suppression of officers with lower grading by those with higher grading shall be permitted in the following manner only. To supersede those grade "VERY GOOD", officer graded "OUTSTANDING" should have at least 4 (four) of his ACRs graded as "OUTSTANDING" including the last ACR when the minimum length of service required at the feeder grade for promotion is 5(five) years. 5(Five) including the 1st one when the required length of service for promotion at the feeder grade is 7(seven) years and 6(six) including the last one when the minimum length of service required at the feeder grade for promotion is 8(eight) including the last one when the required length of service in the feeder grade is 10(ten) years. The same yardstick will apply for suppression of the officers graded "GOOD" by the officers graded "VERY GOOD".

Office memorandum dated 28.3.2001 is also reproduced hereunder:

"Subject : Procedures to be observed by Departmental Promotion Committee (DPCs). Model Calendar for DPCs - Relevant year upto which ACRs are to be considered.

The undersigned is directed to refer to Government of India, Ministry of Personnel, Public Grievances and Pension (Deptt. of Personnel and Training) O.M. No. 22011/9/98-Estt(D) dated. 16.6.2000 (copy enclosed) by the DPCs had been determined/fixed.

The Government of Mizoram has decided that such ACRs of officers should be considered by DPCs which became available during the year immediately preceding the vacancy/panel year even if DPCs are held later than the schedule prescribed in the model calendar. In other words, for the vacancy/panel year 2000-2001, ACRs upto the year 1998-99 are required to be considered irrespective of the date of convening of DPC."

4. Relevant portion of office memorandum dated 5.10.2001 in para 3.5(ii) reads "Outstanding : An Officer who gets at least 3(three) outstanding report out of 5(five) will be categorised as "outstanding".

And office memorandum dated 8.10.2001 reads :-

"Subject: Procedures to be observed by D.P.C. Relevant year upto which ACRs are to be considered.

In partial modification and in continuation of this Deptt's O.H. even No. Dated 5th September, 2001 and 28th March, 2000, the Government of Mizoram has decided that such ACRs of officers which became available during the year immediately preceding the vacancy/panel year should be considered by the DPCs even if DPCs are held later than the year of vacancy. In other words, for the vacancy/panel year, 2000-2001, ACRs upto the year 1999-2000 are required to be considered irrespective of the date of convening of DPC. However, ACRs upto the year ending 31st March, 2000 will be considered by the DPC if it is sits after September of that year even if the vacancy falls within 2000-2001.

This office memorandum will make immediate effect for all DPCs to be convened and all pending cases should be settled in accordance with this office memorandum."

5. As per paragraph 3.5.(ii) of the office memorandum dated 3.9.1998 all posts which are in the level of Rs. 3700/- - 5000/- and above, the bench mark for the promotion should be very good. The officers who are graded as outstanding would rank en-block senior to those who are graded as very good and placed in the select panel accordingly upto the number of vacancies. The officers who have been graded same shall maintain their inter-se-seniority in the feeder post. There will be suppression of the officers with lower grading by those with high grading. The officer graded as very good would be superseded by officers graded as outstanding who have at least four of his ACR's including the last ACR's are outstanding when the minimum length of service required at the feeder grade for promotion is five years. The effect of this memo is, that where the minimum required length of service is five years for promotion to higher grade the officer who holds four outstanding grading in ACR including the last ACR will supersede the officer who is holding very good ACR. The memo dated 28.3.2000 indicates as to which of the ACRs has to be taken into consideration while considering the case of the officer for promotion. According to this memo the DPC shall consider the five ACR's which have become available during the year immediately preceding the vacancy panel year, even if the DPCs are held later than the schedule prescribed in the model calendar. While explaining the procedure to be adopted by DPC it is said in the memo that for the vacancy panel year 2000-2001 ACRs up to year 1998-99 are to be considered irrespective of the date of the DPC meeting. There appears to be typographic error in the explanation when it is said that for the vacancy panel year 2000-2001 the ACR's up to the year 1998-99 shall be considered, in fact the immediate preceding ACR which is to be considered for the vacancy year 2000-2001 would be up to 99-2000 as per the first part of the circular and not 98-99 when DPC has to consider the ACR upto immediately preceding vacancy panel year. The office memorandum dated 5.10.2001 is in regard to consideration of the outstanding, remarks which says that the officers who gets three outstanding report out of five will be categorised as outstanding. Thus the officer although does not get the outstanding ACR for all the five year's under consideration if he get three outstanding ACR he shall be graded as outstanding.

6. The office memorandum dated 8.10.2001 has been issued in continuation of memo dated 5.9.2001 and 28.3.2000 which is classificatory in nature correcting the mistake of the years for consideration by the DPC when it has been said that the ACR's of the officers which become available immediately preceding the vacancy/panel year should be considered by the DPCs even if the DPC is held later on of the year of vacancy i.e. the years of consideration of ACRs of the officials, the vacancy panel year in material and not the date on which DPC is held for consideration of the promotion to the higher grade. While giving example for the vacancy penal year 2000-2001, it is said that ACRs up to the year

1999-2000 are required to be considered irrespective of the date of convening of DPC meeting. It is apparent that the DPC which considered the cases of the promotion of the officers for the higher grade has to keep in mind the vacancy penal year and thereafter to consider the five years ACR immediately preceding the vacancy penal year. The officer who has secured four ACR's of outstanding inclusive of the ACR of the immediately preceding year of the vacancy penal year would be entitled to supersede the officer holding very good ACR although he is senior on the feeder post. Applying the aforesaid test we are to find whether the DPC has rightly considered the ACR of the respective officials while recommending promotion to the higher post.

7. In the post of the Director, vacancy occurred on 1.8.2001 immediately when the incumbent of the post namely Director has retired on superannuation. Thus, the vacancy penal year would be 1.4.2001 to 31.3.2002 and the ACRs which have to be taken into consideration are of immediately five years preceding the vacancy penal year i.e. of the year 1996-97, 1997-98, 1998-99, 1999-200 and 2000-2001. In this relevant years the respondent No. 5 has secured ACR of outstanding in four years including the last preceding year immediately of the vacancy penal year i.e. in the year 2000-2001. As the respondent No. 5 has secured 4 outstanding ACR in the last five preceding years he shall be considered senior to petitioner in the feeder post who has secured three very good ACRs and two outstanding ACRs.

8. A bare reading of the ACRs of the five years clearly indicate that the respondent No. 5 was more meritorious than the petitioner, the petitioner could not get the advantage of his seniority because the office memorandum gives the respondent No. 5 an edge over the petitioner as he has obtained four outstanding in the last preceding five years and would be considered senior to petitioner. The respondent No. 5 having obtained four outstanding has superseded the petitioner in the matter of seniority. Thus the respondent No. 5 at the relevant time was more meritorious and was also senior to the petitioner and he has rightly been given promotion to the higher post of the Director.

9. On the aforesaid I find no infirmity in the recommendation made by the DPC for promotion of the respondent No. 5 to the post of Director and consequential order issued by the State Government promoting the respondent No. 5 to the post of Director.

10. Petition stands dismissed. However, in the circumstances of there shall be no orders as to costs.