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**(2001) 09 GAU CK 0033**  
**In the Gauhati High Court**  
**Case No : Civil Rule No. 101 (SH) of 1996**

Dr. W.S. Dann

APPELLANT

Vs

State of Meghalaya and Others

RESPONDENT

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**Date of Decision :** 07-09-2001

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2001) 3 GLT 241

**Hon'ble Judges :** A.K. Patnaik, J

**Bench :** Single Bench

**Advocate :** K.S. Kynjing, for the Appellant; S. Sen, for the Respondent

**Final Decision :** Partly Allowed

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## Judgement

A.K. Patnaik, J.—The petitioner joined on 14.9.1979 as a Class-II Officer of the Meghalaya Animal Husbandry & Veterinary Service. On 1.2.1985, a gradation list of Class-II Officers of the Meghalaya Animal Husbandry & Veterinary Service was published, and in the said gradation list the petitioner was placed in 20th position and respondents-3 to 6 were placed in 21st to 24th position. Hence, the petitioner was senior to respondents-3 to 6. By a notification dated 31.5.1985 of the Government of Meghalaya, Animal Husbandry & Veterinary Department, respondents-3 to 6 amongst others were promoted and appointed for a period of one year to officiate in Class-I posts of Meghalaya Animal Husbandry & Veterinary Service. The petitioner submitted a representation dated 24.6.1985 to the Special Secretary to the Government of Maghalaya, Animal Husbandry & Veterinary Department, against such promotion of respondents-3 to 6 who were Junior to the petitioner. In the mean while, by a letter dated 2.5.1985 of the Deputy Secretary to the Government of Meghalaya. Animal Husbandry & Veterinary Department, some adverse remarks recorded in the ACRs of the petitioner for the period 1.1.1984 to 31.12.1984 were communicated. The adverse remarks were, "Relation with Non-Officials : An indifferent Officer". After receiving the said communication of adverse remarks, the petitioner in his letter

dated 8.7.1985 to the Deputy Secretary to the Government of Meghalaya, Animal Husbandry & Veterinary Department, requested him to enlighten the petitioner as to on which occasion he was found to be an indifferent officer in dealing with non-officials. Thereafter, the petitioner made several representations from time to time to the Government of Meghalaya in the Animal Husbandry & Veterinary Department against his supersession by Junior officers. But when no relief was granted to the petitioner, he filed the present writ petition praying for quashing the notification dated 31.5.1985 by which respondents-3 to 6 were promoted to Class-I of the Meghalaya Animal Husbandry & Veterinary Service. He has also prayed for a direction on the State-respondents to give him seniority in service over the said respondents-3 to 6.

2. An affidavit-in-opposition has been filed on behalf of state-respondents- 1 and 2. In the said affidavit, it has not been disputed that the petitioner was above the respondents-3 to 6 in the gradation list of Class-II Officers published on 11.2.1985, but it has been stated that the Departmental Promotion Committee, (for short, "the DPC") which met on 14.5.1985 and which studied the ACRs of all concerned officers did not recommend the petitioner for promotion, but recommended 23 other officers including respondents-3 to 6 for promotion. In the said affidavit it has also been stated that the DPC made an observation that the petitioner could not be recommended for promotion as there were a number of remarks against him. For these reasons, the petition could not be promoted. Regarding the representation dated 8.7.1985 on the adverse remarks, it has been stated that the said representation was received by the Department on 19.7.1985, but could not be entertained as it was not submitted within the prescribed period of six weeks. In paragraph-8 of the said affidavit, it has however been stated that the representation of the petitioner dated 25.1.1990 was considered by the Department and the DPC which met on 10.12.1990 recommended the petitioner for promotion from Grade-11 (Jr) to Grade-II (Sr), and the petitioner was accordingly promoted by order dated 26.6.1991.

3. Mr. K. S. Kynjing, learned senior counsel appearing for the petitioner, submitted that the petitioner was serving in a remote area in Meghalaya, and received the letter dated 2.5.1985 of the Deputy Secretary to the Government of Meghalaya, Animal Husbandry & Veterinary Department, communicating the adverse remarks on 23.5.1985, but as soon as the petitioner received the same, he submitted his representation against the said adverse remarks in his letter dated 24.6.1985 to the deputy Secretary to the Government of Meghalaya, Animal Husbandry & Veterinary Department. According to Mr. Kynjing, the period of six weeks prescribed for making representation against any adverse remarks can only be counted from the date of receipt of the communication of adverse remarks by the petitioner and not from the date on which the communication was despatched by the authority. He submitted that in any case, adverse remarks were communicated by letter dated 2.5.1985, and before expiry of six weeks from 2.5.1985 the DPC met on 14.5.1985 and took into account the said adverse remarks and did not recommend the petitioner for promotion. Mr.

Kynjing submitted that it is now settled by a series of decisions of the Supreme Court as well as this court that principles of natural justice would be violated if a government servant is not given an opportunity to represent against the adverse remarks against him in his ACRs, and promotion is denied to him on the basis of such adverse remarks. He relied on the decisions of the Supreme Court in *Gurdial Singh Fijji Vs. State of Punjab and Others*, *Vijay Kumar, I.A.S. Vs. State of Maharashtra and Others*, as well as the decision of this court in *W. R. Dutta v. State of Nagaland* (1992) 2 GLR 437. In support of his aforesaid submission. According to Mr. Kynjing, this is a fit case in which the impugned notification should be quashed by this court, or, in the alternative the petitioner be given seniority over respondents-3 to 6 in Class-I of the Meghalaya Animal Husbandry & Veterinary Service with retrospective effect.

4. In reply, Mr. S. Sen. learned Government Advocate, Meghalaya, submitted that under the relevant provisions of the Rules/Circulars, representation against adverse remarks had to be made within six weeks from the date of communication of adverse remarks, but the representation of the petitioner against the adverse remarks was dated 8.7.1985 which was beyond the said prescribed period of six weeks and was therefore not considered period of six weeks and was therefore not considered by the authority. He also produced a Xerox copy of the proceeding of the DPC dated 14.5.1985 to show that the DPC did not recommend the petitioner for promotion as there were adverse remarks against him. According to Mr. Sen, therefore, this is not a fit case in which this court should grant reliefs as claimed by the petitioner. Notices have been duly served on respondents-3 to 6. but no one has appeared on behalf of the said respondents-3 to 6 at the hearing.

5. I have perused the copy of the proceedings of the DPC meeting held on 14.5.1985 which have been produced before the court by Mr. Sen, learned State counsel appearing for the State of Meghalaya, and I find that in the said meeting, the DPC considered promotions from Grade-III (Jr) to Grade-III of the Meghalaya Animal Husbandry & Veterinary Service. The DPC studied the ACRs of 24 officers and related documents and had a detailed discussion and categorised 5 officers as VERY GOOD and 18 officers as GOOD. Respondent No. 5 was categorised as VERY GOOD, and respondents-3, 4 and 6 were categorised as GOOD by the DPC. The DPC recommended 23 officers graded as VERY GOOD and GOOD for promotion. But the DPC did not recommend the petitioner for promotion and the reasons given by the DPC in its proceedings for not recommending the petitioner are as follows:

"There are a number of remarks regarding the performance of Dr. W. Dann (Sl. No. 20 of the Annexure). The latest report of 1984 reports him as an indifferent officer. The adverse remark has been duly communicated. Dr. Dann is, therefore, not recommended for promotion."

Although the DPC has mentioned was that there were a number of remarks regarding the performance of the petitioner, Mr. Sen very fairly submitted at the

time of hearing that only adverse remark in the ACRs of the petitioner which was considered by the DPC was the remark in the report of 1984 that he was an indifferent officer. The DPC has also mentioned in the aforesaid reasons that the said adverse remark has been duly communicated. The adverse remark appears to have been communicated by letter dated 2.5.1985 of the Deputy Secretary to the Government of Meghalaya, Animal Husbandry & Veterinary Department. During the period of six weeks from 2.5.1985 the petitioner could have represented against the said adverse remarks. But the DPC meeting was held on 14.5.1985 within two weeks from the letter dated 2.5.1985 communicating the adverse remark. As a result, the petitioner had no opportunity to make a representation against the aforesaid adverse remark that he was an Indifferent officer in relation with non-officials, and his representation could not be considered by the competent authority for the purpose of finding out whether the adverse remark was justified, and the DPC took into consideration the said adverse remark and did not recommend the petitioner for promotion. Such denial of promotion to the petitioner on the basis of an adverse remark against which the petitioner had no opportunity to represent was in violation of the rules of natural justice.

6. In *Gurdial Singh v. State of Punjab*, (supra), the Supreme Court held:

The principle is well-settled that in accordance with the rules of natural justice, an adverse report in a confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has an opportunity to improve his work and conduct or to explain the circumstances leading to the report. Such an opportunity is not an empty formality, its object, partially, being to enable the superior authorities to decide on an consideration of the explanation offered by the person concerned, whether the adverse report is justified."

The aforesaid law discussed by the Apex Court was also followed by the court in *W. R. Dutta v. State of Nagaland*, (supra), and it was held therein -

This would show that not only the communication of the adverse reports is important but equally important is the disposal of the representation submitted by the delinquent Officer and to communicate the same. Because in disposing of the representation the appropriate Government has to decide whether the adverse remark was justified. This can only be done only when the representation submitted by the delinquent Officer was considered and disposed of properly by a speaking order and communicated to him."

7. Thus, denial of promotion to the petitioner on the basis of adverse remark in the ACRs for the year 1984 that he was an indifferent officer was in violation of the principles of natural justice. Besides the said adverse remark no other remark in relation to the performance of the petitioner has been mentioned by the DPC for refusing promotion to the petitioner. The proceeding of the DPC meeting held on 14.5.1985 in so far as it did not recommend the petitioner for

promotion is therefore liable to be quashed. The ACRs and service records of the petitioner for the periods upto 1984 without the said adverse remark in the report of the year 1984 will have to be considered afresh by DPC to be constituted by the State Government, and if the said DPC categorises the petitioner as either VERY GOOD or GOOD and recommends the petitioner for promotion from Grade-III (Jr) to Grade-III of the Maghalaya Animal Husbandry & Veterinary Service, the petitioner will be given such promotion with retrospective effect.

8. I am not, however, inclined to quash the notification dated 31.5.1985 in so far as it promoted respondents-3 to 6 to Class-I (Grade-III) posts of the Maghalaya Animal Husbandry & Veterinary Service. This is because, the said promotions had been made in the year 1985 whereas the petitioner filed the present writ petition challenging the said promotions in the year 1996. It has been held by the Supreme Court in *Ramchandra Shankar Deodhar and Others Vs. The State of Maharashtra and Others*, that there is no inviolable rule of law that whenever there is a delay, the court must necessarily refuse to entertain the petition, it is a rule of practice based on sound and proper exercise of discretion, and each case must be dealt with on its own facts. The Supreme Court has however held in the said case that the principle on which the court refuses relief on the ground of laches or delay in that the rights accrued to others by the delay in filing the petitioner, should not be disturbed, unless there is a reasonable explanation for the delay. The petitioner had been submitting representations from time to time against his suppression, but when his representations were not considered he should have approached this court as early as possible for quashing the impugned notification dated 31.5.1985. Since the petitioner did not approach this court promptly, I am not inclined to quash the impugned notification promoting respondents-3 to 6 to Class-I (Grade-III) of the Maghalaya Animal Husbandry & Veterinary Service.

9. For the foregoing reasons, the writ petition is allowed in part. The proceeding of the DPC meeting held on 14.5.1985 in so far as it did not recommend the petitioner for promotion is quashed and the respondents-1 and 2 are directed to constitute a DPC to reconsider the case of the petitioner for promotion in the manner indicated above, and if the DPC recommends the petitioner and the recommendation is accepted by the State Government, respondents-1 and 2 will promote the petitioner with retrospective effect from the date the respondents to 6 were promoted under the impugned notification dated 31.5.1985 with all service benefits including seniority other than the salary and allowances in the promoted post. This direction be complied with within two months of the date of receipt of a certified copy of this judgment and order by the Secretary to the Government of Meghalaya, Animal Husbandry & Veterinary Department. Considering however the entire facts and circumstances of the case, the parties shall bear their respective costs.