
(2004) 04 GAU CK 0062
In the Gauhati High Court
Case No : Writ Petition (C) 204 (AP) of 2001

Gyanti Taki

APPELLANT

Vs

State of Arunachal Pradesh and Another

RESPONDENT

Date of Decision : 23-04-2004

Acts Referred:

Citation : (2005) GLT 713 Supp

Hon'ble Judges : B. Lamare, J

Bench : Single Bench

Advocate : T. Michi, for the Appellant; B.L. Singh and I. Ahmed, for the Respondent

Judgement

B. Lamare, J.—Heard Mr. T. Michi, learned Counsel for the Petitioner, Mr. B.L. Singh, Senior Government Advocate for the State Respondent and Mr. I. Ahmed, learned Counsel for the Respondent No. 3.

2. The Petitioner was appointed as Junior Engineer under the department of power, Government of Arunachal Pradesh by order dated 10.03.84 and he joined to the post on 05.09.84. The seniority list of the Junior Engineers as on 28.02.94 was published and in the said seniority list the name of the Petitioner appears at Serial No. 94 and the name of the private Respondent at Serial No. 102. On the basis of this seniority list a DPC was held in the year 1994 and on the basis of the DPC 12 Junior Engineers were promoted to the grade of Assistant Engineer, Electrical by order dated 22.08.94. By another order dated 12.12.94 12Nos. of Junior Engineer, Electrical were promoted. The name of the Petitioner was not placed before the DPC although he has completed 10 years of qualifying service by the time DPC was held. The case of the Petitioner was not placed before the DPC on the ground that there was a Vigilance enquiry against him.

3. The Petitioner was however allowed to hold the post of Assistant Engineer by order dated 28.08.97 Annexure-G to the Writ Petition with financial and administrative powers until further order.

4. The case of the Petitioner is that since he has joined the post on 05.09.84 and that he is eligible for consideration for promotion after completing 10 years of regular service in the grade of Junior Engineer according to the rule his name should be placed before the DPC for consideration of his promotion. But the Respondent have not considered the case of the Petitioner and his name was not forwarded when the DPC was held although he is under the zone of consideration. It is also the contention of the Petitioner that other Junior Officers were promoted by the orders dated 22.08.94 and 12.12.94 on the basis of the DPC but the case of the Petitioner was not place along with the other officers who were promoted by the said orders therefore he should be promoted from that date when those Junior Officers were promoted.

5. The State Respondent in paragraph 3 of their affidavit-in- opposition have stated that there was a vigilance case pending against the Petitioner therefore his case could not be considered earlier though he was eligible in the year 1994 as per the Recruitment Rules of the Department. The Petitioner has submitted representation regarding closure of the Vigilance case against him and on receipt of the representation from the Petitioner his case was proceeded and he was considered and given officiating promotion by order dated 28.08.97.

6. In paragraph 4 of the affidavit-in-opposition the State Respondent admitted the statement made in paragraph 2 of the writ petition and stated that the department has issued a revision promotion order PWRS/E- 108/95-96/Vol-II dated 13.09. 2000 for 8 (eight) adhoc's Assistant Engineer. By this order a Screening Committee was constituted for fixation of the seniority of the Junior Engineers and considering their qualifying length of services for promotion as required on the Recruitment Rules. It was decided that in respect of the regularization of adhoc's promotion does not arise as they were already holding the post of Assistant Engineer on regular basis on the recommendation of the DPC. However, the case of the Petitioner was considered for regular promotion only on 12.03.2001 and the notional seniority was fixed in respect of the Petitioner from the date when his Juniors has got promotion but no monetary benefit was given to the Petitioner as he was not practically holding the post of Assistant Engineer.

7. In view of the above statement made by the Respondent in their affidavit-in-opposition, it is admitted position that the Petitioner is due for consideration for promotion in the year 1994 but his case was not placed before the DPC only because of the pendency of the Vigilance case against him. From the statement of the Respondents in their affidavit-in-opposition it is also seen that notional seniority was fixed in respect of the Petitioner from the date when his Juniors has got promotion. However, the monetary benefit was denied to the Petitioner when the Petitioner was eligible and was in the zone of consideration when the DPC was held.

8. When the case of the employees has come in the zone of consideration for promotion the authority should place his name before the DPC and also to bring

to the notice of the DPC if he is under suspension, or a charge sheet or disciplinary proceeding is pending against him or there is a criminal charge against him. In such a situation the DPC shall assess the suitability of the candidate independently without regard to the above proceedings pending against him. The DPC findings and grading in respect of the candidate will be kept in a seal cover. On conclusion of any of the proceedings the seal cover will be opened and if he is found eligible for promotion he shall be promoted notionally from the date other candidates selected by the same DPC were promoted.

9. Therefore, it is incumbent upon the Respondents to adopt the seal cover procedure in respect of the Petitioner and place his case before the DPC. The result of the DPC may not be disclosed to the Petitioner till the Vigilance case is cleared but that was not done in the case of the Petitioner. Admittedly, the Vigilance case against the Petitioner was closed as apparent from the memorandum dated 20.08.97 issued by the Superintending Engineer in coordination with the department of Power, Arunachal Pradesh. Therefore, if the case of the Petitioner was placed before the DPC by the time the office memorandum dated 20.08.97 was issued the seal cover would be opened and the Petitioner be given promotion accordingly by following the due procedure. It is the fault of the Respondents for not giving promotion to the Petitioner to which he was entitled to, it is not the fault of the Petitioner for which he can be denied the benefits/ promotion.

10. The Apex Court in the case of Prof. C.D. Tase Vs. University of Bombay and Others, in paragraph-5 of the judgment held as follows:

It is evident from the above decision that lecturers whose name were recommended for placement in the higher scale before October 4, 1975 were entitled to such placement before being brought over to the revised scale of Rs. 700-1600. The Appellant was entitled to placement in the higher scale of Rs. 700-1600 w.e.f. June 15, 1975. The college authorities failed, for no fault of the Appellant and his companions, to forward their names to the University in the prescribed proforma for reasons best known to them. To deny the benefits to which the Appellant and his companions were entitled on account of the lapse on the part of the College authorities would be highly unfair and unjust. The High Court, however, took the view that there was "nothing very inequitable" about the decision of the University to deny such placement to the Appellant and his companions, but it is obvious that if they had been granted placement on the due date they would have been entitled to higher salary and allowances related to basic salary e.g. dearness allowance which is certain percentage of basic salary would have gone up. In addition they would have earned increments by the time they become entitled to the revised scale Rs. 700-1600.

11. In the case of the State of Madhya Pradesh v. Syed Naseem Zahir and Ors. Civil Appeal No. 4190 of 1992 (arising out of SLP (Civil) No. 8717 of 1992 decided on 13.01.1992 the Supreme Court held as follows:

Keeping in view the facts of this case we are of the view that the "sealed cover" containing recommendations of the DPC in respect of the Respondent Syed be not opened till the departmental proceedings against him are concluded. As mentioned above the enquiry report has already been received by Syed and it is a matter of days before the disciplinary proceedings would come to an end. In the case he is completely exonerated, the "sealed cover" shall be opened and if the recommendation is in his favour, he shall be notionally promoted with effect from the date when a person junior to him was promoted to the post of Chief Engineer. In that event, he shall be entitled to all consequential benefits including back wages. In case, Respondent Syed Naseem Zahir is punished in the proceedings, then action would be taken in accordance with the guidelines laid down by this Court in Jankiraman's case.

12. Keeping in view of the above decisions of the Apex Court and in facts and circumstances of the case as already elaborated above, I am of the opinion that the Petitioner is entitled to the benefits of granting notional promotion from the date of issue of the order 22.08.94 where other persons junior to the Petitioner were promoted.

The Petitioner is also entitled to be given benefits including seniority and also financial benefits to which he is entitled according to the Rules from the date the other juniors of the Petitioner were promoted.

13. Accordingly, it is directed that the Respondents shall issue necessary orders granting the Petitioner notional promotion from the date on which his juniors were promoted and also to grant all the service benefits including seniority, financial benefits admissible to the Petitioner from the date of the notional promotion in accordance with the Rules. The entire procedure shall be completed within a period of 3 (three) months from the date of receipt of a copy of this order.

With above direction this petition is disposed off. No costs.