
(2009) 07 GAU CK 0001
In the Gauhati High Court
Case No : Writ Petition (C) No. 325 (AP) 2008

Himmer Ete

APPELLANT

Vs

State of Arunachal Pradesh and Another

RESPONDENT

Date of Decision : 16-07-2009

Acts Referred:

Citation : (2009) 2 GLD 421

Hon'ble Judges : P.K. Musahary, J

Bench : Single Bench

Advocate : K. Ete, N. Ratan, M. Kato, K. Tasso, D. Padu, M. Tang, B. Nomuk and G. Kato, for the Appellant; R.H. Nabam, for the Respondent

Final Decision : Allowed

Judgement

P.K. Musahary, J.—Heard Mr. K. Ete, learned Counsel, appearing for the petitioner and Mr. R.H. Nabam, learned Senior Government Advocate, appearing on behalf of the State respondents.

2. The facts leading to filing of this writ petition are that the petitioner being a B. Tech. in Civil Engineering was initially appointed as Junior Engineer (JE) under the Public Works Department, Government of Arunachal Pradesh, and he joined in the said post on 10.3.1994. In the year, 1997, the State Government created a new Department known as the Department of Urban Development and Housing for which there was an urgent need for staff including the Junior Engineers to man various posts. For that purpose, the Government had to appoint Junior Engineers on deputation from other Engineering Departments. The petitioner applied for and opted to join the newly created Department of Urban Development and Housing and accordingly, he was appointed as Assistant Urban Programme Officer (AUPO in short) in the said Department on deputation on 10.12.1997, which is analogous to the post of Junior Engineer (JE). The petitioner was subsequently absorbed permanently vide order dated 5.2.2001 w.e.f. 29.12.1997. A recruitment rule namely "Urban Programme Officers Recruitment Rules, 2000" was framed which regulate the method of recruitment

to the post of Urban Programme Officer (UPO in short). The petitioner was promoted to the post of UPO vide order dated 22.10.2001 on functional basis and ultimately, his service in the grade of UPO was regularized by order dated 24.2.2005 w.e.f. 22.10.2001. As per the aforesaid Recruitment Rules, 50% of the posts of UPO shall be filled-up from amongst the AUPO who have completed 8 years of regular service for diploma holders and 5 years of regular service for degree holders in the grade. The posts of AUPO, according to the petitioner, is equivalent to the post of Junior Engineer (JE). The petitioner being a degree holder claims that he became eligible for promotion to the post of UPO as far back as on 10.3.1999 and as such, the promotion should have been given to him with effect from 10.3.1999. The petitioner made a representation before the respondent Secretary on 22.10.1999 but the same was not considered and hence, the present petition.

3. Mr. K. Ete, learned Counsel for the petitioner, submits that the post of AUPO in the Department of Urban Development and Housing and the post of Junior Engineer (JE) in other Engineering Works Department are analogous Group-B post with similar pay-scale and the petitioner being a degree holder in Civil Engineering became eligible to be considered for promotion as UPO on 10.3.1999 inasmuch as he completed by then 5 years of continuous service as Assistant Urban Programme Officer/JE since he joined as Junior Engineer (JE) in the parent Public Works Department on 10.3.1994. The action of the respondent authorities in promoting the petitioner to the post of UPO w.e.f. 22.10.2001 i.e. from the date of assuming the charge as UPO on functional basis, is arbitrary, irrational and illegal and a direction may be issued to the respondent authorities to regularize the service of the petitioner as UPO w.e.f. 10.3.1999, the date on which he became eligible for promotion under the provisions of the aforesaid Recruitment Rules and as per the vacancy of UPO which was available since then to promote him. According to Mr. Ete, learned Counsel for the petitioner, the service rendered on equivalent post in the parent Department before absorption in deputation Department is to be counted for promotion and the position has been settled in the case of S.I. Rooplal and Another Vs. Lt. Governor Through Chief Secretary, Delhi and Others, which was followed in several other cases including Meyom Karge v. State of Arunachal Pradesh reported in 2004 (Suppl) GLT 623 and H.M. Rawthar and Ors. v. State of Nagaland reported in 2005 (Suppl) GLT 843.

4. In the affidavit-in-opposition filed by the respondents 1 and 2, the material dates of petitioner's initial appointment as Junior Engineer (JE) in the Public Works Department and his subsequent posting in the Department of Urban Development and Housing on deputation and his permanent absorption as AUPO as stated above, have not been disputed. However, it has been stated that it is completely the discretion of the borrowing department's authority to consider or not, the service period of the petitioner in the parent department towards counting his seniority and in normal procedure, there is no provision of retrospective promotion and as such, the respondent authorities rightly counted

his service from the date of joining on deputation i.e. 29.12.1997.

5. Mr. R.H. Nabam, learned Senior Government Advocate, submits that the decisions rendered in the aforesaid cases as cited by Mr. Ete, learned Counsel for the petitioner, are not applicable to the present case inasmuch as the present case is not concerned with the inter-se-seniority of the staff rather it is a matter of promotion made as per the recommendation of the Departmental Promotion Committee (DPC). According to learned Senior Government Advocate, the petitioner became eligible for promotion to the post of UPO only in the year 2002 reckoning his service from 29.12.1997, i.e., the date on which he was permanently absorbed in the Department of Urban Development and Housing.

6. In Roop Lal's case (supra), on which the learned Counsel for the petitioner puts his maximum reliance, the question involved is whether a Sub-Inspector who was appointed as such in the BSF when transferred on deputation to Delhi Police in the cadre of Sub-Inspector (Executive) on being permanently absorbed in the transferred post, is entitled to count his substantive service as Sub-Inspector in BSF for the purpose of his seniority in the cadre of Sub-Inspector (Executive) in the Delhi Police or not. The aforesaid case was decided applying the principle of law enunciated in R.S. Makashi and Others Vs. I.M. Menon and Others, and applying the said principle, the Apex Court held that there is no reason as to why the appellant on being absorbed in equivalent cadre in the transferred post should not be permitted to count their service in the parent department. It is also held that in law, it is necessary that if the previous service of a transferred official is to be counted for seniority in the transferred post, then two posts should be equivalent.

7. In order to give the benefit of judgment in Roop Lal's case (supra), it is necessary to find out as to whether the post of Junior Engineer (JE) which the petitioner was holding while he was in the Public Works Department and the post of AUPO against which he was posted/transferred on deputation in the Department of Urban Development and Housing and in which, he was permanently absorbed are equivalent or not. The State respondents have denied in the affidavit-in-opposition that these two posts are equivalent as claimed by the petitioner. Such statement is found to be a general statement, made without looking at the pay-scale of the aforesaid two posts and the nature of job performed by the Junior Engineer (JE) and the Assistant Urban Programme Officer (AUPO). The petitioner was offered the post of Junior Engineer (Civil) by the Superintending Engineer (Coord), PWD, vide memo No. SE/CAP/E-III/Coord/109/93-94/15127-28 dated 4.2.1994 wherein the pay scale has been indicated as Rs. 1400-40- 1800-EB-50-2300 pm plus usual allowances as admissible (Annexure- 1 to the petition). By an office order No. UD-75-97 dated 10.12.1997, issued by the Secretary (UD), Government of Arunachal Pradesh, the service of the petitioner was accepted as AUPO in the pay scale of Rs. 1400-40-1800-EB-50-2300 pm (Annexure-2 to the petition). From the aforesaid two Government orders, it is clearly found that the post of Junior Engineer (JE)

and Assistant Urban Programme Officer (AUPO) are borne in the same pay scale. Both the departments of PWD and Department of Urban Development and Housing are work departments and there is no reason to take a view that the incumbents holding the post of Junior Engineer (JE) and Assistant Urban Programme Officer (AUPO) do not perform similar nature of works. For the purpose of coming to a conclusion as to whether the post of Junior Engineer (JE) and Assistant Urban Programme Officer (AUPO) are equivalent, it would be appropriate to quote the relevant portion from paragraph-17 of the judgment in Roop Lal's, case (supra), as under:

17. ...Equivalency of two posts is not judged by the sole fact of equal pay. While determining the equation of two posts many factors other than "pay" will have to be taken into consideration, like the nature of duties, responsibilities, minimum qualification, etc. It is so held by this Court as far back as in the year 1968 in the case of Union of India v. P.K. Roy. In the said judgment, this Court accepted the factors laid down by the Committee of Chief Secretaries which was constituted for settling the disputes regarding equation of posts arising out of the States Reorganisation Act, 1956. These four factors:

- (i) the nature and duties of a post;
- (ii) the responsibilities and powers exercised by the officer holding a post, the extent of territorial or other charge held or responsibilities discharged;
- (iii) the minimum qualifications, if any, prescribed for recruitment to the post; and
- (iv) the salary of the post.

It is seen that the salary of a post for the purpose of finding out the equivalency of posts is the last of the criteria. If the earlier three criteria mentioned above are fulfilled then the fact that the salaries of the two posts are different would not in any way make the post "not equivalent". In mentioned hereinabove are in any manner different between the two posts concerned. Therefore, it should be held that the view taken by the Tribunal in the impugned order that the two posts of Sub-Inspector of BSF and Sub-Inspector (Executive) in the Delhi Police are not equivalent merely on the ground that the two posts did not carry the same pay scale, is necessarily to be rejected....

8. On the basis of the admitted position that the post of Junior Engineer (JE) and AUPO are borne in the same pay scale and the criteria laid down by the Apex Court in the above case, I hold that the post of Junior Engineer (JE) against which the petitioner was initially appointed in the Public Works Department and the post of Assistant Urban Programme Officer (AUPO) in which the petitioner was transferred/appointed on deputation in the Department of Urban Development and Housing are equivalent posts and as such, the stand taken by the State respondents that the above posts are not equivalent, is not acceptable.

9. Yet, there is another aspect to be considered seriously. Due to trifurcation of a Government Department, there was a pressing need for appointment/posting of

Junior Engineers from Works Departments on deputation and the State Government, in order to meet the exigency in public service, requisitioned the services of Junior Engineers who were willing to serve in the newly created Works Departments. It is not a case where the petitioner on his own or for his personal benefit opted to serve in the new department which would justify denial of the benefit of service rendered in the parent department. It is rather, admittedly, a case where the petitioner's service was utilized by the Government purely for public purpose in the new Department on deputation. There is nothing on record to show that the Government, at the time of posting the petitioner on deputation, specifically provided that the benefit of service rendered in the parent department would not be given. If it was made so, nobody would have opted to serve in the new department on deputation. It would be atrocious and unjustified if the petitioner is denied the benefit of past services in his parent department, and in that view of the matter, the stand of the respondent authorities cannot be accepted at all.

10. H.M. Rawthar's case (supra), as cited by the petitioner, deals with the similar question and in fact, the decision in Roop Lal's case (supra) has been followed and held that the past service in the parent department after being absorbed in the borrowing department cannot be wiped out. In the said case, this Court came to a conclusion that in view of the law laid down by the Apex Court, there cannot be any escape from the finding that the petitioner is entitled to count his seniority w.e.f. 15.12.1986 i.e. the date on which he was given regular promotion as Stenographer Gd-1 in the former department.

11. In view of the decisions rendered by this Court in the light of the decisions of the Apex Court, in the cases referred to above, I hold that the petitioner is entitled to get the benefit of services rendered by him as Junior Engineer (JE) in the Public Works Department towards counting his seniority and consequential service benefits like promotion from the date on which he became eligible for such promotion under the provision of the service rules and accordingly, it is directed that the promotion of the petitioner to the post of Urban Programme Officer (UPO) be given with effect from 10.3.1999.

12. With the above directions, the writ petition stands allowed. There shall be no order as to costs.