
(2003) 06 GAU CK 0040

In the Gauhati High Court

Case No : Writ Petition (C) No's. 160 and 218 (K) of 2002

Howoto Sema

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision : 09-06-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 16(1)

Nagaland State Transport Service (Amendment) Rules, 1991 — Rule 15

Citation : (2004) GLT 417 Supp

Hon'ble Judges : B. Lamare, J

Bench : Single Bench

Advocate : A. Zhimomi, for the Appellant; C.T. Jamir and Y. Longkumar, for the Respondent

Final Decision : Dismissed

Judgement

B. Lamare, J.—These 2 (two) writ petitions are taken together as during the pendency of W.P. (C) No. 160 (K) 2002, the Respondents have issued the Notification dated 26.9.2002 promoting the Respondent No. 4 to the post of Joint General Manager, Nagaland State Transport on the basis of the recommendation of the Departmental Promotion Committee (for short DPC) held on 31.5.2002 and the Notification dated 27.8.2002 publishing the inter-se seniority of the officers in the NST. The writ petition No. 218 (K) 2002 was filed as a subsequent development in the W.P. (C) No. 160 (K) 2002. Hence, both the writ petitions are heard and disposed of by this common judgment.

2. Heard Mr. A. Zhimomi, learned Counsel for the Petitioner, Ms. Y. Longkumer, learned Govt. Advocate for the state Respondents and Mr. C.T. Jamir, learned Counsel for the Respondents 4 and 5.

3. The case in brief is that the Petitioner was appointed as Asstt. Station Superintendent in the NST with effect from 8.9.81. On 21.5.82 he was promoted to the post of Station Superintendent and on 29.5.89 he was promoted to the post of Assistant General Manager and again by order dated 20.3.97 he was

promoted to the post of Divisional Manager, NST with retrospective effect from 1.8.1996.

4. The Respondent No. 4 was appointed by direct recruitment as Station Superintendent on 29.6.83. He was promoted to the post of Assistant General Manager on 29.5.89 and again promoted as Divisional Manager by order dated 25.9.92 with retrospective effect from 1.9.1997.

5. The Respondent No. 5 was originally serving in the Nagaland Plantation Crops Development Corporation (for short NPCDC). Upon winding up of the said Corporation the Respondent No. 5 was inducted into the NST in terms of the Government policy and he was given the benefit of 4 years seniority in the Grade in which he was inducted. Therefore, though he joined the NST as Assistant General Manager on 18.4.94, his seniority was counted from 18.7.1990 by giving him the benefit of 4 years seniority in the Grade.

6. At the relevant time when this writ petition is filed the Petitioner and Respondents Nos. 4 and 5 were holding the post of Divisional Manager, NST.

7. By Office Memorandum dated 28.8.85 a tentative seniority list was published by the NST in respect of Station Superintendents. In the said seniority list the Petitioner's name is shown at SI. No. 13 and that of Respondent No. 4 at SI. No. 14. By another office Memorandum dated 12/1/1993 another tentative seniority list of DGM/DM/AGM/SSs and Eo was published and in the said tentative seniority list of Station Superintendents the name of the petitioner is shown at SI. No. 9 and that of Respondent No. 4 is shown at SI. No. 10. In the year 1998 yet another tentative seniority list was published as on 1.6.1998 and in the said tentative seniority list the name of the Petitioner is shown at SI. No. 4 and Respondents 4 and 5 are shown at SI. No. 5 and 6 respectively.

8. In the letter dated 28.4.2000 from the General Manager, NST to the Commissioner and Secretary, Transport and Communication Deptt., Nagaland, the General Manager has requested the Government to hold a DPC for finalisation of the seniority of the officers in the NST in accordance with the rules. The Government in the Department of Transport and Communication by letter dated 14.9.2000 addressed to the General Manager, NST has directed the General Manager, NST to furnish the cases of all the NST officers for regularization through the DPC. In the said letter, it is also directed that the names of all the officers should be furnished to the Government and not in piecemeal manner so that the case of the Petitioner as well as that of the Respondent No. 4 Shri Pekrusetuo Angami could be finalised, but the matter remains pending and the seniority of the officers could not be finalised as no DPC was held. The final seniority list also was not published by the NST.

9. However, by Notification dated 24.5.2001, the Respondent No. 4 Shri Pekrusetuo Angami was promoted to the post of Joint General Manager as an out turn promotion. The said promotion order was assailed before this Court in WP(C) 121 (K) 2001 and this Court by judgment and order dated 10/12/01 has

passed the following orders:

In view of the above statement made by the Respondent No. 1 and 2 in their Affidavit and also order passed by this Court. I am of the considered view that the case of the Petitioners as well as Respondent No. 4 needs to be examined by the D.P.C. for promotion to the post of Joint General Manager in the Nagaland State Transport Department. Accordingly, it is directed that the Respondents 1, 2 and 3 shall constitute the D.P.C. for examining the case of the Petitioners as well as Respondent No. 4 for promotion to the post of Joint General Manager in the Nagaland State Transport Department. This shall be done within a period of 2 (two) months from the date a copy of this order is served on the Respondents 1,2 and 3. Till then the post of Joint General Manager shall not be filled up. The impugned Notification dated 24.5.2001 which was already been stayed by this Court is hereby set aside and quashed.

It is made clear that any order passed by this Court shall not be a binding for the D.P.C. to examine the case of the Petitioners as well as Respondent No. 4 in their own merit.

10. After the above direction was issued by this Court, the DPC was constituted for the NST by the department. The DPC in its meeting held on 31.5.2002 has examined the cases of the Petitioner and Respondent Nos. 4 and 5 and in the said DPC the name of Respondent No. 4 is shown at SI. No. 2, the Respondents No. 5 is shown at SI. No. 3 and the Petitioner is shown at SI. No. 4. Basing on the said recommendation of the DPC the final inter-se seniority of the officers in the NST as on 11.7.2002 was published by Notification dated 29.8.2002 (Annexure-0). In the said Notification the name of the Respondent No. 4 and 5 are shown at SI. No. 2 and 3 and the Petitioner is shown at SI. No. 4 in the seniority list

11. Being aggrieved by the recommendation of the DPC as well as by the Notification dated 29.8.2002 regarding inter se seniority where the Petitioner was shown as junior to Respondents 4 and 5, the Petitioner has approached this Court by way of this writ petition No/60(K) 2002. However, during the pendency of this writ petition 160 (K) 2002 the Respondent No. 4 was promoted vide Notification dated 5.10.2002 and the Petitioner has again filed the subsequent writ petition No. 218 (K) 2002 for quashing the promotion of Respondent No. 4.

12. The case of the Petitioner in brief is that he was originally appointed as Assistant Station Superintendent on 8.9.81 and thereafter he was promoted as Station Superintendent on 21.5.82. He was again promoted by order dated 29.5.89 as Assistant General Manager and subsequently promoted as Divisional Manager vide order dated 20.3.97 with effect from 1.8.96. The Respondent No. 4 was appointed as Station Supdt. by direct recruitment on 29.6.83 and promoted as Asstt. General Manager on 29.5.89. He was, however, again promoted as Divisional Manager with effect from 1.9.97. The Respondent No. 5 was appointed as Assistant General Manager on 15.7.94 and promoted as Divisional Manager

with effect from 1.2.98. Therefore, according to the Petitioner, he was flie senior most amongst the Divisional Manager, i.e. the Respondents Nos. 4 and 5. It is also the case of the Petitioner that he was promoted as Asstt. General Manager on the basis of the tentative seniority Ust dated 28.8.85 and that he was promoted after completing 7 years as Station Superintendent, According to the Petitioner his seniority over the Respondent Nos. 4 and 5 was also accepted without any objection from any quarter for the last 20 years when he was originally appointed as Asstt. Station Supdt. in the year 1981. The Petitioner also claim that the DPC held on 31.5.2002 was not in accordance with the rules and that the subsequent Notification fixing the seniority of the Petitioner as well as of Respondent Nos. 4 and 5 was in violation of the rules.

13. The Respondent No. 1 and 2 resisted the claim of the Petitioner and stated in paragraph 5 of the affidavit in opposition that the service of the Petitioner as well as of the private Respondents are governed by the Nagaland State Transport Service Rules, 1973 and thereafter with effect from 16.1.1992 it is govemed by the Nagaland Transport Service (Amended Rules) 1992. According to the 1973 Rules, the Petitioner is required to complete 5 years as Asstt. Station Supdt. to be eligible to be promoted to the post of Station Superintendent, but he was promoted in 1982 without following the rules. In paragraph 6 of the affidavit, it is fiirther stated that the Petitioner was apointed on officiating capacity as Station Superintendent, but the regular appointment could have been given to him only with effect from 8.9.1986 and not from 21.5.1982, according to the rules. It is also contended that the claim of the Petitioner that he was apointed as Station Superintendent before Respondent No. 4 and 5 is not correct as all the promotions of the Petitioner were not in accordance with the rules. In paragraph 18 of the affidavit, the matter with regard to the finalisation of the seniority of the Petitioner and Respondents could not be finalised as no DPC was held for the purpose. However, the DPC was held on 31.5.2002 and the final seniority list could be published by the Government.

14. Respondent Nos. 4 and 5 also contested the claim of the Petitioner and stated in their affidavit in opposition that the DPC held on 31.1.2002 was done in accordance with the relevant rule and that the Notification issued thereunder with regard to the seniority of the Petitioner and Respondent Nos. 4 and 5 was in accordance with the rules. There is no violation of the rules in the DPC held by the NST. hi paragraph 6 of their affidavit in opposition, it is stated that the promotion of the Petitioner in the post of Station superintendent was purely officiating and on temporary basis. He was not promoted in accordance with final seniority list or by following the rules. Promotion of the Petitioner to the post of Station Superintendent only after 8 months service as Assistant Station Superintendent is in violation of the rules which requires the minimum qualifying service of 5 years to be eligible for promotion to the post of Station Superintendent from the post of Assistant Station Superintendent.

15. The Respondent Nos. 4 and 5 also contended that the Respondent No. 4 was

initially appointed on regular basis on the recommendation of the Nagaland Public Service Commission with effect from 1.7.1983 and therefore his seniority will be counted from that date. So also the appointment of Respondent No. 5 as Assistant General Manager on 15.7.1994, but his seniority is to be counted with effect from 18.7.1990 after granting him the benefit of 4 years seniority for his service in the NPCDC.

16. Mr. A. Zhimomi, learned Counsel for the Petitioner vehemently urged that the Petitioner at all stages of his service on the promotional side is senior to the Respondent Nos. 4 and 5. There was no objection whatsoever with regard to the promotion of the Petitioner and therefore by the promotion of the Petitioner as Divisional Manager with effect from 1.8.96, the Petitioner is senior to Respondent Nos. 4 and 5. Therefore, the placement of the Petitioner below Respondent Nos. 4 and 5 by the DPC is totally illegal and against the right of the Petitioner for promotion.

17. In support of his contention Mr. A. Zhimomi, learned Counsel for the Petitioner relied on the decision of the Apex Court in the case of Miss Shainda Hasan v. State of U.P. and Ors. reported in 1991 (3) SLR 10. In the said case the Appellant applied for the post of Principal of a College and she was appointed by the College by relaxing her experience. However, the University refused to grant approval to the appointment of the Appellant as the Appellant did not have the requisite experience as required under the Rules; but the Appellant has served for 16 years. In such a situation the Apex Court held that asking the Appellant to leave the job after 16 years would be doing injustice to her. The above case is not applicable in the instant case.

18. Mr. A. Zhimomi, learned Counsel for the Petitioner also relied on the decision of the Supreme Court in the case of Narender Chadha and Others Vs. Union of India and Others, In the said case the Apex Court has held that when an officer has worked for a long period for nearly 15-20 years in a post and had never been reverted, it cannot be held that the officer's continuous officiation was a mere temporary or local or stop gap arrangement, even though the order of appointment may state so. In such circumstances the entire period of officiation has to be counted for seniority. Any other view would be arbitrary and violative of Articles 14 and 16(1) of the Constitution because the temporary service in the post in question is not for a short period to meet some urgent or unforeseen circumstances. The said case also is not applicable in the case in hand as the question in this case is with regard to the promotion of the Petitioner and the private Respondents from time to time without following the Rules.

19. Ms. Y. Longkumer, learned Govt. Advocate submitted that the DPC was conducted as per the order of this Court rendered in WP(C) No. 121 (K) 2001 whereby this Court has directed for holding of DPC in the NST and in accordance with the direction of this Court the DPC was held and the seniority of the Petitioner as well as the private Respondents were fixed by the DPC.

20. Mr. C.T. Jamir, learned counsel for Respondents 4 and 5 has submitted that in view of the direction issued by this Court in WP(C) 121 (K) 2001 the selection made by the DPC has become final and the matter has attained its finality. Learned counsel also submitted that the Petitioner was appointed as Asstt. Station Superintendent on 8.9.81, but he was promoted to the post of Station Superintendent on 21.5.1982 within one year; whereas according to the Rules the Petitioner can be promoted only after 5 years of service as Assistant Station Superintendent. Therefore the Petitioner could be promoted, according to the Rules, only after 8.9.1986. The learned counsel also submitted that the subsequent promotion of the Petitioner was also against the Rules.

21. At the first instance, it may be noted that the Nagaland State Transport Service Rules, 1973, hereinafter called the 1973 Rules has come into effect from 18.9.1973. These Rules were superceded by the Nagaland Transport Service (Amendment) Rules 1992 which comes into effect from 16.1.1992, hereinafter called the 1992 Rules. The service of the Petitioner as well as of the private Respondents were governed partly by 1973 Rules and partly by the 1992 Rules. It is also noted that the promotions of the Petitioner and the private Respondents were done without following the Rules. There was also no final seniority list published by NST nor any DPC was held at the time of promotion of the Petitioner and the private Respondents at any stage. Tentative Seniority List was published on 28.8.1985. as on 1.1.85 and also on 12.1.1993 as on 1.12.1992, but the said tentative seniority lists remains mere tentative seniority lists as no final seniority list was published on the basis of the said tentative seniority list.

22. The DPC was held and the final seniority list was published only after the direction was made by this Court in the judgment and order dated 10.12.2001 in WP (C) 121 (K) 2001 as per the direction referred to above. A careful scrutiny of the minutes of the DPC held on 31.5.2002 shows that the DPC has considered both the 1973 and 1992 Rules. The observation of the DPC with regard to the NST Department is reproduced below:

Minutes of the DPC Meeting for the Department of NST on 31.05.2002.

The DPC for the NST department constituted under Rule 15 of "The Nagaland State Transport Service (Amendment) Rules 1991" held a meeting in the Chairman's Office Chamber on 31.5.2002. The Officers/Members present were as per their names and signature appearing at the end of the ensuing minutes. The Committee noted that in course of time several inconsistencies and irregular appointments as well as officiating promotions had taken place in the department which could only be rectified by strict application of the Service Rules Provisions.

Both in respect of the DPC's role in its deliberations as well as application of the rules, the Committee decided to go strictly by the provisions of the (1) The Nagaland State Transport Service Rules 1973, for service conditions of the Officers prior to 16th January 1992, and (ii) The Nagaland State Transport Service (Amendment) Rules, 1991 for those falling within the amendment Rules

after these came into force.

The DPC took the view that since the Nagaland State Transport Service (Amendment) Rules 1991 took effect only from the 16th January, 1992, therefore the cases of regularization of promotions prior to 1992 should be based on the provisions in force under the Nagaland State Transport Service Rules, 1973. Corollary to this, the cases of promotions from 1992 onward should be based on the provisions of the amended Service Rules.

The Service Rules of 1973 and 1991 specifies different lengths of services for qualifying for promotions to different grades as shown below:

Promotions from Number of Years of Service for qualifying for promotions per Service Rules of

1973 1991

Assistant Station Superintendent (ASS) to Station Superintendent (SS) 5 10

SS to Assistant General Manager (AGM). 6 5

AGM to Divisional Manager (DM) 7 5

The Committee decided that regularization of appointments would be considered within the relevant lengths of service as prescribed above. Accordingly, the analysis of the positions of the officers within the zone of consideration for promotions is as follows (This should be read with the note which comes at the end of the analysis of seniority fixation).

23. From the above observations of the DPC it shows that according to 1973 Rules an officer can be promoted to the post of Station Superintendent after 5 years of service as Assistant Station Superintendent and thereafter he can be appointed to the post of Assistant General Manager after 6 years of service as Station Superintendent. Taking into consideration the above criteria required by the 1973 Rules, the Petitioner could be promoted as Station Superintendent only after 8.9.1986 and also he could be promoted as Assistant General Manager only after 8.9.1992. Thereafter according to the 1992 Rules, the Petitioner could have been promoted as Divisional Manager only after 8.9.97. Therefore, the promotion of the Petitioner in all the categories as shown in paragraph 2 of the writ petition was not made according to the Rules.

24. In the case of Union of India and Ors. v. Rakesh Kumer and Ors. connected appeals, reported in (2001) SCC 309, the Apex Court has held that it would be unjustifiable to submit that by the appropriate writ the Court should direct something which is contrary to the Statutory Rules. In such cases there is no question of application of Article 14 of the Constitution. No person can claim any right on the basis of decision which is de hors the Statutory Rules nor can thereby any Estoppel.

25. Similarly in the case of Food Corporation of India Vs. Thaneswar Kalita and

others, the Apex Court has held that Respondents were not promoted according to rules. In other words, they were promoted dehors the Rules. Though they have continued for a long time, the entire length of service should be considered as fortuitous and should not be counted. Towards the seniority. The High Court, therefore, was clearly in error in directing to treat their services as on regular basis.

26. In the instant case, it is admitted position that no final seniority list was published and that the promotion was made without following the rules. Therefore, the Petitioner is not entitled to claim the benefit of his promotion which was done without following the Rules. The promotion of the Petitioner was dehors the Rules. When the authority is shown to have committed any illegality or irregularity in favour of any individual, such illegality or irregularity cannot be extended to the individual in whose favour the benefit was granted. Hence the illegality or irregularity in the promotion of the Petitioner without following the Rules cannot be taken advantage of by the Petitioner in the instant writ petition. A wrong decision committed by the Respondents does not give a right to enforce the wrong order and claim the right thereunder. In the instant case wrongs have been committed in the promotion of the Petitioner at all stages and these two or three wrongs cannot make a right.

27. Considering the above facts and circumstances of the case as discussed above, this Court is of the view that there is no malafide or arbitrariness whatsoever in the selection made by the DPC held on 31.5.2002. The Notification dated 29.8.2002 issued on the basis of the said DPC is also found to be valid and in accordance with the Rules.

For the reasons aforesaid I find no merit in these petitions and accordingly it is dismissed.

Considering the facts and circumstances of the case there will be no order for costs.

Interim orders dated 23.9.2002 and 7.11.2002 stands vacated.