
(2005) 07 GAU CK 0007
In the Gauhati High Court

Km.Sinam Binodini Devi

APPELLANT

Vs

State of Manipur and Ors.

RESPONDENT

Date of Decision : 07-07-2005

Acts Referred:

Citation : (2005) 07 GAU CK 0007

Hon'ble Judges : M.B.K.Singh, J

Bench : Single Bench

Advocate : Kh.Tomba Singh, A.Vashum, N.Kotishwar Singh, R.S.Reisang,
N.Ibotombi Singh, Advocates appearing for Parties

Judgement

1. This writ petition has been filed praying mainly for quashing the order dated 10.6.2002 by which the private respondents were promoted to the posts of MCS GradeII and also for an appropriate writ or direction for holding a review DPC for giving promotion to the said posts.

2. I have heard Mr. N.Ibotombi, learned counsel appearing on behalf of the petitioner, Mr. N.Kotiswor, learned counsel appearing on behalf of the private respondent No. 8, Mr. Kh.Tomba Singh, learned counsel appearing on behalf of the respondents 5,6,7 and 9 and Mr.A.Vashum, learned counsel appearing on behalf of the respondents 14,15,16,19 and 20 as well as Mr. R.S.Reisang, learned Addl.Govt. Advocate appearing on behalf of the respondents 1 to 3 . None has appeared on behalf of the remaining respondents despite due notice.

3. The petitioner, who has been holding the substantive post of SDC on regular basis since 29.7.1981 and who has been functioning as SDO/Equivalent since 19.9.1998 on incharge/ officiating basis, is challenging the impugned promotion order dated 10.6.2002 mainly on the grounds that the DPC held on 13.5.2002 in connection with the said promotion failed to consider her case properly and in accordance with the relevant rules and that no official interse seniority list of the officers holding the concerned feeder posts for promotion to MCSGradeII was prepared or framed before the said DPC.

4. There is no dispute in respect of the following facts: Under the Manipur Civil Services Rules, 1965, the post of SDC, amongst others, is a feeder post for promotion to MCS Grade II. As per provisions of Rule 5 of the said Rules of 1965, 50% of the vacancies in the MCS Grade II are to be filled up by promotion and the remaining 50% of the vacancies are to be filled up by direct recruitment. Rule 14 prescribes the conditions of eligibility & procedure for selection. The period of 2 years regular service is prescribed as qualifying service. The DPC is to consider the cases of eligible officers and prepare the list of officers recommended for appointment. The selection for inclusion in the list is to be based on merit and suitability in all respects for promotion to the service with due regard to seniority.

5. The relevant files of the DPC held on 13.05.2002, by which the respondents No. 5 to 21 were recommended for giving promotion to the 17 posts in MCS Grade II, are produced before the Court by Mr. R. S. Reisang, learned Addl. Govt. Advocate. An inter-se seniority list of 100 officers eligible for promotion to MCS Grade II is found to have been sent up by the Administrative Department. The names of the petitioner and the respondents No. 5 to 21 are found in the said list. Since inter-se seniority list of officers eligible for promotion to MCS Grade II is found to have been prepared, one of the grounds of objection of the petitioner in that connection is of no consequence. The DPC, purportedly after examining the ACRs, the integrity certificate and assessing the overall grading of all the said 100 eligible officers, recommended the respondents No. 5 to 21 from amongst the said 100 eligible officers for promotion to the post of MCS Grade II. It is also ascertained that assessment charts indicating the grading of some officers pertaining to different assessment years with reference to vacant posts in the year 1997-98, 1999-2000, 2000-01 and 2001-02 were prepared. It is, however, not clearly mentioned on what basis the said assessment charts were prepared. The DPC recommended 2 (two) officers for vacant posts available from 1997-98, 6 (six) officers for vacant posts available from 1999-2000, 5 (five) officers for vacant posts available from 2000-01, 4 (four) officers for vacant posts available from 2001-02. There is a dispute in respect of the question if the DPC considered the relevant ACRs of the petitioner and others in accordance with the relevant rules before making the said recommendation.

6. On perusal of the relevant files of the DPC, it is ascertained that the ACRs of the petitioner for the year 1997-98, 98-99, 1999-2000, 2000-01 and 2001-02 were not before the DPC on 13.5.2002. However, the ACRs of the petitioner for the year 1991-92, 92-93, 93-94, 94-95, 95-96 and 1996-1997 were presumably before the DPC. Special assessment reports in respect of the petitioner pertaining to the years 1994-95, 1997-98, 1998-99, 1999-2000 and 2000-2001 were also before the DPC. It is not clear by whom the last 4 (four) special assessment reports were made. The name and the particulars of the officer who made the said special assessment reports are not clearly and properly given. One can reasonably say the DPC must have considered those ACRs and the special assessment reports of the petitioner at the time of consideration of her case in

connection with the said promotion. However, there is nothing to show that the DPC complied with the provisions of Rule 5A, which were introduced by amendment to the Manipur Civil Services Rule, 1965 on 24.11.1994, while making the selection for the promotion. As per provisions of the said Rule 5A, marks were required to be given against the gradings recorded in the ACRs of each of the officers and the criteria being one of the merit cum seniority, the marks secured by each of the officers in respect of the ACRs for the years under consideration ought to have been computed and on the basis of such computation alone, selection should have been made with due regard to seniority. The said method of giving marks was not adopted by the DPC and as such, there was a violation of the provisions of Rule 5(A). There is no any provision in the Rules giving option to the DPC not to comply with the said provisions of Rule 5A. The provisions of Rule 5A cannot be override by any provisions contained in the office memorandum dated 29.4.1999 which are in the nature of Government instructions. On account of the failure on the part of the DPC to proceed in compliance with the provisions of the said Rule 5A while making selection, the recommendation made in favour of the private respondents for promotion cannot be considered as one made duly in accordance with the Rules.

7. While dealing with the same provisions of Rule 5A of Manipur Civil Services Rules, 1965, a Bench of this Court in C.R.No.302/1996 and C.R.No. 304/1996 on 24.01.2003 observed:

? Under the provisions of the relevant Rules in force, the selection for promotion was required to be made by adopting the criteria of meritcum seniority. The expression ? meritcum seniority? has been settled by a large number of judicial pronouncements and the said expression is no longer res integra. It is essentially a criteria of merit and only when merit is equal, seniority will have a role to play. It is perhaps keeping in mind the requirements of the aforesaid criteria of meritcum seniority. Even the service rules were amended in the year 1994 by introducing Rule 5A. Rule 5A as introduced by the amendment would clearly go to show that the marks are required to be awarded to each candidate on the basis of the gradings recorded in the ACRs of each year and merit is required to be determined on the basis of the total marks obtained by a particular candidate. If two candidates secure the same marks, the seniority will tilt the balance in favour of the senior. In between a senior and a junior, the junior gets more marks than the senior; the junior will steal a march. This is how the rules have to be understood.?

8. In that case also, the DPC recommended the private respondents for promotion to MCS Grade II on the following findings:

?The committee after examining the Integrity Certificates, Confidential Reports and assessing the overall grading recommended the following persons for appointment by promotion to MCS Grade II.?

9. The Single Bench of this Court, on finding that the DPC had failed to comply with the provisions of the Rule 5A held :

? What were the marks secured by each of the candidates within the zone of consideration on the basis of their respective gradings in the ACRs is not disclosed. In the absence of the aforesaid disclosures what would be the relative merit of the candidate whose cases were considered for selection would obviously not be known. The impugned selection, therefore, contains an inbuilt subjective element which runs counter to the provisions of the Rules. The Rules in force contemplate an absolute objective method of determination of merit whereas in the selection held such merit clearly appears to have been determined by the subjective process. In view of what has been discussed above, this court is inclined to hold that the Selection on the basis of which the private respondents were promoted to MCS GradeII is not in conformity with the Rules in force.?

10. I fully agree with the above said view of the learned Single Judge of this court and I am inclined to hold that the selection on the basis of which the private respondents in the present cases were promoted to MCS GradeII is not in conformity with the Rules in force and as such, the impugned promotion order passed on the said selection made by the DPC is not sustainable in the eye of law.

11. Keeping in view of all the relevant considerations including the need for not disturbing the settled position would possibly extend, this writ petition is to be disposed of in somewhat similar fashion in which the said C.R. No. 302/96 an C.R. No. 304/96 were disposed of. Accordingly, this writ petition is disposed of with the following directions:

(1) A review DPC in respect of the DPC held on 13.05.2002 in connection with the promotion to the post of MCS GradeII is to be held in accordance with the provisions of Rules in force on the said date after holding the review DPC required to be held in pursuance of the directions made in the common order dated 24.01.2003 passed in C.R. No. 302/96 an C.R. No. 304/96. On the basis of the result of the review DPC held in pursuance of the order of this Court, no promotion is to be disturbed and if any of the private respondents is found to have been not fit for selection as on 13.5.2002, he is to be pushed back so far as the seniority position is concerned below the position of the petitioner who may be found to have been fit for promotion at the relevant time by the review DPC;

(2) The present directions will not cover the cases of the private respondents who may have been promoted to MCS GradeI or who have retired in the meantime;

(3) The present direction shall not have any other operative effect except for what has been specifically directed above. This writ petition is allowed as indicated above.