
(2010) 02 GAU CK 0074

In the Gauhati High Court

Case No : Writ Petition (C) No. 168 (K) of 2007

Lipokmar Yaden

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision : 22-02-2010

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2011) 4 GLR 442 : (2006) 1 GLT 463

Hon'ble Judges : H.N. Sharma, J

Bench : Single Bench

Advocate : C.T. Jamir, for the Appellant; Luci, B.M. Sarma, A. Pongener and N. Mozhui, for the Respondent

Final Decision : Dismissed

Judgement

H.N. Sarma, J.—The subject matter of challenge in this writ petition is refusal to fix the seniority of the Petitioner in the promoted cadre Class-I Junior Grade in the Department of Soil & Water Conservation, Government of Nagaland in terms of the notification dated 14.6.2007 wherein the initial officiating promotion of the Petitioner to the post of Sub-Divisional Officer/Soil Survey Officer is reflected to be on 12.6.89.

2. I have heard Mr. C.T. Jamir, learned Counsel for the Petitioner, Ms. Luci, learned GA, Nagaland, Mr. B.M. Sarma, Senior Advocate, assisted by Mr. A. Pongener, learned Counsel for the private Respondents except Respondent No. 6 and Mr. N. Mozhui, learned SC for Nagaland Public Service Commission.

3. The case of the Petitioner as projected in this writ petition is that he was initially appointed as Assistant Soil Survey Officer under the Directorate of Soil & Water Conservation Department, Government of Nagaland, vide order dated 12.10.87. Thereafter he was promoted to the next higher grade of Soil Survey Officer vide notification dated 12.6.89. As per relevant Service Rules the post of Assistant Soil Survey Officer is a Class-III category post whereas the post of Soil

Survey Officer/Sub-Divisional Officer falls within the category of Class-II post. It is contended that while the Petitioner continued to render service in the promoted post of Soil Survey Officer, a DPC was held on 18.7.96 for the purpose of consideration of regularisation of officers in Class-II cadre. In the said DPC while the case of the Petitioner came up for consideration, the DPC held that his case could not be recommended for regularization as that would amount to supersession of many other senior officers of the same category. Such a DPC was again held in the year 2001 wherein also the DPC rejected the prayer of the Petitioner for regularization on the same ground. The Petitioner challenged the action of the Respondents in not regularizing him as prayed for by filing WP(C) No. 96(K)/2005, which was disposed of vide judgment and order dated 8.6.2006, wherein the Respondent authorities were directed to consider the case of the Petitioner and the other officers senior to him in the grade in terms of the relevant Service Rules.

Pursuant to the said judgment and order, the case of the Petitioner was again placed before the DPC on 5.3.2007 along with other similarly situated officers and the DPC recommended for regularization of the officiating promotion of the Petitioner with effect from 7.7.2005. The Respondent authorities accepting the said recommendation issued a notification dated 27.3.2007 notifying regularization of the Petitioner officiating promotion with effect from 7.7.2005 in the grade of Class-I Junior Grade in the cadre of Sub-Divisional Officer/Soil Survey Officer. The Petitioner considering the notification 27.3.2007 to be an apparent mistake wherein the date of his officiating promotion was reflected to be with effect from 7.7.2005, vide representation dated 12.4.2007 prayed for rectification of the said date as 12.6.89 on which date his officiating promotion order was issued. Accepting his prayer, a corrigendum was issued on 14.6.2007 wherein the promotion of the Petitioner was directed to be read as 12.6.89 instead of 7.7.2005. In spite of the said corrigendum, the Petitioner not being regularized with effect from that date, i.e., from 12.6.89, he has approached this Court by filing this writ petition praying for setting aside the DPC proceeding in respect of him, which was held on 5.3.2007 so far it regularized his service with effect from 7.7.2005 in the cadre of Sub-Divisional Officer/Soil Survey Officer. The Petitioner further prays for consideration of the regularization of his officiating promotion as Sub-Divisional Officer/Soil Survey Officer with effect from 12.6.94 on which date he become eligible for promotion as per the Service Rules.

4. Mr. Jamir, learned Counsel for the Petitioner, submits that it being undisputed fact that the Petitioner was allowed to officiate in the higher cadre of Class-I Junior Grade with effect from 12.6.89, the DPC committed grave error in recommending his regularization with effect from 7.7.2005, more particularly, in view of the corrigendum dated 14.6.2007 accepting his officiating promotion as on 12.6.89. Mr. Jamir further submits that it is true that on 12.6.89, the Petitioner was not qualified to be promoted to the higher grade for not having five years experience in the feeder post as required under the Service Rules, but

he being acquired such qualification with effect from 12.6.94, he should have been regularized at least from that date. It is contended that accepting the aforesaid regularization of the Petitioner's service from 12.6.1994 consequential seniority relating to the said date be fixed.

5. Ms. Luci, learned GA, Nagaland, referring to the counter affidavit filed by the state Respondents submits that the claim of the Petitioner is not tenable, inasmuch as, there are other senior officers to him and without regularization of their services, a junior officer like the Petitioner could not have been regularized, which would have amounted supersession of senior officers and it has been rightly so held by the Respondents as per findings of the DPC.

6. Mr. B.N. Sarma, learned senior counsel appearing on behalf of the private Respondents stiffly resisted the contention of the Petitioner submitting that the Petitioner being the junior in service than that of all private Respondents his officiating promotion with effect from 12.6.89 and regularization from that date could not be made in infraction of relevant Service Rules, which requires five years experience in the feeder post for promotion to the Class-I Junior Grade on the basis of seniority-cum-merit. Further contention of the learned senior counsel is that three DPCs in the year 1996, 2001 and 2007 resorting to the principle of seniority-cum-merit and five years experience as qualification in terms of the Service Rules and considering that there are officers in the department above the Petitioner including the private Respondents, rejected his claim and in the event of accepting his prayer it would amount to supersession of senior officers and in infraction of statutory Service Rules. Learned Senior Counsel has also referred to the judgment passed in the earlier writ petition wherein the seniorities of the respective officers were also directed to be considered while considering the regularization of the officiating promotion of the Petitioner and other similarly situated officers. The notification dated 27.3.2007 is pressed into service which reflects the decision of the Government not to allow regularization of a junior officer over his senior.

7. Mr. N. Mozhui, learned Counsel appearing on behalf of Respondent No. 4 submits that DPC decided the case following the provisions of the relevant Rules as well as the basic principles that the senior officers should not be allowed to be superseded without having just and proper reason and upon consideration of pros and cons of the matter consistently maintained the spirit of the statutory Rules.

8. Submissions of the learned Counsel for the parties received due attention of the Court. The relevant facts such as appointment of the Petitioner in Class-III cadre as ASSO on 12.10.87, his officiating promotion on 12.6.89 as SDO/SSO, which is categorized as Class-I Junior Grade Officer as well as the appointment of the private Respondents prior to the Petitioner in feeder posts of ASSO, i.e., in Class-III cadre are not disputed.

The conditions of service including the officiating promotion of the Petitioner and

the private Respondents are regulated and guided by a set of Rules known as "Nagaland Soil and Water Conservation Service Rules, 1997". Prior to the aforesaid Rules, "Nagaland Soil and Water Conservation and Engineering Service Rules, 1988" was holding the field. All these Rules are statutory in nature and framed under proviso to Article 309 of the Constitution of India. While the Petitioner was promoted on officiating basis on 12.6.89, the 1988 Rule was prevailing. As per the said Rule, the criteria for promotion to the cadre of Class-I Junior Grade to the rank of Sub-Divisional Officer/Soil Survey Officer in the department is seniority-cum-merit, having five years of experience in the feeder post. Admittedly, at the time of providing the officiating promotion to the Petitioner on 12.6.89, there were other senior officers in the cadre of feeder posts, in the rank of ASSO. There is nothing on records to show that those senior officers have adverse service records justifying denial of their promotion to the higher cadre being incompetent to shoulder the higher responsibility. This is also not the case of the writ Petitioner. Applying the principle of seniority-cum-merit seniority is to be given due weightage. From the materials placed before the Court the procedure for promotion contemplated under the Rules appears not to have been followed by the authorities, inasmuch as, the Petitioner was promoted on officiating basis before completion of five years of service as ASSO in the feeder cadre and ignored the cases of the senior officer above him. Therefore, consequently it is to be held that the Petitioner was promoted on the officiating basis with effect from 12.6.89 dehors the statutory Rules. Although Mr. C.T. Jamir contends that the aforesaid officiating promotion of the Petitioner did not come to be challenged by any aggrieved persons, nonetheless, for the purpose of seniority certainly this can be considered by the Court while deciding the date of regularization. The DPC held in the year, 1996 and 2001 rejected the prayer of the Petitioner for regularization on the ground that in the event of regularization of service of the Petitioner from the date of his officiating promotion that would amount to supersession of many of his senior officers in the rank of feeder posts.

In the DPC held on 18.7.1996 while considering the case of the Petitioner, the DPC commented as follows:

He was appointed as Soil Conservation Inspector with effect from 12.10.1987. His qualification in B.Sc. (Agri). He was given officiating promotion to the post of SDO (SC) with effect from 16.6.1989. His case was also refused to be regularized by the DPC as there were 20 Soil Conservation Inspectors senior to him at present. The matter is put up to the DPC for decision.

Similarly, in the DPC meeting held on 26.9.2001, it was held as follows:

The Committee could not consider promotion case of Shri Lipokmar Yaden to the post of S.S.O. though he possesses the requisite additional qualification to hold the post of S.S.O. as there is no provision in the existing service rules to allow such promotion in supersession of the other senior members in the grade of Inspector. The Committee also further observed that in the last DPC, held on 18.7.96 the Committee had made some comments on the procedure for filling up

the post of SDO (S.C.)/S.S.O. (Class-I Junior Grade) in the Department. In order to facilitate promotion for such deserving cases the department should look into this matter and consider for suitable modification of their Services Rules without further delay.

9. Challenging the aforesaid action of the Respondent authorities, the Petitioner again approached this Court by filing WP(C) No. 96(K)/2005. While disposing of the aforesaid Writ Petition on 8.6.06 at paragraph 9 of the judgment it was held as follows:

...Except the contention that the regularization of the Petitioner would have the effect of superseding his seniors and that such course of action is not provided under the Rules, no mention has been made as to the reasons for not considering the cases of the petitioner and the officers senior to him in accordance with the Rules.

Finally, this Court directed the Respondent authorities the case of the Petitioner and other officers senior in the cadre in terms of the provision of the Nagaland Soil and Water Conservation Service Rules, 1997, for promotion.

10. In terms of the aforesaid direction, the department prepared an agenda for consideration of the matter by a DPC, stating necessary relevant facts and so far as it relates to the Petitioner it was stated that on the basis of Merit-Cum-Seniority, the Petitioner was given out of turn promotion to the post of SSO with effect from 16.6.89, vide Govt.

Order No. Soil-42/85/I dated 12.6.89, whereas such promotion is to be made on the basis of seniority-cum-merit as per Service Rules. However, in the impugned DPC meeting also it maintained the same stand allowing regularization of the Petitioner with effect from 7.7.05 even accepting the argument of the learned Counsel for the Petitioner that the Petitioner was qualified to be promoted with effect from 12.6.94 as per the statutory rules, that date also could not be considered, inasmuch as, in that event it would amount to supersession of at least one of the senior officers, namely the Respondent No. 18, which would go against the principle of fixation of seniority under the service jurisprudence.

11. From the stand of the department as well as decision of the DPC, it is abundantly clear in terms of the principles laid down for promotion in the statutory Service Rules to the rank of Class-I Junior Grade that such promotion shall be on the basis of merit-cum-seniority from amongst the confirmed members of the Class-III officers. For ready reference, we quote herein the criteria for consideration by the DPC is provided in the Schedule appended to the 1988 Service Rules is as follows:

The Committee shall select and prepare a list of candidates eligible/suitable in order of preference and forward it to the Government. In the process of selection, if any member of the service is proposed to be superseded, the Committee shall record the reason thereof. This select list shall be valid for a

period of six months from the date of approval or till such time a fresh select list is prepared, whichever is earlier. All vacancies arising during that period and intended to be filled by promotion shall be filled from that list.

12. It is to be noted herein that under the 1997 Rules the merit-cum-seniority has become the criteria for promotion departing from 1988 Rules where the principle was merit-cum-seniority. The DPC in order to avoid supersession of large number of officers who have been arrayed as Respondent Nos. 5 to 18 (respondent No. 17 expired in the meantime), took the view as stated above. The stand so taken by the Respondents, considering the irregularities in promotion of the Petitioner on officiating basis with effect from 12.6.89 de hors the Rules in supersession of senior officers cannot be said to be unjustified, improper and illegal requiring interference of this Court otherwise that would adversely affect the seniority earned by the private Respondents and the DPC has rightly accepted the date of regularization of the Petitioner with effect from 7.7.05 on which date his immediate senior officer, namely Respondent No. 18 was regularized.

13. In view of the above discussions, I do not find any merit in this Writ Petition and stands dismissed accordingly.

14. No costs.