

(2003) 07 GAU CK 0044

In the Gauhati High Court

Case No : Writ Petition (C) No. 183 (K) of 2001

M. Tali Longchar

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision : 10-07-2003

Acts Referred:

Nagaland Excise Service (Amendment) Rules, 1977 — Rule 15, 18

Citation : (2004) GLT 605 Supp

Hon'ble Judges : B. Lamare, J

Bench : Single Bench

Advocate : B.N. Sarma and Apok Pongener, for the Appellant; L.S. Jamir, for the Respondent

Final Decision : Dismissed

Judgement

B. Lamare, J.—Heard Mr. B.N. Sarma, learned Counsel for the Petitioner and Mr. L.S. Jamir, learned Counsel for the Respondents.

2. Briefly stated the case is that on selection by the Nagaland Public Service Commission (NPSC), the Petitioner was appointed as Inspector of Excise on 16.9.81. The Petitioner was promoted on officiating basis to the post of Deputy Superintendent of Excise with effect from 30.1.99 vide notification dated 6.2.99.

3. The Respondent No. 3 was originally appointed in the Excise Department on 5.7.72 as Radiographer. Subsequently, he was appointed as Assistant Inspector of Excise on 9.5.75 and thereafter he was promoted to the rank of Inspector of Excise with effect from 21.12.81.

4. The post of Inspector of Excise was Non-Gazetted post till 1993. However, after 1993 ROP was published, the post was made Gazetted. The Commissioner of Excise by memorandum dated 8.8.86 has notified that the departmental qualifying examination was to be held for the post of Inspector, Assistant Inspector etc. in the department. Accordingly, the examination was held on 25.9.86. As per the result of the said departmental examination the Petitioner

was declared passed and placed at serial No. 8 in the list of successful candidates. However, the Respondent No. 3 failed to qualify in the said departmental examination.

5. The case of the Petitioner is that the draft seniority list of the Inspector of Excise as on 31.12.94 was published and in the said list the name of the Petitioner appeared at serial No. 4 and the name of the Respondent No. 3 appeared at serial No. 5. Thereafter, another draft seniority list of the Inspector of Excise was published showing the seniority as on 1.10.97 and in the list the name of the Petitioner appeared at serial No. 2 and the name of the Respondent No. 3 appeared at serial No. 3. However, the final seniority list of the Gazetted officers of Excise Department as on 1.1.98 was published by the Additional Secretary to the Govt. of Nagaland Excise Deptt. In the said list the name of the Petitioner was shown at serial No. 3 and the name of the Respondent No. 3 was shown at serial No. 1. According to the Petitioner by this final seniority list he was superseded by the Respondent No. 3.

6. It is the contention of the Petitioner that in the draft seniority list published earlier, the Petitioner was shown as senior to the Respondent No. 3 but in the final seniority list of 16.11.98 the Petitioner was shown to be junior to the Respondent No. 3. The fixing of the seniority list of the Respondent No. 3 above the Petitioner is not in accordance with Rule 15(c) of the Nagaland Excise Service Rules, 1977 as amended (for short "the Rules"). Therefore, according to the Petitioner in view of the provision of Rule 15(c) the Petitioner is senior to the Respondent No. 3 and the said final seniority list is in contravention of the Rules.

7. The Respondents resisted the claim of the Petitioner and stated that according to Rule 15(c) of the Rules the departmental promotees are to rank above the direct recruit. In the instant case, the Petitioner is a direct recruit to the post of Inspector of Excise and the Respondent No. 3 is a promotee from the rank of Assistant Inspector of Excise. As per amended Rules it is stipulated that 25% of the post is reserved for promotion of Asstt. Inspector of Excise, 25% are reserved for promotion from amongst the UDAs/HAs of the Deptt. And 50% of the post are for direct recruit and as such the seniority in the cadre of Inspector of Excise is to be fixed in the ratio of 1:1:2 that is 1 (one) promoted from the Asstt., Inspector of Excise, 1 (one) promotee from the UDAs/HAs and 2 (two) from the direct recruit irrespective of the date of joining to the post of Inspector in the same calendar year. On the basis of the above criteria the final seniority list published on 16.11.98 was based strictly in accordance with the Rules. Therefore, according to the Respondents there is no violation of the Rules in fixing the final seniority list.

8. Mr. B.N. Sarma, learned Counsel for the Petitioner submitted that according to Rule 15(c) of the Rules the departmental promotees will rank senior to the direct recruit on the basis of the rotation of vacancies and ratio proportion basis. This provision in the Rules is clear that the direct recruit is 50% and 50% for the departmental promotees from the post of Asstt. Inspector and UDAs/HAs.

Therefore, the ratio is to be 1:1 contends the learned Counsel. Mr. B.N. Sarma has also urged that in the instant case, the Petitioner has been denied the principle of natural justice as no draft seniority list was issued before issuance of the final seniority list. It is also contended that the settled seniority of the Petitioner from 1981 onwards was disturbed by the impugned final seniority list of 1998 therefore according to the counsel there is violation of the Rules in fixing the seniority list.

9. Mr. L.S. Jamir, learned Government Advocate on the other hand submitted that the seniority list as shown in Annexure-D to the writ petition was never published by the department at any point of time. The learned Counsel also contended that the matter in the instant case was referred to the Government as per Rule 18 of the Rules for interpretation of Rule 15(c) of the Rules and the Govt. has given a clear opinion that the ratio for fixing of seniority as per the Rules is on the basis of 1:1:2 the case of the Petitioner and Respondent No. 3 was duly examined by the Government and the Govt. has come to the conclusion that the Respondent No. 3 rank senior to the Petitioner and therefore, the final seniority list was published on that basis.

10. A perusal of the records shows that the draft seniority list of the Inspector of Excise as on 31.12.82 was published on 30.4.83. In the said list, the name of the Respondent No. 3 appeared at serial No. 10 and the name of the writ Petitioner appeared at serial No. 16. Another draft seniority list as on 31.12.85 was published vide notification dated 18.9.86 and in the said seniority list the name of the Respondent No. 3 appeared at serial No. 7 and the name of the Petitioner appeared at serial No. 13. Another draft seniority list of Inspector of Excise as on 31.12.89 was published on 10.9.90 and in the said list, the name of the Respondent No. 3 appeared at serial No. 4 and the Petitioner appeared at serial No. 6. However, the final seniority list of the Inspector of Excise as on 1.10.97 was published on 24.10.97. In this final seniority list the name of the Petitioner appeared at serial No. 2 and the name of the Respondent No. 3 appeared at serial No. 3.

11. Against the said final seniority list dated 24.10.97, the Respondent No. 3 submitted representation dated 9.1.98 to the Addl. Secretary, Excise Department, Govt. of Nagaland. On the representation of the Respondent No. 3 the matter was examined by the Government and clarification was sought by the Addl. Secretary, Govt. of Nagaland from the Addl. Commissioner of Excise, Nagaland by his letter dated 10.8.98. The clarification was furnished by the Addl. Commissioner of Excise to the Addl. Secretary, Govt. of Nagaland, Excise Deptt. in his letter dated 10.11.98, thereafter, the final seniority list dated 16.11.98 was published fixing seniority list of the Inspector of Excise as on 1.11.98. In this final seniority list, the name of the Petitioner appeared at serial No. 3 and the name of the Respondent No. 3 appeared at serial No. 1.

12. In order to make the matter clear we may refer to the provision of the Rules. The 1977 Rules was amended by notification No. EX-1/12/75 dated 18.8.81

whereby the reservation for the post of Inspector of Excise was 50% for direct recruit 25% by promotion from Asstt. Inspector and 25% from ministerial staff i.e. UDAs in the office of the Commissioner and HAs in the district carrying identical scale of pay. By virtue of this amendment of the Rules the seniority to the post of Inspector has to be fixed on the basis of this amendment read with Rule 15(c) of the Rules.

13. Now coming to the present case, it is noticed that the draft seniority list was published on many occasions before publication of the final seniority list viz; 30.4.83, 18.9.86 and 10.9.90 and in all the draft seniority list the Petitioner was found to be junior to the Respondent No. 3. The Petitioner did not raise any objection to the draft seniority list. However, on 24.10.97 the final seniority list was published as on 1.10.97 whereby the Petitioner was shown to be senior to the Respondent No. 3 to the extent that the name of the Petitioner appeared at serial No. 2 and the Respondent No. 3 appeared at serial No. 3 of the final seniority list. However, this final seniority list was objected to by the Respondent No. 3.

14. The case thereafter was examined by the Government in which the Addl. Secretary to the Govt. of Nagaland Excise Deptt. in his letter dated 10.8.98 has called for clarification of the Addl. Commissioner of Excise, Nagaland. The Addl. Commissioner of Excise, Nagaland has submitted his clarification in his letter dated 10.11.98 which reads as follows:

Government of Nagaland Office of the Commissioner of Excise Nagaland: Dimapur
No. EX-1/40/81/1151 Dt. Dimapur, the 10th Nov. 98

To,

The Addl. Secretary to the Govt. of Nagaland Excise Deptt., Kohima.

Subject: Seniority list of Inspectors of Excise.

Sir,

I have the honour to invite a reference to your letter No. EX/ESTT/7/86 (Pt.) dated 10.8.98 on the above subject and to say that on careful scrutiny of the records it has been observed that the seniority fixed by the Deptt. during the year 1985, 1989, Shri Tinu Jamir, Inspector of Excise was senior to Shri I. Azang Jamir. But later on the seniority position was changed on 15.6.93 (copy enclosed) by the then Commissioner of Excise for which he had not given any justification over his action in the record. The action of the former Commissioner has been objected and complaint brought by Shri Tinu Jamir, Inspector of Excise. In this context, our views and comments sent to the Govt. vide letter No. EX-1/40/81/4844 dated 10.3.93 may be referred to (copy enclosed.) In the light of the observation and findings supported by the earlier records, the Deptt. is of the view that seniority of the Inspector of Excise required to be refixed placing Shri Tinu Jamir senior to I. Azang Jamir as per the original seniority record.

Yours faithfully,

(K.C. QUITO SEMA) Addl. Commissioner of Excise Nagaland, Dimapur.

15. A perusal of the above letter shows that the seniority of the Inspector of Excise till 1989 was that the Respondent No. 3 is senior to the Petitioner. However, the seniority was changed only in 1993. By this changed in the seniority list of the Inspector of Excise, the seniority list as on 1.10.97 was published. However, on objection raised by the Respondent No. 3 the matter was re-examined by the Government and the impugned seniority list as on 1.11.98 was published.

16. Records shows that except 1997 seniority list, in all the seniority list published, the Respondent No. 3 is shown senior to the Petitioner. Records produced by the learned Government Advocate also shows that after publication of the final seniority list as on 1.10.97 the matter was re-examine by the Government and after proper consideration the final seniority list as on 1.11.98 was published.

17. Coming to the provision of the Rules as already observed that by amendment of 18.8.81, recruitment to the post of Inspector is to be done on the basis of 50% by direct recruitment, 25% by promotion from Asstt. Inspector and 25% by promotion from ministerial staff i.e. IDAs/HAs. This question was also examined by the Government in the Deptt. of P and AR as reflected from the records in the letter dated 13.4.88 from the Under Secretary, Govt. of Nagaland, Excise Deptt. to the Addl. Commissioner, Excise Deptt. which reads as follows:

Government of Nagaland Excise Department

No/COM/10/85:: Dated Kohima, the 13th April '88

To,

The Additional Commissioner of Excise Nagaland, Dimapur

Sub: Fixation of Seniority of Inspector of Excise in the excise department
Clarification regarding

Sir,

I am directed to refer your letter No. EX-1/40/81 dated 17.11.87 on the above subject and to furnish below the Department of Personnel and Administrative Reforms (A.R. Br.) observation for necessary action.

Yours faithfully, (TOKUGHA SUKHALU) Under Secretary to the Govt. of Nagaland.

According to the orders in force, regarding the fixation of seniority, the Departmental promotees are to rank above the direct recruits. In the present case, the UDAs/HAs who are promoted to the grade of Inspectors against the quota reserved, cannot be treated as direct recruits but are to be treated as promotees only.

As such they will rank above the direct recruits in seniority. Since 25% of the posts are reserved for promotion from A.S. Is 25% of the posts are reserved for promotion of UDAs/Hhs of the Deptt and 50% of the posts are reserved for direct recruitment, the seniority in the cadre of Inspector of Excise shall be fixed in the ratio of 1:1:2 i.e. one promotee from ASI, one promotee from UDAs/Has and 2 direct recruits and in that order.

The Service Rules may be suitably amended to incorporate the above; so that there will be no ambiguity in the matter.

18. Rule 15(c) of the Rules reads as follows:

15 Seniority: (c) If in a calendar year, recruitment is done partly by Departmental promotion and partly direct recruitment the departmental promotees will rank senior to the direct recruits, on the basis of rotation of vacancies on ratio proportion basis.

19. A conjoint reading of Rule 15(c) and the notification No. 1/12/75 dated 18.8.81 specifying the ratio filling up of the post of Inspector by 50% from direct recruit, 25% by promotion from Asstt. Inspector and 25% by promotion from ministerial staff i.e. UDAs/HAs shows that the ratio fixing seniority will be on the basis of 1:1:2. Therefore, in my opinion, the opinion given by the P and AR Deptt. Govt. of Nagaland as quoted above is purely in accordance with Rule 15(c) of the Rules read with the amendment of 18.8.81. Therefore, the contention of the learned Counsel for the Petitioner that the ratio is to be 1:2 cannot be accepted. The Respondent No. 3 being a promotee from the post of Asstt. Inspector of Excise will rank senior to the Petitioner although the Respondent No. 3 joined as Inspector of Excise on 21.12.81 and the Petitioner joined on 16.9.81. They were appointed to the post of Inspector of Excise in the same year in 1981. Hence, according to the provision of Rule 15(c) the departmental promotion rank senior to the direct recruit on the basis of the ratio as indicated above.

20. For the aforesaid reasons I find that final seniority published on 16.11.98 fixing the seniority as on 1.11.98 was done in accordance with the Rules as amended and calls for no interference by this Court.

This petition is devoid of merits and it is accordingly dismissed. There will be no order as to costs.