
(2005) 02 GAU CK 0092

In the Gauhati High Court

Case No : Writ Petition (C) No. 110 (K) of 2003

N. Sanchio Lotha

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision : 11-02-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2005) GLT 195 Supp

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

Bench : Single Bench

Advocate : E.Y. Renthungo, Z.N. Ngullie and S. Ahmed, for the Appellant; Y. Longkumer, for the Respondent

Judgement

M.B.K. Singh, J.—In this writ petition, the Petitioner's case is, in brief, that though he is a senior officer in the cadre of Assistant Engineer/SDO, PWD, whose service was regularized by the DPC along with others similarly situated vide order No. WH/EST/92(Pt)B dated 19.2.2002 w.e.f. 17.4.1989, without considering his case for promotion to the next higher post of Executive Engineer, Respondents 3 to 9, who were appointed to the post of Assistant Engineers subsequent to him, have been given officiating promotion to the next higher post of Executive Engineers by the Respondents 1 and 2 in an arbitrary and illegal manner in violation of the provisions of Articles 14 and 16 of the Constitution of India. The Petitioner prays for setting aside Notification No. WH/EST/18/78 (Pt) dated 15.5.2002 by which the Respondents 3, 4, 5 and 6 were given the said officiating promotion and Notification No. WH/EST/18/78(Pt) dated 28.5.2003 by which Respondents 7, 8 and 9 were given the said officiating promotion, as illegal and arbitrary. The Petitioner further prays for passing an appropriate order in the facts and circumstances of the case.

2. I have heard Mr. E.Y. Renthungo, the learned Advocate appearing on behalf of the Petitioner and Mrs. Y. Longkumer, learned Government Advocate appearing on behalf of the Respondents 1 and 2.

Despite due notices through registered post, none has appeared on behalf of the remaining Respondents without showing any cause.

3. There is no dispute in respect of the following facts: the Petitioner is a Diploma holder in Civil Engineering and he was initially appointed as S.O. Grade-I for a period of 6 months, vide order No. PW(E-1)9/77, dated 20.10.1978 (Annexure-1). His service was extended from time to time (Annexures-2 and 3). Thereafter, having been selected at Serial No. 1 in the merit list by the Nagaland Public Service Commission (NPSC), he was appointed to the post of Overseer Grade I (Civil) vide Notification No. E (II)/G-46/81 dated 8.4.1981 (Annexure-4). After having served as Overseer Grade I on regular basis for three and half years, he was granted study leave by the Competent Authority and he obtained Degree in Civil Engineering in 1988 (Annexures-5 and 6). After 9 years of his service as Overseer Grade I, he was given officiating promotion to the post of Assistant Engineer (PWD) vide order No. WH/EST/88/78(Pt) dated 17.4.1989 (Annexure-7), his service as Assistant Engineer/SDO was regularized vide order No. WH/EST/92(Pt)/B dated 19.2.2002 w.e.f. 17.4.1989 (Annexure-8). As per the said regularization order, his seniority will be determined from the date of his regularization in the cadre.

4. There is also no specific denial about the following facts from the side of the Respondents: that the Respondent No. 3 and four others were appointed as Assistant Engineers (Civil), Nagaland PWD vide order No. WH/EST/32/90 dated 22.10.1990 through Nagaland Public Service Commission w.e.f. 13.7.1990 (Annexure-9). The Respondents 7 and 8 were also similarly appointed as Assistant Engineers (Civil) vide order No. WH/EST/32/90 dated 13.6.1991 w.e.f. 12.3.1991 (Annexure-10). The Respondents 4, 5 and 6 were appointed on 11.1.1991 as direct recruit Assistant Engineers and the Respondent No. 9 was appointed on 23.5.1992.

5. It is to be noted that there is no specific denial from the side of the State Respondents in respect of the allegations of the Petitioner to the fact that he is senior to Respondents 3 to 9 in the cadre of Assistant Engineer/SDO, PWD. The Petitioner is a promotee to the post of Assistant Engineer (Civil) and the Respondents 3 to 9 are direct recruits to the said post. None of the parties brings to my notice as to what was the Rules governing inter se seniority of the promotee and the direct recruits in the cadre of Assistant Engineer (Civil)/SDO of Nagaland PWD at the relevant time of recruitment of the Petitioner and the Respondents 3 to 9. Though no seniority list has been prepared up till now in respect of the officers in the cadre of Assistant Engineer/SDO, in the absence of any specific denial from the side of the Respondents and having regard to the orders of recruitment and regularization, the Petitioner's case that he is senior to the Respondents 3 and 9 is accepted as correct. It is further to be noted that in case, seniority is to be determined in accordance with Nagaland Engineering Services (Class-I and Class-II) Rules, 1997, which was not in force at the relevant time of recruitment of the Petitioner and the said Respondents, there is

no dispute that the Petitioner is senior to the said Respondents. In any case, in absence of specific denial from the side of the Respondents, it is taken as correct that the Petitioner is senior to Respondents 3 to 9 in the said cadre of Assistant Engineer (Civil)/SDO of Nagaland, PWD.

6. It is also ascertained that though the Petitioner is eligible for giving promotion to the next higher post of Executive Engineer under Nagaland Engineering Services Rules, 1997 and despite his representation made for consideration of his case for giving promotion to the said next higher post, his case has not been considered by the Respondents 1 and 2. On the other hand, Respondents 3 to 9, who are juniors to the Petitioner, have been given officiating promotion to the said next higher post of Executive Engineer vide Notification dated 15.5.2002 and 28.5.2003 (Annexures-12 and 14) without showing any appreciable reason either for not filling up the vacant post of Executive Engineer on regular basis or for not giving the said officiating promotion to the Petitioner while giving the said promotion to his juniors. By reason of the said officiating promotion, the Respondent Nos. 3 to 9 are now purportedly getting higher scale of pay and exercising more power than their senior, the Petitioner. Nothing is disclosed as to what is the basis for picking and choosing the Respondents 3 to 9 by ignoring their senior.

7. According to the Respondents 1 and 2, the promotion of Respondents 3 to 9 are purely on officiating basis and as such the Petitioner's seniority is not affected in anyway. Further, according to the Respondents 1 and 2, as per terms of the said promotion orders, the said promotions are purely temporary and subject to regularization by the DPC and will not confer any right to the said Respondents to claim seniority over their seniors in the cadre. The above said view of the Respondents 1 and 2 is too technical. They are apparently trying to ignore the injustice caused to the Petitioner and the illegality involved in the case of giving the said promotion. The said promotion orders have been in existence for a period of two years or more and by virtue of the said orders, the Respondents 3 to 9 have been enjoying more pay and power than their seniors, the Petitioner who has been deprived of the said benefits arbitrarily and without any appreciable reason.

8. In absence of any reasonable basis for choosing and picking the said Respondents 3 to 9 for giving officiating promotion, while ignoring the claim of their senior, the issuances of the said notifications giving officiating promotion to the said Respondents are nothing but arbitrary exercise of power in violation of Article 14 of the Constitution of India. Further, by ignoring claim of the Petitioner for promotion to the next higher post, his right to be considered for promotion has been denied. Since the said officiating promotion is not for a short fixed period, the Petitioner's case ought to have been considered before giving the said promotion to his juniors. In the facts and circumstances there has been violation of the provisions of Article 16 of the Constitution. In my opinion, it is also unjust and unfair on the part of the Respondents 1 and 2 to allow the said

Respondents 3 to 9 to enjoy all the benefits of officiating promotion by way of higher scale of pay and more power for a period of about 2 years or more while the said benefits are not given to their senior, the Petitioner, without any appreciable legitimate reason. Such an arbitrary, unjust and unfair act is not expected from the State who is supposed to be a model employer.

9. The impugned Notifications dated 15.5.2002 and 28.5.2003 are found to be violative of the Articles 14 and 16 of the Constitution of India and as such not sustainable in the eye of law in so far as giving of officiating promotion to Respondents 3 to 9 are concerned. Accordingly, the above said Notifications, only in respect of giving of officiating promotion to the Respondents 3 to 9, shall cease to have effect immediately from today. Having regards to all the relevant considerations, the Respondents 1 and 2 are hereby directed to take all the necessary steps for filling up of the vacant posts of Executive Engineer regularly in accordance with relevant Rules within a period of 3 (three) months from the date of receipt of a certified copy of this order. In case, exigency demands to fill up the said vacant posts of Executive Engineer on officiating basis for a short period before filling them up on regular basis, the case of the Petitioner and other senior A.Es. are to be considered properly in connection with said officiating promotion. Further, the Respondents 1 and 2 shall take necessary steps for settlement of Seniority list of Assistant Engineers/SDOs of Nagaland PWD within a period of 3 months from the date of receipt of a certified copy of this order.

10. With the above observations, direction and order, this writ petition is disposed of.