
(2005) 08 GAU CK 0091

In the Gauhati High Court

Case No : Writ Petition (C) No. 339 (AP) of 2004

Nilin Kumar Baruah

APPELLANT

Vs

State of Arunachal Pradesh and Others

RESPONDENT

Date of Decision : 09-08-2005

Acts Referred:

Citation : (2005) GLT 115 Supp

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : R. Deka, R.B. Yadav and S. Nag, for the Appellant; B.L. Singh, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—The correctness of the assessment made by the Departmental Promotion Committee (for short the "DPC") for promotion of the Petitioner, vis-a-vis, the Respondent No. 3, is the subject-matter of challenge in the instant writ petition.

2. The fact materials for the purpose of disposal of this writ petition are that the Petitioner initially entered the services of the Respondents as Compositor Grade II (Group C), on 4.7.1977. The Respondent No. 3 has joined the service as Computor on 19.11.1986. The Petitioner was promoted to the rank of Compositor Grade I on 20.12.1983 and the Respondent No. 3 was promoted to the rank of Foreman on 29.12.1994. While the Respondent No. 3 was promoted to the rank of Foreman on 29.12.1994, the Petitioner was promoted to the rank of Foreman with effect from 19.2.1998.

3. As per the Recruitment Rules called "The Overseer (Group-C) Recruitment Rules, 1988" (for short the "Rules"), the next promotional post of Foreman is Overseer which is a selection post. The post of Overseer is to be filled up 100% by promotion from amongst the Foremen. Those who have completed five years of service in the grade are entitled to be considered for promotion to the rank of

Overseer.

4. The aforesaid Rules were amended in the year 2004 by providing criteria of selection for promotion to the rank of Overseer on the basis of merit-cum-seniority. A vacancy had occurred due to termination of service of one Shri Rajiv Kr. Raha, Overseer, and the cases of both the Petitioner and the Respondent No. 3 were taken into consideration by the DPC constituted for the purpose. The DPC recommended the Respondent No. 3 for promotion and by Annexure-P/5, order dated 12.8.2004, the Respondent No. 3 was promoted as Overseer Grade-B (Non-gazetted). The legality and the validity of the recommendation made by the DPC and the consequential order of promotion of the Respondent No. 3 are the subject-matter of challenge in this writ proceeding.

5. The Respondents have filed their counter-affdavit and they have also produced the records including the minutes of the DPC. The simple stand of the Respondents is that the DPC had duly considered the cases of both the incumbents taking into account the Annual Confidential Reports (ACRs) for the last five years. The DPC found the Petitioner and the Respondent No. 3 to be of equal merits and since the Respondent No. 3 was senior to the Petitioner in the substantive grade, he was recommended for promotion.

6. Mr. R. Deka, learned Counsel for the Petitioner, submitted that the DPC instead of considering the merits of both the incumbents, recommended the Respondent No. 3 for promotion only on the basis of his seniority. According to him, such recommendation was against the principle of promotion which is merit-cum-seniority. He places reliance on the decisions of the Apex Court in *Sarat Kumar Dash and Others Vs. Biswajit Patnaik and Others*, and *B.V. Sivaiah and Others etc. Vs. K. Addankl Babu and Others etc.*,

7. Mr. B.L. Singh, learned Senior GA, Arunachal Pradesh, appearing for the official Respondents, submitted that the principle of merit-cum-seniority was duly followed by the DPC and when the merits of both the incumbents were found to be equal, the DPC recommended the Respondent No. 3 being senior to the Petitioner.

8. None has appeared on behalf of the Respondent No. 3.

9. From the above narration of facts, the only controversy which has been raised in this proceeding is that as to whether the DPC committed any wrong in recommending the Respondent No. 3 on the basis of evaluation of the ACRs. It was submitted on behalf of the Petitioner that if a comparison is made between the ACRs of the Petitioner and the Respondent No. 3, the Petitioner has better grades than that of the Respondent No. 3 and thus had there been correct assessment by the DPC, it is the Petitioner who would have been recommended by the DPC for promotion to the post of Overseer and not the Respondent No. 3.

10. In the case of *B.V. Sivaiah and Ors. (supra)*, the Apex Court discussed about the principle involving selection on the basis of merit-cum-seniority which,

needless to say, postulates greater emphasis on merit and ability and seniority plays a less significant role. Seniority is to be given weight only when merit and ability are approximately equal.

11. In the case of Sarat Kumar Dash and Ors. (supra), the same principle involving the merit-cum-seniority has been reiterated. In the instant case the records of the case have revealed that the ACRs of the Petitioner and the Respondent No. 3 pertaining to the years 1999-2000, 2000-2001, 2001-2002, 2002-2003 and 2003-2004 were placed for consideration of the DPC. It appears that the DPC duly took note of the Bench mark for recommendation on the basis of merit-cum-seniority which was "Good". It was on that basis the evaluation was made and the DPC having found that the merits of both the candidates were equal according to the Bench recommended the senior between the two, i.e., the Respondent No. 3 for promotion.

12. The learned Counsel for the Petitioner argued that the DPC having not assigned any reason in its minutes towards making assessment of the candidates, the entire proceeding of the DPC is vitiated. Suffice it to say that as per the Recruitment Rules there is no necessity to record any reason. Even in the case of Sarat Kumar Dash and Ors. (supra), on which the learned Counsel for the Petitioner placed reliance, the Apex Court held that there is no need to record reason when the grading itself reflects the reason.

13. The plea of the Petitioner and the arguments advanced on that basis that the Petitioner has better ACRs than the Respondent No. 3 and accordingly, the DPC ought to have assessed the Petitioner to have better merit than the Respondent No. 3 is also not equally tenable. Needless to say that the grading in the ACRs and the assessments made by the DPC are quite distinct and different.

14. In the case of Mrs. Anil Katiyar Vs. Union of India and others, a similar argument was advanced but negated by the Apex Court. In that case, the ACRs of two competing candidates for three years were considered. One of them was graded as "Outstanding" in the ACRs for two years and as "Very Good" in the ACR for the third year, while the other candidate was graded in all the three ACRs as "Very Good". However, the DPC graded both of them as "Very Good" and on the basis of seniority, selected the senior one. In that case also as in the instant case, a question was raised as to the propriety of the DPC in grading both the candidates as "Very Good" which according to the unsuccessful candidate was contrary to the grading in the ACRs. The plea did not find favour from the Apex Court and the Apex Court held that having regard to the criteria adopted by the DPC, the grading in the ACRs cannot be equated with that of the grading of the DPC.

15. The Apex Court also observed that having regard to the limited scope of judicial review of the merits of a selection made for appointment to a service or a post, the Tribunal had rightly proceeded on the basis that it was not expected to play the role of an appellate authority or an umpire in the acts and proceedings

of the DPC and that it could not sit in judgment over the selection made by the DPC unless the selection is assailed as being vitiated by mala fides or on the ground of it being arbitrary.

16. In the instant case also the Petitioner has based his claim on the basis of purported better grading in the ACRs. Having regard to the procedure being followed by the DPC and when the Bench mark was "Good", it cannot be said that the DPC had committed any error in assessing the merits of the two candidates. Even otherwise also having regard to the limited scope of interference in the matter of selection conducted by the DPC, more particularly, in absence of any allegation of mala fide and arbitrary exercise of power by the members of the DPC, I am of the considered opinion that no interference is called for to the assessment made by the DPC. Consequently, the promotion made in favour of the Respondent No. 3 on the basis of such recommendation, cannot be interfered with.

17. In view of the above, there is no merit in the writ petition and accordingly the same is dismissed leaving the parties to bear their own costs.