
(1997) 03 GAU CK 0005
In the Gauhati High Court
Case No : Writ Appeal No. 229 of 1996

P.C.Borthakur

APPELLANT

Vs

State of Arunachal Pradesh

RESPONDENT

Date of Decision : 17-03-1997

Acts Referred:

Constitution of India, 1950 — Article 226, 226

Citation : (1997) 1 GLJ 490

Hon'ble Judges : D.N.Chowdhury, J and V.Dutta Gyani, J

Bench : Division Bench

Advocate : R.Das, M.Singh, K.P.Pathak, Advocates appearing for Parties

Judgement

V. Dutta Gyani, C.J. (Acting)

1. This writ appeal is directed against the judgment dated 5.4.95, passed by a learned Single Judge of this Court in Civil Rule No.1894 of 1993.
2. Basic facts of the case are : The appellants started their service career as Lower Division Assistants in the Supply and Transport Directorate in May 1962 and eventually promoted to the post, Upper Division Assistant, in April/May, 1964. The respondent Nos.4 and 5 were also promoted as UDA with effect from 9.6.64 and 1.8.64 respectively. A Board was constituted by the State Govt. for preparation of seniority list vide notification dated 8.10.73. The Board published a provisional seniority list, vide notification dated 4.4.73 calling upon all those affected to submit their objections. Final seniority list was published on 11.4.74. As some of the UDAs were promoted as Superintendents, the final seniority list dated 18.5.94 was updated till 22.3.79, vide notification Annexure II. The appellants and respondent Nos.4 and 5 were placed at Serial Nos. 18,20,21 and 22 respectively. The same order of seniority was maintained in the subsequently published list dated 6.2.85, Annexure III. Based on this seniority list Annexure III, the appellants were also promoted as Superintendents with marginal, difference of couple of months with effect from 2.5.89 and 1.9.89, vide Annexure

IVA and IVB. The same order of seniority was continued to be maintained even as Superintendents as per seniority list published on 2 A.91. It may be noted that the respondent No.5 does not figure in this list as he was not promoted as Superintendent by that time.

3. It was on 2.7.93, that the respondent State Govt. came out with an order Annexure VI not only cancelling appellants promotion as Superintendent but also reverting them to the lower post of Assistant, with effect from 3.5.89. By the same order they were also promoted and reappointed as Superintendents with effect from 28.2.92, placing them in seniority below respondent Nos.4 and 5. It is this order Annexure VI which the appellants challenged in the writ petition and lost hence this appeal.

4. Despite being duly served the respondent Nos.4 and 5 have not entered appearance. We have heard learned counsel for the appellants as also the Govt. Advocate.

5. The Supreme Court dealing with the question of confirmation in service, in *SB Patwardhan & another vs. State of Maharashtra & others*, AIR 1977 SC 2051 has held as follows :

"Instead of adopting an intelligible differentia, Rule 8 (iii) leaves seniority to be determined on the sole touchstone of confirmation which seems to us indefensible. Confirmation is one of the inglorious uncertainties of Government service depending neither on efficiency of the incumbent nor on the availability of substantive vacancies. A glaring instance widely known in a part of our country is a distinguished member of the judiciary who was confirmed as a District Judge years after he was confirmed as a Judge of the High Court....

Rule 33, in so far as it makes seniority dependent upon the fortuitous circumstances of confirmation, is open to the same objection as Rule 8 (iii) of the 1960, rules and must be struck down for identical reasons."

6. This case has been affirmed and followed in (1990) 2 SCC 715 and relied on in 1991 Suppl (2) SCC 51 and 1992 Suppl (2) SCC 318.

7. It appears that this aspect of the matter has escaped notice of the learned Single Judge, who has dealt with some other cases as cited by the writ petitioner appellants.

8. There is yet another aspect of the matter as rightly pointed out by the learned counsel, inter se seniority which was settled and maintained all along the years 1964 to 1993, almost three decades was suddenly disturbed by the impugned order dated 2.7.93, Annexure VI as issued by the State Govt. The Supreme Court in *A. Guneshami vs. State of Maharashtra*, AIR 1984 SC 850 has pointed out that in absence of a satisfactory explanation for delay in challenging the seniority the claim cannot be entertained. The impugned order resulted in disrupting the vested rights of the appellants regarding seniority rank and promotion accrued to them, during the past 27 years. The appellants were

entitled to as what has been observed in Rabindra Nath Bose case, (1970) 1 SCC 84 :

"Every person ought to be entitled to sit back and consider that the appointment and promotion effected a long time ago would not be set aside after the lapse of number of years.

This case has been relied on hi (1985) 3 SCC 72 and (1992) 3 SCC 204.

9. Counsel for the appellant has placed reliance on some of the judgments on the point of delay. In view of the settled position of law on the point, it is not necessary to deal with these cases.

10. What makes the respondentState Government to pass the impugned order dated 2.7.93, Annexure 6, is to be found in the affidavitinopposition as filed by the respondentGovernment, the same is extracted below :

"On examination of the records it transpires that the objection of the respondent Nos.4 and 5 was based on the facts, that the petitioners erroneously shown as senior to them. It further transpires that the respondent No.3 were appointed as UDA

before the petitioner although all of them were confirmed in the post of LDA on 15.6.74. The respondent Nos.3 and 5 were confirmed as Assistant on 14.6.74 whereas petitioners were confirmed on 16.6.74 and 1.9.75 respectively. As per the relevant Govt. instructions to the effect that the seniority should follow the order of confirmation and as because the respondent Nos.4 and 5 was confirmed in the post of Assistant earlier than the petitioner, the seniority of respondent Nos.4 and 5 was fixed showing them senior to the petitioner by order No.EsttR/76/429 dated 16.6.91. A copy of the said order was also forwarded to the petitioner and respondent Nos.4 and 5. The petitioners submitted representation against refutation of the seniority but the same could not be entertained as the same established that respondent Nos.4 ; and 5 is senior to them. It is thus clear from that the petitioner to the post of Superintendent earlier than respondent Nos.4 and 5. As per FR 31A the orders of promotions of the petitioners were cancelled in order to avoid illegality and injustice to the persons adversely affected. Thereafter, the seniority list was accordingly modified and was published vide memo No.Estt.R/431 dated 5.7.93." It would be seen that the very basis for change in order of seniority was the late of confirmation, which has been scathingly attacked by the learned counsel For the appellants, who also contended that the appellants.seniority has been ipset after almost two decades which is not permissible for any Govt.

In view of the foregoing discussion the appeal deserves to be allowed, it is accordingly allowed, the impugned judgment is set aside and the order dated 2.7.93, Annexure VI as passed by the respondentState Govt. is quashed. Appeal allowed.