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**(1990) 04 GAU CK 0023**  
**In the Gauhati High Court**  
**Case No : Civil Rule No. 1064 of 1985**

Prem Singh

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 23-04-1990

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16, 226

**Citation :** (1990) 2 GLR 297

**Hon'ble Judges :** S. Haque, Acting C.J.; W.A. Shishak, J

**Bench :** Division Bench

**Advocate :** M.A. Laskar and N. Mahammed, for the Appellant; S.K. Chand Mahammad, Sr. C.G.S.C., for the Respondent

**Final Decision :** Allowed

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## Judgement

S. Haqub, Actg. C.J.

1. The Petitioner Mr. Prem Singh was an Assistant Engineer (Civil) in Border Roads Organisation at the time of filing this writ petition under Article 226 of the Constitution of India assailing the order of the Director General, Border Roads, New Delhi under Memo No. 18801/AEE (C) /DGBR/EIA, dated 6.8.1985 (Annexure 6 to the writ petition) and the order under Memo No. F. 138(13) 84/Estt, dated 16 October, 1985 issued by the Ministry of Transport, Department of Surface Deptt. Border Road Development Borders "B" Wing (Annexure "8" to the writ petition).

2. By Annexure "6" the junior officers than the Petitioner had been appointed to officiate as Assistant Engineer (Civil) on the basis of recommendation of the Departmental Promotion Committee bold on 19th June, 1985; whereas by Annexure "8" had conveyed the decision of the Government of India to extend the adhoc appointment of the Petitioner In the post of Assistant Engineer (Civil) for the period from 1.11.1985 to 31-1-1986. The Petitioner was shown as serial No. 12 of Annexure "8".

3. While the Petitioner was serving as Superintendent Grade-I in 1982 as member of GREF, he was promoted to the next higher post as Assistant Engineer (Civil) on adhoc basis for a period of 6 (six) months vide Memo No. 18801/AEB (C)/DGBR/EIA, dated 24th December, 1982 (Annexure-I). Thereafter, vide Notification No. F. 141 (2)/1982-Pers, dated 25-5-1983, the President of India appointed the Petitioner on officiating basis until further orders to the post of Assistant Engineer with effect from 23-2-1983. But vide No. F. 138(12)/84/Estt dated 21.2.1984 the Petitioner was reverted to the Grade of Superintendent B/R Grade I with effect from 1st January, 1985.

4. Thereafter, the Director General, Border Roads by his letter No. 18801/AEE (C)/EIA, dated 1-2-1985 (Annexure-4) case appointed the Petitioner to officiate as Assistant Engineer (Civil) on adhoc basis with effect from 1-2-1985 (at serial No. 38), and It has been mentioned in the letter that the promotion/appointed has been made on the basis of the recommendation of the Departmental Promotion Committee (in short D.P.C.) held on 23-1-1985, It was mentioned in the letter that the promotion was for 6 (six) months or until the post was filled--up on regular basis whichever is earlier.

5. The statutory service rule annexed in the Government deals with promotion at column 10, 11, 12, and 13 of the schedule annexed thereto. It states that promotion to the post of Assistant Engineer (Civil) is made from the post of Superintendent B/R Grade-I which post the Petitioner is holding from 1969, Column No. 10, 11 and 12 of the schedule does not provide for that the department promotion committee can recommend promotion on adhoc basis. It simply provide for promotion on D.P.C recommendation. Mr. M.A. Laskar on behalf of the Petitioner submits that the Petitioner having been recommended by the D.P.C. held on 12-1-1985, the requirement and eligibility of the Petitioner's promotion under the rule having satisfied, the Petitioner shall be deemed entitled to promotion on regular basis even though the appointment shown as temporary and that the Government's case that the Petitioner is promoted on adhoc basis is contrary to the Rules.

6. The Union of India admitted in part 8 of their affidavit that Petitioner was duly considered, by the D.P.C. held on 14th and 19th June, 1985 along with eligible candidates And his name Appeared at serial No. 65 of the eligibility list; and that due to limited number of vacancies, he could not be promoted on regular basis And his name was not included in the elected panel, And that some juniors who had bettered over all records than the Petitioner were Approved for promotion by the D.P.C.

7. Mr. Laskar submits that once the Petitioner was recommended for promotion by the D.P.C. held on 22.1.1985 and again recommended for promotion by the D.P.C. held on 14th And 19th June, 1985 and this time on regular basis, the requirement of service rule, vide Column No. 10, 11 And 12 of the schedule having satisfied And the Petitioner is holding the post from 1982 And that the Petitioner Is entitled to And shall be deemed in regular promotion in the absence-

of anything provided in the rule to the contrary and that the rule does not provide for the D.P.C. recommendation for temporary promotion.

8. The service rule limply provides for promotion on the recommendation of D.P.C. The Petitioner was holding the post from 24-12-1982 vide Memo No. 18801/AEE(C) /BR/EAI, dated 14th December, 1982 (Annexure-I) and he Was recommended for promotion by the D.P.C. held on 22.1.1985 and again on 19-6-1985 And as such the requirements of the rule was satisfied and the Petitioner?s appointment on 1-2-1985 having done in terms of the service rules, and being a regular promotion to the next higher post treating his service on adhoc basis vide Annexure 7 and 8 was a discrimination because of permanent promotion of his juniors vide Annexure 6 by-passing the Petitioner which was not in accordance with the Rules and was violative of Articles 14 And 16 of the Constitution on India.

9. The admitted position was that the Petitioner did not hold the post of Assistant Engineer (Civil) on adhoc between 1-1-1985, to 1-2-1985. He was promoted on 1-2-1983 vide order under Memo No. 18801/AEE (c)/DGER/EIA, dated 1st February, 1985 temporarily for a period of 6 (six) months on the basis "of the recommendation of D.P.C. held on 22nd January 1985 placing the Petitioner at serial No. 38 and on the expiry of that 6 (six) months his temporary/adhoc and promotion extended/continued for Anr. three (3) months from 1st August to 31st October, 1985 vide order under letter No. F. 138 (13)/84-Estt, dated 1st August, 1985 of the Deputy Secretary, Ministry of Shipping and Transport Border Roads Development, Border "B" Wing, New Delhi (Annexure-7), Admittedly, in the meantime, the Petitioner was recommended for promotion by the D.P.C. held for the second time on 19.6.1985. Again vide letter No. F. 138 (13)/84 Estt, dated 16th October, 1985 or the Deputy Secretary to the Government of India, Ministry of Transport, Department of the Surface Deptt, Border Roads Development, Border "B" wing, New Delhi (Annexure-8), extended/continued the adhoc appointment of the Petitioner for Anr. three (3) months from 1-11-1985 to 31.1.1986. When the Service Rules provides for promotion on the recommendation of D.P.C. and does not provide w motion/appointment on adhoc basis on the recommendation of D.P.C. the appointment/promotion of the Petitioner on 1st February, 1985 vide Annexure-4 on adhoc basis was not inconformity with the rules because the Petitioner was recommended by the D.P.C. held on 22nd January, 1985 and subsequently, on 19th June, 1985 for the second time, the subsequent two orders under Annexure 7nd 8 exteuding/continuing adhoc period, were also not inconformity with the Service, Rules because the Petitioner had already been recommended by the D.p.C. twice for promotion/appointment on substantive basis. The juniors of the Petitioner had been appointed/promoted on regular basis vide order of the Director General, Border Roads, New Delhi under Memo No. 18801/AEE (c)/DGBR/EIA, dated 6-8-1985 (Annexure-6) on the recommendation of the D.P.C. held on 19th June, 1985, There could be no reason as to why the appointment/promotion of the Petitioner was not regularised alongwith his juniors with effect from 6th August,

1985 in order to maintain his seniority alongwith his junior colleagues. The reason assigned by the Respondents in para 8 of their affidavit-in-opposition to give regular promotion/appointment to the juniors to the post of Assistant Engineer (Civil) depriving the Petitioner was not tenable and such action of the Respondents was discriminatory and no satisfactory ground could be shown to us for superseding the Petitioner by his juniors. The Petitioner was also entitled for regular appointment/promotion. in the post of Assistant Engineer (Civil) with effect from 6th August, 1985 as HE was already; holding the post of Assistant Engineer (Civil) at the relevant time (6th August, 1985) since 1st February, 1988. We find no force in the submission of learned Senior Central Govt, Standing Counsel Mr. Sk, Chand Mohanmad.

10. No adhoc appointment/promotion can be made against substantive vacancy, after recommendation by the D.P.C. unless service rule specifically provides such provision; and in the absence of such provision all appointments/promotion on the recommendation of the D.P.C. must be treated as regular appointment against substantive vacancy, if available.

11. This writ petition is allowed and the rule is made absolute.

12. We direct that the Respondents shall record the appointment/promotion of the Petitioner on substantive basis (regular) to the post of Assistant Engineer (Civil) with effect from 6th day of August, 1985 maintaining his inter-se-seniority.

13. We make no order as to cost.