
(2014) 05 GAU CK 0055
In the Gauhati High Court
Case No : W.A. No. 1 (AP) of 2013

Punyo Tangu

APPELLANT

Vs

State of Arunachal Pradesh

RESPONDENT

Date of Decision : 08-05-2014

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2014) 2 GLT 892

Hon'ble Judges : M.R. Pathak, J;Biplab Kumar Sharma, J

Bench : Division Bench

Advocate : D. Lazi, Advocate for the Appellant; K. Ete, AAG, A.P. and D. Pangang, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Biplab Kumar Sharma, J.—This writ appeal is directed against the judgment and order dated 06.12.2012 passed in WP(C) No. 115(AP)/2001. The present appellant was the writ petitioner therein and his writ petition challenging the promotion of the private respondents i.e. respondent Nos. 3 and 4 to the post of Assistant Engineer pursuant to the recommendation of the Departmental Promotion Committee (DPC) that was held in 2001 having been turned down, he has filed the instant appeal. The only ground on which the appellant has preferred this appeal against the said judgment and order, is that by the time the Departmental Promotion Committee(DPC) was convened for consideration of the case of the incumbents within the zone of consideration for promotion to the post of Assistant Engineer, the said two private respondents were not eligible, as regards the length of service in the feeder cadre i.e. Junior Engineer and consequently in the garb of extending relaxation they could not have been brought to the zone of consideration so as to be considered with the eventual recommendation for promotion to the post of Assistant Engineer. The case has a chequered history. The appellant had earlier approached this Court challenging the impugned promotion of the private respondents by filing WP(C) No.

115(AP)/2001. The writ petition was allowed by judgment and order dated 23.03.2004 setting aside the promotion of the private respondents and directing the official respondents to consider the case of the petitioner. Be it stated here that pursuant to the Departmental Promotion Committee (DPC) that was held in 2001, the private respondents had been promoted to the post of Assistant Engineer vide order dated 30.03.2001.

2. Pursuant to the aforesaid judgment and order, the appellant was promoted to the post of Assistant Engineer in 2004 and to be precise w.e.f. 19.07.2004 and notionally with effect from 30.03.2001, the date on which the private respondents had been promoted. The aforesaid judgment and order was put to challenge by the private respondents by filing a writ appeal being WA 08 (AP)/2007, which was disposed of by order dated 25.04.2011 by remanding the matter back to the learned Single Judge and while doing so, the earlier judgment and order dated 23.03.2004 was set aside. The Division Bench by its order dated 25.04.2011 while remanding the matter back to the learned Single Judge also referred to the earlier services of the private respondents which they had rendered as Technical Assistant, upon abolition of which they were re-designated as Junior Engineer.

3. It will be appropriate at this stage to refer to the relevant Recruitment Rules, namely, the Assistant Engineer (Civil), Group "B" Recruitment Rules, 1997 which was promulgated vide notification dated 21.04.1997. It was subsequently amended vide notification dated 24.10.1997. As per the said rules, promotion to the post of Assistant Engineer is to be made 50% by direct recruitment and 50% by promotion from amongst the Junior Engineers of the department within 8(eight) years regular service. There is also provision for consideration of the case of those incumbents who has 3 (three) years regular service in the cadre of Technical Assistant, which was subsequently abolished and re-designated as Junior Engineer. So far as the length of service is concerned, it was provided that the incumbent will have to have eight years of regular service in the feeder cadre. However, by subsequent amendment, notified on 24.10.1997, it was provided that the eight years experience will be applicable for diploma holder JEs and in respect of Engineering graduate JEs, the required experience in the feeder cadre will be 5 (five) years.

4. It is an admitted position that when the Departmental Promotion Committee(DPC) was held, the private respondents did not have the required eight years experience in the" feeder cadre of JEs and they were short by only one month. On the other hand, the writ petitioner-appellant was eligible for promotion he having had five years of regular service in the feeder cadre and being an Engineer graduate JE.

5. In the impugned judgment and order dated 06.12.2012, the learned Single Judge has referred to the fact that private respondents before their re-designation as Junior Engineers had been working as Technical Assistants and by the time the post of Technical Assistants had been abolished vide order dated

24.08.2000, they had to their credit more than 3 (three) years of service as Technical Assistant. As noted above, as per the Recruitment Rules, the incumbents having had three years of regular service as Technical Assistant are also eligible for promotion. Simultaneously those who have had 8(eight), years of service as Junior Engineers are also eligible for promotion.

6. Assailing the impugned judgment and order, Mr. D. Lazi, learned counsel for the appellant has submitted that when the eligible candidate for promotion to the post of Assistant Engineer was very much available, the private respondents would not have been considered for promotion by extending the relaxation and that too after the Departmental Promotion Committee (DPC) had met and recommended the case of the private respondents. He further submits that once the post of Technical Assistant had been abolished vide the Annexure-A order dated 24.08.2000, the private respondents were not entitled to count their service from 24.08.2000 and consequently they were not eligible for consideration for promotion to the post of Assistant Engineer, inasmuch as, they did not have eight years of regular service as Junior Engineer.

7. In support of the aforesaid submissions made by Mr. Lazi, learned counsel for the appellant, he has placed reliance on two decisions of the Apex Court reported in Joyachan M. Sebastian Vs. Director General and Others, and the one reported in R.S. Garg Vs. State of U.P. and Others,

8. Opposing the aforesaid submission, Mr. R.H. Nabam, learned State Counsel submits that if the authority decided to extend the relaxation having regard to the hardship that was caused to the private respondents, there was nothing wrong in it. According to him the grievance raised in the writ petition is misconceived. Mr. D. Panging, learned counsel representing the private respondents also submits that there is nothing wrong in the impugned judgment and order. He submits that the fact of the matter being that the private respondents had to their credit the earlier service as Technical Assistant, they were entitled to get their cases considered as per the Recruitment Rules, which provides for promotion even to the Technical Assistants having had 3 years of service in the feeder cadre.

9. We have given our anxious consideration to the submissions, made by the learned counsel for the parties and have also considered the relevant materials on record.

10. There is no dispute that the private respondents were initially appointed as Junior Engineer w.e.f. 01.5.1993. Thereafter they were promoted to the post of Technical Assistant w.e.f. 30.4.1997. By the time the post of Technical Assistant came to be abolished for the reasons stated in the order dated 24.08.2000, they had to their credit more than 3 (three) years of service as Technical Assistant. By the said order dated 24.08.2000, the post of Technical Assistant was re-designated as Junior Engineer. It was also indicated that the post of Technical Assistant would stand abolished and the same should be treated as Junior

Engineer. As would be evident from the said order dated 24.08.2000, such a course of action was adopted upon adoption of 3 tier pay structure of JEs serving under the Govt. of A.R. Thus, it is not the case that upon abolition of the posts the private respondents had been shunted out from the department or to some other posts.

11. The consequence of abolition of the post of Technical Assistant was that the private respondents had been re-designated as Junior Engineer instead of Technical Assistant. In view of this fact, the decision in Joyachan M. Sebastian (supra) is not applicable. In the said case, the Apex Court was concerned with the affect of abolition of post. It was held that on abolition of the post, the incumbent loses the right to continue in the post. In that case, upon abolition of post the incumbent was accommodated at his option in a vacancy available in a different region. Same is not the case in hand. With the abolition of the post of Technical Assistant, the same was re-designated as Junior Engineer and the private respondents continued to hold the said post.

12. Much have been emphasized by the learned counsel for the petitioner that irrespective of whether the private respondents were lacking only one month of service in the feeder cadre, the authority could not have extended the relaxation so as to make them eligible for promotion. In this connection, he has referred to the decision in R.S. Garg (supra). In the said case dealing with the particular rules framed under Article 309 of the Constitution of India, it was held by the Apex Court that relaxation can be extended only in case of showing hardship to the particular incumbent (s). Referring to the clause of relaxation it was held that it will be only on showing the hardship, relaxation can be extended and not otherwise. Referring to this case, it is the submission of the learned counsel for the appellant that he private respondents could not have been extended with the relaxation in absence of any hardship.

13. As has been held by the Apex Court in Shri. Amrik Singh and Others Vs. Union of India (UOI) and Others, , if any rule and regulation affects an employee and cause undue hardship, than the iniquitous consequence thereof may be relieved by relaxation of the concerned rule or regulation. In Sandeep Kumar Sharma Vs. State of Punjab and others, , the Apex Court dealing with the case of single beneficiary of the clause of relaxation held that such relaxation) is permissible. It was held that the power of relaxation, even if generally included in the service rules, could either be for the purpose of mitigating hardship or to meet special and deserving situation.

14. In the instant case, prior to issuance of the above referred order dated 24.08.2000 abolishing the post of Technical Assistant so as to be merged with that of Junior Engineer and re-designating the Technical Assistants as JEs, the petitioners had been occupying the said promotional post of Technical Assistants w.e.f. 30.04.1997 and thus by the time the order dated 24.08.2000 came into being, they had rendered more than 3 (three) years of service as Technical Assistant. Earlier, they were serving as Junior Engineer w.e.f. 1.5.1993 from

which post they were promoted to the post of Technical Assistant w.e.f. 30.4.1997 and therefore again re-designated as JE. If the entire period is counted, they had completed about eight years of service by the time the Departmental Promotion Committee (DPC) was convened. The Departmental Promotion Committee (DPC) was held on 20.03.2001 and they were short by about one month of service as Junior Engineer. It was in the aforesaid circumstances, the authority felt it prudent to provide relaxation to the private respondents vide order dated 30.03.2001.

15. Having regard to the situation in which the private respondents were in by virtue of their initial appointment as Junior Engineer, thereafter their promotion to the post of Technical Assistant and with the abolition of the post of Technical Assistant, their re-designation again as Junior Engineer, the authority decided to extend relaxation in view of the hardship that was caused to the private respondents. In such circumstances, we are of the considered opinion that it cannot be said to be a case of providing undue benefits to the private respondents. As regards the plea that relaxation could not have been provided after holding of the Departmental Promotion Committee(DPC) on 20.03.2001, while it is true that the relaxation was extended by order dated 30.03.2001, but at the same time the authority could not have been oblivious of the fact that by the time the Departmental Promotion Committee(DPC) was held, the private respondents had to their credit the requisite length of service as Technical Assistant, which was one of the eligibility conditions provided in the Recruitment Rules.

16. As noted above, as per the Recruitment Rules, the requirement was either 3 (three) years of service, as Technical Assistant or 8(eight) years of service as Junior Engineer. Thus viewed from both the angles i.e. experience as Technical Assistant and Junior Engineer in feeder cadre, the authority was within its competence and jurisdiction to provide relaxation to the private respondents. If we strictly go by the Recruitment Rules, even without such relaxation and as has been held by the learned Single Judge, the private respondents were eligible for promotion having three years of service to their credit as Technical Assistant.

17. In view of the above, we do not find any infirmity in the judgment impugned in this writ appeal and consequently we also do not find any merit in the appeal. Accordingly the writ appeal is dismissed.

18. Before parting with the case records, we place on record the submission made by the learned counsel for the parties that pursuant to the initial judgment of the learned single Judge, the petitioner-appellant has been promoted to the post of Assistant Engineer vide order dated 19.07.2004 effective from 30.03.2001. While not interfering with the said order it is hereby provided that irrespective of the said position, the private respondents would continue to rank senior to him inasmuch as, they were senior to him in the feeder cadre of Junior Engineer. Be it stated here that while the private respondent's seniority positions were at SI No. 34 and 35, that of the writ petition-appellant was at SI. No. 119 in

the feeder cadre of JE. Subject to the above observation, the writ appeal is dismissed, without however, any order as to costs.