
(2002) 01 GAU CK 0011

In the Gauhati High Court

Case No : Writ Petition (C) No. 188 (AP) of 2000

Raj Bamin

APPELLANT

Vs

State of Arunachal Pradesh and Others

RESPONDENT

Date of Decision : 28-01-2002

Acts Referred:

Citation : (2002) 01 GAU CK 0011

Hon'ble Judges : P.C. Phukan, J

Bench : Single Bench

Advocate : T. Michi, for the Appellant; P.K. Mushahary, GA, for the Respondent

Final Decision : Allowed

Judgement

P.C. Phukan, J.—Heard Mr. T. Michi, learned counsel for the petitioner, and Mr. P.K. Mushahar, learned Govt. Advocate for the State respondents.

2. I have also considered the affidavit-in-opposition filed on behalf of the Respondent No. 3 and the related documents as well as the writ petition and the annexures thereto, and the records of the proceedings of the DPC held on 3.2.2000 produced by the learned Government Advocate.

3. The petitioner Shri Raj Bamin was appointed as LD Clerk under the Deputy Commissioner, Lower Subansiri District, Ziro on 24.4.1985 and thereafter his services were regularised in the year 1996. In the year 1990, the petitioner alleges, "some other LDCs were promoted to the post of UD Clerk (UDCs) but the case of the petitioner was not considered. He was informed that due to adverse remarks in the ACRs for the year 1988-90 he was not found fit for promotion. On his request the adverse remarks were communicated to him in the year 1991. The representation submitted by the petitioner was considered and rejected and the adverse remarks remained. In the year 1997 he was informed that his matter will be placed before the next Departmental Promotion Committee. But nothing has been done. The petitioner then filed Civil Rule No. 5869 of 1997.

4. It was submitted by the learned counsel in above-mentioned Civil Rule that the adverse remarks for the years 1988-90 were never communicated to the petitioner and as such, the same should not have been taken into consideration by the authority while considering the case of the petitioner for promotion in the year 1990. This Court by an order dated 2.12.1999 (Annexure-A) disposed of the said Civil Rule CR-5869 of 1997 with a direction to consider the question of promotion of the present petitioner to the post of UD Clerk within a period of 3 (three) months and pass necessary orders. This Court further directed that the petitioner's claim for promotion from the date when his junior was promoted in June, 1990 shall also be considered by the DPC, keeping in view the relevant provisions of law.

5. Subsequently, on the recommendation of DPC held on 3.2.2000, the petitioner was promoted to the post of UDC w.e.f. 31.10.1996 by the impugned order dated 3.2.2000, issued by the Deputy Commissioner, Papun Pare District, Itanagar (Annexure-B). It is stated therein that the pay and allowances would be admissible from the date he reports for duty at SP's office, Papum Pare District, Itanagar and his seniority will be counted from 31.10.1996.

6. Mr. Michi, learned counsel for the petitioner, submits that the impugned order is contrary to this Court's order dated 2.12.1999 passed in CR No. 5869 of 1997 that the claim of the petitioner for his promotion from the date when his junior was appointed in June, 1990 shall be considered by the DPC. This submission is not tenable since the DPC did consider such claim of the petitioner pursuant to this Court's Order dated 2.12.1999 as is evident from the records of the proceedings of the DPC held on 3.2.2000 and on such consideration rejected his claim finding that he was rightly not promoted in June, 1990 because of his adverse ACR duly communicate to him. In para 7 of the affidavit-in-opposition, it has been categorically stated that a memorandum dated 19.6.1990 (Annexure-1 of the affidavit-in-opposition) was issued to the petitioner intimating adverse remarks in the ACR and also advising him to improve his performance. That being so, the principle enunciated in the decision reported in Gurdial Singh Fijji Vs. State of Punjab and Others, is not applicable in the instant case wherein it has been held:

"The principle is well-settled that in accordance with the rules of natural justice, an adverse report in a confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has an opportunity to improve his work and conduct or to explain the circumstances leading to the report. Such an opportunity is not an empty formality, its object, partially, being to enable the Superior authorities to decided on a consideration of the explanation offered by the person concerned, whether the adverse report is justified."

7. However, once on the recommendation of the DPC held on 3.2.2000, the petitioner was promoted with retrospective effect from 31.10.1996 and his seniority also was allowed to be counted from 31.10.1996 the State respondents

could not have directed that his pay and allowances would be admissible only from the date he report for duty as UDC. The impugned order dated 3.2.2000 (Annexure-B) is hereby set aside so far as it relates to this direction, that the pay and allowances of the petitioner would be admissible from the date he reports for duty as UD Clerk. The State respondents are directed to give the petitioner pay and allowance of UD Clerk with other consequential benefits with effect from 31.10.1996.

8. The petitioner shall furnish a certified copy of this order along with a copy of the writ petition and the annexures to the State respondents, more particularly, the Deputy Commissioner (Respondent No. 2) Papum Pare District, Itanagar, who shall comply with the above direction of this Court within two months from the date of receipt of the same.

9. This writ petition is allowed to the extent indicated above. No. costs.