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**(2003) 09 GAU CK 0034**

**In the Gauhati High Court**

**Case No : Writ Petition (C) No. 283 (SH) of 2001**

Rijied Singh Rynjah

APPELLANT

Vs

Meghalaya State Electricity Board and Others

RESPONDENT

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**Date of Decision : 26-09-2003**

**Acts Referred:**

**Citation : (2004) 2 GLR 624 : (2004) 1 GLT 7**

**Hon'ble Judges : Ranjan Gogoi, J**

**Bench : Single Bench**

**Advocate : A.M. Majumdar and T. Yangi, for the Appellant; K.S. Kynjing, K. Sunar, G.S. Massar and E.C. Suja, for the Respondent**

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## **Judgement**

Ranjan Gogoi, J.—The grievance raised in the present writ application is with regard to what the writ petitioner comprehends to be unequal and unfair treatment meted out to him and the indulgence and favouritism shown to the respondent No. 3, thereby enabling the said respondent to steal a march over the petitioner in service. A selection and consequential promotion made on 3.7.1997 to the post of Joint Secretary in the Meghalaya State Electricity Board and the belated promotion of the petitioner to the same rank made in the year 2000, are incidental aspects of challenge in the present writ application.

2. The writ petitioner joined service in the erstwhile Assam Electricity Board in the year 1972 as Assistant Personnel-cum-Welfare Officer. His services were retained after bifurcation of the Assam State Electricity Board and creation of the Meghalaya State Electricity Board and thereafter the petitioner was absorbed in the said post in the Meghalaya State Electricity Board. In the year 1980, he was allowed to officiate as the Personnel Officer. On 23.2.1988, the petitioner was provisionally promoted as Personnel Officer and the said promotion was regularized by an order dated 6.7.1993. Thereafter, by an order dated 12.12.1994, the petitioner was promoted to the post of Deputy Secretary of the Board.

The Petitioner has further averred, that the respondent No. 3 who was also promoted as a Deputy Secretary of the Board by the same order dated 12.9.1994, joined service in the year 1972 as a Typist and thereafter was promoted as Assistant Superintendent and Superintendent in the Land Cell Wing of the Board. He was promoted as the Under Secretary of the Board with effect from 3.5.1992, prior to his promotion to the post of Deputy Secretary made by the same order dated 12.9.1994, by which the petitioner was also promoted to the rank of Deputy Secretary. The petitioner contends, that the careergraph indicated above, would go to show that the petitioner had held more responsible assignments in the Board and in terms of educational qualifications also, the writ petitioner was better qualified. According to the writ petitioner, the authority at this stage, displayed certain irrational and arbitrary actions, leading to the promotion of the respondent No. 3 to the post of Joint Secretary of the Board made by order dated 3.7.1997. A brief resume of the facts and circumstances leading to the said promotion of the respondent No. 3 as pleaded by the petitioner, would therefore, be necessary.

3. Under the Meghalaya State Electricity Board Service Regulations, 1996, in force, after the post of Secretary of the Board which has been included in category 1 of Clause 1 of the posts mentioned under Regulation 4(A.) of the Regulations, the next higher post was that of Deputy Secretary. Under the Regulations in force, the post of Secretary could be filled up either by deputation or by promotion from the rank of Deputy Secretary. Five years" of service in the post of Deputy Secretary was stipulated by the Regulations as the requisite length of service so as to entitle an incumbent for promotion to the post of Secretary. The Board, by a Resolution, approved by circulation amongst the members, took a decision on 24.6.1997 to create a post of Joint Secretary in the Board, and the Board also took the decision for incorporation of the following provisions in Annexure-1 of Schedule-1 of the Service Regulations in force :

"Name of the Post: Joint Secretary Category : Class-I, Category-II Pay Scale : Rs. 230-300(5)-9730-3300(9)-12700. Method of filling the vacancy : By promotion from the serving Deputy Secretaries of the Board. Education Qualification : Degree in Arts or Science or Commerce Experience : A minimum, of 2 years of service in the rank of Deputy Secretary. Appointing Authority : Board. Transferring Authority : Chairman."

Thereafter, a Departmental Promotion Committee was constituted to fill up the said post and a meeting of the said Committee was held on 1.1.1997 and in the said meeting, on a consideration of the previous 3 years" ACRs of the writ petitioner, the respondent No. 3 and another incumbent, i.e., one Shri J.C. Das, the respondent No. 3 was found to be the most suitable candidate for promotion by application of the criteria of "merit with due regard to seniority". It may be noticed at this stage, that under the Regulations in force, an elaborate procedure for promotion is contemplated which does not appear to have been followed by the respondent authority in "the matter of the instant promotion. Even the

requirement of consideration of 5 years" ACRs as spelt out by the Regulations was dispensed with and the respective candidates were assessed on the basis of ACRs of the previous 3 years. One additional fact has also to be taken note of, i.e., that the then Secretary of the Board, one Mr. Kumar, who was a member of the Departmental Promotion Committee, had circulated a note with regard to the suitability of the three incumbents for the promotion and in the said note it was suggested that the respondent No. 3 would be the most suitable candidate for promotion. The Departmental Promotion Committee held its deliberations on the above basis, and on the basis of the recommendations made in favour of the respondent No. 3, an order dated 3.7.1997 was passed promoting the respondent No. 3 to the post of Joint Secretary. What again must be noticed, is that the resolution of the Board for amendment of the Service Regulations by incorporating the newly created post, was notified by Office Memorandum dated 21.11.1998, i.e., much after the promotion of the respondent No. 3.

4. Placing the above facts, Mr. A.M. Mazumdar, learned senior counsel who has argued the case of the petitioner, has vehemently contended that the entire exercise of creation of the post, prescription of qualifications, holding of the meeting of the Departmental Promotion Committee and the eventual promotion order, reflects a pre-conceived mind of the authority to favour the respondent No. 3 with the promotion. The petitioner's better qualifications and highly satisfactory track record, as compared to that of respondent No. 3, was ignored. Not only the authority acted in great haste, but the authority also proceeded to finalize the promotion in flagrant violation of the provisions of the statutory Regulations in force. The consideration of the case of the petitioner, according to learned counsel, is no consideration in the eye of the law and the exercise has now to be repeated by due and proper application of the relevant provisions of the Regulations. Mr. Mazumdar, has further submitted that subsequently in the year 2000 the petitioner has been promoted to the same rank, i.e., Joint Secretary first by upgrading the post of Personnel Officer held by him to that of Officer on Special Duty in the Board, and thereafter, by redesignating the post of Officer-on Special Duty as Joint Secretary. The promotion given to the petitioner has come at a belated stage and the respondent No. 3, by virtue of the apparently illegal promotion granted to him in the year 1997, has become senior to the writ petitioner thereby enabling him to steal a march over the petitioner in the matter of subsequent promotion to the post of Secretary of the Board, as and where the same would be made.

5. In support of the submissions advanced, Mr. Mazumdar has relied on a decision of the Apex Court in the case of Dr. S.P. Kapoor, Appellant v. State of Himachal Pradesh and Ors., reported in AIR 1981 SC 2181. The facts in S.P. Kapoor's case as noted in para 33 of the judgment are altogether different and distinguishable from the facts of the present case. In the said case, the Promotion Committee Meeting for regularization of ad-hoc employees was held on a date when the Secretary of the Department who was a member of the Promotion Committee, was on leave, by nominating another officer as a member

of the Committee. The Apex Court took the view that as the leave of the Secretary was only for a couple of days, the haste with which the meeting was convened and held was suggestive of the fact that the meeting was so held as in a meeting of the regular committee, the ad hoc appointments may not have been approved by the committee. The ratio laid down would hardly apply to the facts of the present case. Reliance has also been placed on behalf of the petitioner on another judgment of the Apex Court reported in *State Bank of India and others Vs. Mohd. Mynuddin*, A perusal of para 5 of the judgment on which reliance has been placed, does not indicate, in any manner, as to how the observations, contained in the aforesaid para 5 assists the petitioner. The last case on which reliance has been placed on behalf of the petitioner is reported in *Badrinath Vs. Government of Tamil Nadu and Others*, In the aforesaid case, the Apex Court, inter alia, laid down that the assessment made by the Departmental Promotion Committee would be liable to be interfered with by the Court only by application of the principle of *Wednesbury unreasonableness*. The parameters for the exercise of the writ power and the scope and extent of the Court's jurisdiction to interfere with the conclusions of the Promotion Committee, are questions to which we shall presently turn.

6. While there can be no manner of doubt that the authority of the MeSEB did act in some haste in proceeding with the promotion in question, and such haste has not been explained in the affidavit filed by the authority of the MeSEB, the question that would confront the Court in the present proceedings is whether the decision of the Promotion Committee should be set aside merely because it has been arrived at in haste. Acting in any particular matter in haste and without scrupulously following the laid down procedure, is at best indicative of the possibility of a wrong being committed. A mere action in haste ought not to form the basis of a Court's decision and unless the Court is satisfied from a scrutiny of all the surrounding materials that the decision arrived at is palpably wrong, interference would not be normally called for. This is precisely the reason why this Court gave repeated opportunities to the Counsel appearing for the MeSEB to produce before the Court the proceedings of the selection as well as the ACRs of the concerned officers. The same having been placed before the Court, has been duly perused and what this Court finds, is that though technically the proceedings of the Promotion Committee do not conform to the requirements of the Service Regulations, yet having regard to the totality of the materials made available before the Court, it will be a futile exercise to direct a re-consideration of the matter by the Departmental Promotion Committee. The ACRs of the 5 years preceding the year of promotion of the writ petitioner and respondent No. 3 have been placed before the Court. While it is correct that it is not function of the Court to consider the said ACRs by conferring upon itself any powers of the Promotion Committee, yet in deciding as to whether a matter should be remanded to the authority for a de novo consideration, the futility of the proposed exercise, would be a relevant factor that should guide the Court in deciding on the necessity of issuing a direction for a re-consideration of the

matter. It would be appropriate to rely herein on the following passage from the decision of the Apex Court in *Tata Cellular v. Union of India* 1994(6) SCC 651 :

"An innovative approach is made by Clive Lewis as to why the courts should be slow in quashing administrative decisions (in his *Judicial Remedies in Public Law* 1992 Edn. 294). The illuminating passage reads as under :

The courts now recognize that the impact on the administration is relevant in the exercise of their remedial jurisdiction. Quashing decisions may impose heavy administrative burdens on the administration, divert resources towards reopening decisions and lead to increased and unbudgeted expenditure. Earlier cases took the robust line that the law had to be observed, and the decision invalidated whatever the administrative inconvenience caused. The courts nowadays recognize that such an approach is not always appropriate and may not be in the wider public interest. The effect on the administrative process is relevant to the courts' remedial discretion and may prove decisive. This is particularly the case when the challenge is procedural rather than substantive, or if the courts can be certain that the administrator would not reach a different decision even if the original decisions were quashed. Judges may differ in the importance they attach to the disruption that quashing a decision will cause. (emphasis is mine) They may also be influenced by the extent to which the illegality arises from the conduct of the administrative body itself, and their view of that conduct."

The ACRs of the petitioner and the respondent No. 3 placed before the Court amply disclose that the record of service as well as the specific gradings in the ACR of respondent No. 3 are far superior to those of the writ petitioner. The gradings in the ACRs are expressed in arithmetical formulation/figures. In such a situation, this Court can reasonably take the view that having regard to the provisions of the service. Regulations which require assessments for promotion to be made in a preset manner and largely, if not solely on the basis of the gradings in the ACRs, the exercise which the petitioner has repeatedly prayed for, i.e., reconsideration of the entire matter by a fresh Departmental Promotion Committee would indeed be a futile exercise.

A writ Court before directing re-consideration of the matter by the authorities must be satisfied that the re-consideration directed would be a meaningful and not a futile exercise. Applying the above principle to the facts of the present case, this Court without converting itself into a fact-finding body and without conferring upon itself any powers of the Departmental Promotion Committee is inclined to take the view that the materials on record do demonstrate that a re-consideration of the matter, even if directed, would be largely futile.

7. Consequently, this Court while holding the decision taken by the MeSEB to promote the respondent No. 3 to the post of Joint Secretary, to be irregular, is of the view that the said decision need not be interfered with in the exercise of the discretionary power under Article 226 of the Constitution. It will be sufficient to hold that the authorities of the MeSEB had acted in haste and in departure to the

norms set by itself in the Service Regulations. Such actions of public functionaries dealing with rights of individual citizens, needs to be deprecated by the Court. Beyond that, no further directions, would be called for in the facts and circumstances of the case.

8. Writ Petition shall stand closed in terms of the directions.