
(1995) 02 GAU CK 0012
In the Gauhati High Court
Case No : Civil Rule No. 2100 of 1991

Takiuddin Ahmed

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision : 14-02-1995

Acts Referred:

Citation : (1995) 2 GLR 55

Hon'ble Judges : H.K. Sema, J

Bench : Single Bench

Advocate : B.N. Sarma, for the Appellant; Government Advocate, for the Respondent

Judgement

H.K. Sema, J.—In this writ petition, the Petitioner has assailed the promotion of Respondents No. 4 to 9 as Asstt. Engineer, Mechanical on officiating basis.

2. Notices were issued to the Respondents 4 to 9 by registered A/D on 20.8.94. Despite of the notices none appear on behalf of the Respondents 4 to 9. Mr. E.Y. Renthungo learned Jr. Govt. Advocate representing the Respondents 1, 2, and 3 also expresses his inability to file counter because of non-cooperation of the official Respondents. At the same time this is a case of 1991 and deserve expeditious disposal. This being the position, the matter is disposed of on merit on the basis of the materials available on record after hearing Mr. B.N. Sarma learned Counsel for the Petitioner.

3. Final seniority list of Mechanical Overseer Grade-II as on 1.1.92 was published by the authority. In the said final seniority list, the name of the Petitioner appeared in serial No. 8. Respondent No. 4 in serial No. 12 Respondent No. 5 in serial No. 20 Respondent No. 6 in serial No. 15 Respondent No. 7 in serial No. 11, Respondent No. 8 an serial No. 13 and Respondent No. 9 in serial No. 10. According to the final seniority list, therefore the Petitioner is senior to all the Respondents in the order of Overseer Grade 1. The grievance of the Petitioner is that, despite of he being to all Respondents 4 to 9, the Petitioner is still working

as overseer Grade (sic) whereas the Respondents 4 to 9 have been promoted on officiating basis to the post of Asstt. Engineer in the Mechanical department.

4. The promotion of Respondents 4 to 9 to the post of Asstt. Engineer, Mechanical on officiating basis has been annexed in this writ petition and marked is Annexure 2 to 7. The language used in the appointment order is all similar. The Respondent 4 to 9 have been promoted on officiating basis with a stipulation that:

(a) promotion is purely on temporary officiating basis subject to regularisation by the Departmental Promotion Committee, and

(b) will not confer any right on him to claim seniority on his seniors.

(Emphasis supplied)

5. It is contended by Mr. B.N Sarma that the Respondents 4 to 9 are still holding the post on temporary basis and no D.P.C. has been held ever since the appointment of the Respondents.

From the final seniority list, there is no dispute that the Petitioner is senior to Respondents 4 to 9 in the cadre of Overseer Grade - I. There is also no dispute that the Petitioner has been allowed to supersede by his juniors whose name appeared below the serial number of the Petitioner in the final seniority list in the cadre of Overseer Grade - I as on 1.1.92

7. It is amazing to know that instead of promoting the incumbents on regular basis through D.P.C, the Respondents are arbitrarily exercising the power of pick and choose and making officiating promotion subject to regularisation by D.P.C. and allowed the officiating promotees without constituting the D.P.C. for years together thereby depriving the right of the Petitioner for consideration of promotion to the post of Asstt. Engineer. It is more amazing that some of the Respondents have been promoted on officiating basis subject to regularisation by D.P.C. in 1979 and they are still continuing as on officiating basis without constituting regular D.P.C. This practice has been deprecated by a catena of decision of this Court. This Court, in similar circumstances has already observed that the D.P.C. should be held every year subject to vacancy for regular appointment. In the instant case, this has not been done. The Petitioner has taken a grievance because once a regular D.P.C. is constituted he is entitled to be considered for promotion to the post of Asstt. Engineer on regular basis keeping in view of his seniority. However, since no regular D.P.C. has been constituted, the right to consider has been deprived in the case of the Petitioner.

8. After hearing Mr. B.N. Sarma, learned Counsel for the Petitioner and after taking into consideration into the entire facts and circumstances of this case and in the interest of justice, equity and fair play, I disposed of this writ petition with the following directions:

(1) The Commissioner and Secretary, Works and Housing shall within a period of one month from the date of receipt of this order constitute a Departmental

Promotion Committee for considering the promotion of all eligible Grade-I Mechanical Overseers to the post of Asstt. Engineer, Mechanical on regular basis.

(2) The post which would be requisitioned for filling up on regular basis would include the post now held by Respondents 4 to 9.

(3) All the cases of eligible candidates now working in the cadre of Overseer Grade-I, Mechanical shall be forwarded to the D.P.C. for promotion to the post of Asstt. Engineer on regular basis.

(4) The D.P.C. thereafter shall consider all the eligible candidates for promotion to the post of Asstt. Engineer on regular basis and shall prepare a list in order of merit keeping in view of the interse seniority in the cadre of Overseer Grade-I.

(5) The entire process shall be completed within a period of two months from the date of receipt of this order.

With the aforesaid direction, this petition is disposed.

No Costs.