
(2015) 05 GAU CK 0076

In the Gauhati High Court

Case No : W.A. No. 04 (AP) of 2014 in W.P.(C) No. 372 (AP) of 2010

Taku Taya

APPELLANT

Vs

State of Arunachal Pradesh and Others

RESPONDENT

Date of Decision : 15-05-2015

Acts Referred:

Citation : (2015) 3 GLT 676

Hon'ble Judges : Biplab Kumar Sharma, J;Manojit Bhuyan, J

Bench : Division Bench

Advocate : M. Batt, N. Bakhang, G. Tadi, M. Pussang, M. Tamar and T. Chungma, for the Appellant

Final Decision : Allowed

Judgement

Biplab Kumar Sharma, J—This appeal is directed against the judgment and order dated 07.04.2014 passed by the learned Single Judge in WP(C) No. 372 (AP) 2010, by which the writ petition that was filed by the appellant has been dismissed. However, it has also been provided that since the petitioner has completed the qualifying service for promotion, his case may be considered by holding Departmental Promotion Committee (DPC) as per the Recruitment Rules of 2005, applicable to the case. The grievance of the writ petitioner/appellant is that his case was not even placed before the DPC, which sat on 19.03.2007, pursuant to which the private respondents were promoted to the post of Assistant Engineer vide order dated 05.06.2007. The writ petitioner/appellant wants consideration of his case at par with his said juniors from the date when their case was considered. We have heard Mr. M. Batt, learned counsel for the appellant and have also heard Ms. G. Deka, learned State Counsel. Entertaining the appeal on 11.05.2015, we directed the learned State Counsel to produce the Minutes of the Selection Committee. Today, she has produced the relevant file containing not only the Minutes of the DPC, all related materials produced before the DPC. On perusal of the said file, we find that the authority had placed the tentative Gradation List of Junior Engineers (Civil) as of 28.05.2005, in which the

name of the petitioner appeared at Sl. No. 110 and that of the private respondents at Sl. No. 111 and 112. Thus, even on the date of placing the materials before the DPC, the writ petitioner/appellant was senior to the private respondents. However, his case was not placed before the DPC, coupled with the fact that while furnishing other related particulars including the results of the Departmental Professional Examination, the fact of clearing the said examination by the writ petitioner/appellant in 2005 was also not placed before the DPC. The records have shown that the results of the Departmental Professional Examination as on 16.01.2007 was placed before the DPC. However, there is nothing to show the fact that the writ petitioner/appellant had cleared the said examination in 2005 was ever apprised to the DPC.

2. It is true that while the writ petitioner/appellant is a Diploma holder Junior Engineer and the private respondents are Degree holder Junior Engineer but the fact of the matter is that the writ petitioner/appellant acquired the relevant eligibility i.e. 8 years of service in the feeder cadre in 2005. Additionally, he also obtained Engineering Degree in 1999. Although the respondents have taken the plea that the said degree is yet to be recognized, but the fact of the matter is that the writ petitioner/appellant was allowed study leave in respect of the Degree Course he had undertaken. Even otherwise also, the writ petitioner/appellant having acquired the relevant eligibility as on 2005 and the DPC having met in 2007, irrespective of the said Degree qualification, the case of the writ petitioner/appellant ought to have been placed before the DPC he being senior to the private respondents.

3. In view of the above, the impugned judgment stands modified directing the respondents to consider the case of the petitioner as of 2007 when the case of the private respondents had been considered. Facilitating the said exercise, a review DPC shall be convened towards consideration of the case of the writ petitioner/appellant applying the same yardsticks and parameters as had been applied in the case of the private respondents while considering their case. In the event, the petitioner is found suitable for promotion, necessary consequential order shall be issued treating his promotion from the date when his juniors were promoted. However, he will not be entitled to any back wages, but his pay should be fixed notionally as he did not shoulder the responsibility of the higher post.

4. Let the required exercise in terms of this order be carried out and completed as expeditiously as possible, preferably within 3 (three) months. Writ Appeal is allowed to the extent indicated above, without however, any order as to costs.