

(1998) 07 GAU CK 0039
In the Gauhati High Court
Case No : Civil Rule No. 506 of 1997

Y. Chaoba Singh

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 14-07-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1998) 4 GLT 312

Hon'ble Judges : N. Surjamani Singh, J

Bench : Single Bench

Judgement

N. Surjamani Singh, J.—In this writ petition, the Petitioner namely, Shri Y. Chaoba Singh made a prayer for setting aside or quashing the whole proceedings of the Departmental Promotion Committee (DPC) meeting held on 19.4.97 in connection with the recommendation and appointment by promotion to the post of Block Development Officer (Junior) on the Director of Rural Development and Panchayati Raj, Manipur, coupled with a prayer for setting aside the promotion order dated 2.9.96 as in Annexure A/5 to the writ petition, by contending inter-alia that, the writ Petitioner was initially appointed in the post of Progress Assistant on regular basis on 27.12.68 in the Department of Rural Development and Panchayati Raj and he had already rendered 28 years of service without any stigma and he also procured a very good service record, but, a junior Project Assistant namely Shri N. Sharatchandra Singh, the Respondent No. 3 had been given ad-hoc promotion/appointment to the post of Block Development Officer (Jimior) Kakching C.D. Block Langmeidong by superseding the writ Petitioner vide order dated 2.9.96 as in Annexure-A/5 to the writ petition.

2. According to the writ Petitioner, in the related combined final seniority list as in Annexure A/3, the name of the Petitioner is shown as against serial No. 5 whereas, the name of Respondent Nos. 3, 4 and 5 are shown as against serial No. 6, 7 and 8 respectively and, as such, the writ Petitioner is senior to all those private Respondents but the competent authority without considering the

seniority position of the writ Petitioner prepared another unpublished seniority list as in Annexure A/4 to the writ petition showing the name of the writ Petitioner below the names of the Respondent Nos. 3 and 5, which is prepared and used by the present Respondent No. 2 namely the Secretary/Commissioner, Department of Rural Development and Panchayati Raj, Govt. of Manipur, with some extraneous reasons in collusion with the private Respondents in order to accommodate the junior incumbents to the exclusion of a senior person like the writ Petitioner. It is also the case of the writ Petitioner, that the competent authority had recommended the names of the private Respondents for appointment to the post of Block Development Officer (Junior) and, accordingly, they have been given appointment in the said posts vide order dated 2.5.97 (Annexure-A/7 (a)) and order dated 4.6.97 as in Annexure A/7. It is also urged, that at the time when the Respondent No. 3 was given ad-hoc promotion by virtue of the order dated 2.9.96 as in Annexure A/5 to the writ petition, the writ Petitioner raised objection and also made representation with the competent authority for review of the said order of 2.9.96. as seen in the document marked as Annexure A/6 to the writ petition out, the competent authority paid no heed too. Having no alternative, the Petitioner approached this Court with this writ petition for an appropriate order and direction from end of this Court.

3. The case of the writ Petitioner is contested by the Respondents by filing counter affidavit and contending interalia that, the said inter-se seniority list as in Annexure A/4 has been prepared on the basis of the date from which the incumbents/officials holding the feeder posts became eligible for consideration for promotion to BDO (Jr.) and this was done by taking into account the date of their regular appointments and the length of qualifying service as prescribed by the related Recruitment Rules as in Annexure A/2 to the writ petition. It is also asserted that the post of BDO (Jr.) is a selection post and as such, all the persons falling in the zone of consideration whose cases were duly considered by the DPC concerned on the basis of merit and service records including seniority positions and, that the said inter-se seniority list was prepared for the use by the DPC concerned and it was confidential, hence, it cannot be expected to be widely published like other documents. The concerned DPC duly considered the case of the eligible candidates who are in the feeder list for promotion to the post of BDO (Jr.) and the DPC recommended the case of the duly selected, candidates for appointment to the post of BDO. The Respondent No. 4, being a Scheduled Tribe has been recommended against the Reserved (ST) quota as the appointment of Respondent No. 4 falls on the reserved seats of scheduled Tribe according to the 100 point Roster. It is also the case of the State-Respondents, that the Respondent No. 3 was not given ad-hoc promotion in the post of BDO (Jr.) at any point of time but he was simply allowed to look after the charge of BDO to meet the administrative requirements and exigencies of services and, such arrangement does not confer any automatic right of promotion to the Respondent No. 3 to the said post of BDO (Jr.).

4. Mr. H.N.K. Singh, learned senior Counsel appearing for the Petitioner

submitted, that the writ Petitioner has been superseded by his three juniors and his seniority position was not at all considered by the competent authority at the time of selection and appointment in higher post of DBO(Jr.) which is quite unconstitutional and violative of Articles 14 and 16 of the Constitution of India. The learned senior Counsel also argued, that the impugned inter-se seniority list as in Annexure A/4 was never published and known to the writ Petitioner, by which the writ Petitioner has been placed below the Respondent Nos. 3 and 5 which is quite arbitrary and malafide. According to Mr. H.N.K. Singh, the writ Petitioner has procured a very good service record and he had already rendered 28 years of service without any stigma and, as such, the competent authority ought to have recommended his case and given promotion to the post of BDO (Jr.) and he should not be superseded by his junior like Respondent Nos. 3, 4 and 5. The learned senior Counsel also argued, that the related original file containing the entire proceedings of the said DPC may be examined by this Court for just determination of the real points in controversy between the parties.

5. At the hearing, Mr. A Jagatchandra Singh, the learned Addl. Govt. Advocate for the state-Respondents submitted, that the Respondent No. 3 was not given ad-hoc promotion to the post of BDO (Jr.) and simply he was allowed to look after the charge of the said post for a temporary period to meet the administrative requirements and exigencies of services. That can be seen from the order itself, i.e. order of 2.9.96 as in Annexure A/5 to the writ petition. The said order also highlights that such arrangement will not confer any automatic right upon the Respondent No. 3 for promotion to the post of BDO (Jr.) as and when filling up of such regular vacancy is considered. Therefore, the contentions and submissions of the writ Petitioner is misconceived, the learned Addl. Govt. Advocate argued. It is also submitted, that the said impugned inter-se seniority list was prepared on the basis of the date/dates from which the individuals/officials in the feeder posts became eligible for consideration for promotion to the post of BDO (Jr.) and it was applicable only to the said DPC held at relevant time. The DPC duly considered all the eligible candidates who fall within the zone of consideration and out of 10 eligible candidate, 4 candidates including the Respondent Nos. 3, 4 and 5 had been recommended and they have been given appointment in the said post of BDO (Jr.) and, there is no infirmity or illegality in the said proceedings of the DPC, the learned Addl. Govt. Advocate contend.

6. For just determination of the real points in controversy between the parties, this Court had directed the learned Addl. Govt. Advocate to produce the related file containing the proceedings of the said DPC and, accordingly, the learned Addl. Govt. Advocate had produced the related records.

I have perused the records, particularly the proceedings of the said DPC.

On perusal of the related records including the original ACRs, particularly of the writ Petitioner's and the private Respondents Nos. 3, 4 and 5 the related assessment of ACRs made by the competent authority when is materials for this purpose is termed as follows:

Sl. No.	Name	ACRs	1991-92	92-93	93-94	94-95	95-96
1.	...	...	...	...	...	...	...
2.	...	...	...	...	...	...	...
3.	Y. Chaoba	Very Good	Very Good	Out- standing	Out- standing	Out- standing	Very Good
4.	N. Saracchandra Singh, P.A.	good standing	good standing	good standing	good standing	good standing	Out- standing
5.	P. narendra Singh, P.A.	Out- standing	Out- standing	Out- standing	Out- standing	Out- standing	Out- standing
6.	Doukhomang	Good	Good	Very Good	Good	haokip P.A. good	7. 8. 9. 10.

In my considered view, the said DPC had examined the related ACRs of the candidates and dealt with the matter exhaustively thus recommending those candidates including the private Respondents for appointment to the post of BDO (Jr.). So far the impugned inter-se seniority list is concerned, the authority prepared it for their convenience and for placing the same before the DPC concerned taking into account the date of regular appointment of all Hoe eligible candidates in the feeder post so as to determine the date of eligibility for promotion to the post of BDO(Jr.) as per related recruitment Rules as in Annexure A/2 to the writ petition. The related Recruitment Rules for the post of BDO (Jr.) provides, that the post is a selection post and method of recruitment is by promotion from amongst the Extension Officer (PN)/Extention Officer (Dev./ Instructor) /Inspector(PN)/Progress Asssistant, having graduate from a recognised University and 4 years" regular service in the officials having undergraduate from a recognised University/Institute with 7 years"s legular service in their respective grade. The Petitioner, being and undergraduate, though his date of regular appointment in the post of Progress Assistant is in the year 1965, his date of eligibility fbr consideration for promotion to the next higher post of BDO (Jr.) falls on 17.12.75 and whereas, the date of eligibility of the Respondent Nos. 3, 4 and 5 fall on 1.4.73; 3.8.74 and 12.9.77. The Respondent No. 4 had been accommodated under the reserve quota by virtue of the 100 Point Roster and Reservation Policy. So far, the gradation of the writ Petitioner as well as the private Respondents Nos. 3 and 5 is concerned, the private Respondent Nos. 3 and 5 were found suitable and got the higher gradation than that of the writ Petitioner as reflected from the proceedings of the said DPC as well as the original ACRs of the candidates concerned.

7. It is well settled, that it is not the function of the Court to hear appeals over the decisions of the Selection Ccommittee or DPC and to scrutinise the related merits of the candidates. It is the wisdom and under the domain of the Selection Committee to decide the matter as it is the expertise on the subject and the Court has not such expertise. Only when there is infirmity in the selection process or decision making process and, when the Selection Committee discarded the genuine merits/ACRs of the candidates on record, then in that case, the Court can interfere with it, if the Court finds that there is infirmity. While exercising the power of judidal review, the Court is primarily concerned as to whether there has been any infirmity in the decision making process and the Court cannot, as an appellate authority, substitute its opinion to a rightful decision arrived by a competent authority. In this regard, a reference can be made to a decision of the Apex Court rendered in Dalpat Abasaheb Solunke and

Others Vs. Dr. B.S. Mahajan and Others, wherein the Apex Court held thus:

It is needless to emphasise that it is not the function of the Court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has such expertise on the subject. The Court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc. It is not disputed that in the present case the University had constituted the Committee in due compliance with the relevant statutes. The committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so called comparative merits of the candidates as assessed by the Court, the High Court went wrong and exceeded its jurisdiction.

This decision of the Apex Court has its reference to another case between Kuldip Chand Vs. State of H.P. and others,

8. Considering all these existing facts and circumstances of the case and also on perusal of all these documents including the proceedings of the DPC, I am of the view that, there is no infirmity or illegality in the said DPC proceedings and, as such, the writ Petitioner could not make out a case to justify the interference of it.

In the result, the writ Petitioner has no enforceable legal right and accordingly, this writ petition is dismissed. No cost.

Despite the dismissal of this writ petition, I am constrained to make the following observations:

From the available materials on record, it is established that the writ Petitioner had rendered more than 28 years of service in the department and he is one of the senior-most Progress Assistants and his ACRs for the related period from 1991-92 to 1995-96 is commendable and no adverse remark is there as against the writ Petitioner. Hence, this Court require the state-Respondents to consider the case of the writ Petitioner for promotion to the post of BDO (Jr.), if there is vacancy and, it is further made clear that this judgment and order shall not stand on the of the State-Respondents to afford appointment to the writ Petitioner in the post of BDO (Jr.) on promotion.