

(2003) 08 GAU CK 0025

Gauhati High Court (Itanagar Bench)

Case No: Writ Petition (C) No. 322 (AP) of 2002

Kopsi Panor and Others

APPELLANT

Vs

State of Arunachal Pradesh and
Others

RESPONDENT

Date of Decision: Aug. 8, 2003

Acts Referred:

- Constitution of India, 1950 - Article 14, 16

Citation: (2004) 1 GLR 263 : (2005) GLT 620 Supp

Hon'ble Judges: I.A. Ansari, J

Bench: Single Bench

Advocate: A. Dasgupta, S. Bhuyan and J. Hussain, for the Appellant; B.L. Singh, for the Respondent

Judgement

I.A. Ansari, J.

Aggrieved by the alleged inordinate delay in considering the petitioners for promotion by the authorities concerned, the petitioners, who are working as Assistant Audit Officer/Sub-Treasury Officer under the Department of Finance, Government of Arunachal Pradesh, have approached this Court seeking issuance of appropriate writ(s) commanding the respondents to consider the cases of the petitioners for promotion.

2. The essential facts giving rise to this writ petition are not in dispute. What emerges, in a nut-shell, as the undisputed case of the parties is thus: The petitioners have been working as Assistant Audit Officer/Sub-Treasury Officer/Superintendents of Accounts under the Department of Finance, Government of Arunachal Pradesh, and their service conditions are governed by Arunachal Pradesh, (Accounts Officer/Treasury Officer) Recruitment Rules, 1993 (hereinafter referred to as the "Recruitment Rules"). There are three ways for recruitment to the posts of Group-B, namely, Accounts Officer/Treasury Officers. According to the Recruitment Rules,

25% of these posts are to be filled up by direct recruitment, 37.5% by promotion and 37.5% by departmental examination. Out of 37.5% of the promotional quota, 60% are to be filled up from amongst the Inspecting Auditor (now called as Assistant Audit Officers), 12% from Superintendent of Accounts and 28% from Sub-Treasury Officers. In the year 1996, four posts of Accounts Officer and Treasury Officers were created. Out of these four posts, two posts were for Inspecting Auditor, one for Sub-Treasury Officer and one for Superintendent of Accounts. In the year 1999, as many as six such promotional posts were created. Out of these six promotional posts, two were for Inspecting Auditor (now called as Assistant Audit Officer), two for Sub-Treasury Officers and two for Superintendent of Accounts. In the year 2000, eleven promotional posts were created. Out of these eleven posts, five posts were for Assistant Audit Officers, three for Sub-Treasury Office and three for Superintendent of Accounts. Recruitments, by way of promotion to the posts of Accounts Officer/Treasury Officers, have not been made since 1996. In fact, the process for filling of the said posts by departmental promotion commenced in the year 2002, but even this process has not been brought to its logical conclusion due to non-availability of ACRs of some of the employees concerned. Confronted with this situation, the Department concerned has referred the matter to the Departmental Promotion Committee giving them certain guidelines (Annexure-C to the affidavit-in-opposition of the State respondents) whereby the DPC has been requested that for the purpose of evaluation, if the ACRs are not available, the DPC should consider the confidential report of the year preceding the period, in question, and if even confidential report of the preceding year is not available, then, the Confidential Report of the lower grade should be taken into account and if even Confidential Reports of lower grade are not available, all available Confidential Reports should be taken into account. The guidelines had been issued on 17.06.2002. The matter has, however, rested there and no further action has been taken.

3. I have perused the materials on record, I have heard Mr. A. Dasgupta, learned counsel for the petitioners, and Mr. BL Singh, learned Senior Government Advocate appearing on behalf of the respondents.

4. It has been submitted, on behalf of the petitioners, that the petitioners are all eligible for promotion, but on account of nonavailability of ACRs, their cases have not been considered for promotion. This delay has caused, according to learned counsel for the petitioners, serious hardship and grave injustice to the petitioners. Reacting to the submissions so made on behalf of the petitioners, learned Senior Government Advocate has not denied that the petitioners fall within the zone of consideration for promotion. What has, however, been contended, on behalf of the petitioners, is that the promotion is not a matter of right and that steps are being taken to fill up the posts, which are lying vacant in the promotional quota.

5. It needs to be borne in mind that promotion is not a matter of charity, but a well-deserved right of a worthy employee, which the employee earns by putting in requisite standard of service for a specified period. Though the employer is not bound to fill up every vacant promotional post, yet continued denial to fill up such posts without any justified/ justifiable reason may be regarded as unjust and require intervention by a writ Court. In the case at hand, however, it is of utmost importance to note that it is not the case of the respondents that the posts of Accounts Officers/Treasury Officers have not been filled up at all; rather, these posts have been filled up by way of direct recruitment as well as by holding departmental examinations. What has not been done is filling up of the said posts by promotion from the candidates of the departmental concerned. Excluding a particular class of employees from enjoying the benefit of promotion must be held, in the absence of any reasonable ground, as discriminatory affecting Articles 14 and 16 of the Constitution. In [H.P. State Electricity Board Vs. Shri K.R. Gulati](#), the Apex Court has clearly held that non-consideration for promotion is an infringement of Article 16 of the Constitution. It is well-settled that consideration for promotion can be postponed only on reasonable grounds. Reference may be made, in this regard, to [C.O. Arumugam and Others Vs. State of Tamil Nadu and Others](#), it was held as follows :-

"As to the merits of the matter, it is necessary to state that every civil servants has a right to have his case considered for promotion according to his turn and it is a guarantee flowing from Articles 14 and 16(1) of the Constitution. The consideration of promotion could be postponed only on reasonable grounds. To avoid arbitrariness, it would be better to follow certain uniform principles. The promotion of persons against whom charge has been framed in the disciplinary proceedings or charge-sheet has been filed in criminal case may be deferred till the proceedings are concluded. They must, however, be considered for promotion if they are exonerated or acquitted from the charges. If found suitable, they shall then be given the promotion with retrospective effect from the date on which their juniors were promoted." (emphasis is added)

6. No employee can be made to suffer delay in granting of promotion for events on which he has no control. I am guided to adopt this view from the case of [Nirmal Chandra Bhattacharjee and Others Vs. Union of India \(UOI\) and Others](#), wherein the Apex Court has held that an employee cannot be made to suffer on account of delay arising out of the intervening events.

7. In the case at hand, for their inability to fill up the posts aforementioned by promotion, the only excuse offered by the respondents is that the ACRs of all the candidates, who fall within the zone of consideration for such promotion, are not available. It has not been contended by the respondents that they do not intend to fill up the posts aforementioned by promotion. The respondents have merely pointed out the difficulties, which they face in granting the promotion, namely, that

the AGRs. of some of the employees are, as indicated above, not available,

8. Considering, therefore, the matter in its entirety, I am firmly of the view that the respondents-authorities need to be directed to expedite the process of consideration for promotion of the petitioners and all persons similarly situated.

9. In the result and for the reasons discussed above, this writ petition is disposed of with direction to the respondents-authorities to place the cases of the petitioners and of all persons, who fall within the zone of consideration for such promotion, before the DPC and the DPC shall consider the cases of the petitioners and of all other persons, similarly situated, in the light of the guidelines issued by the authorities concerned. In accordance with the recommendations that may be made by the DPC, the respondents-authorities shall pass necessary order(s) of promotion. The whole exercise, so directed, shall be completed within a period of four months from today.

10. With the above observations and directions, this writ petition shall stand disposed of.

11. No order as to costs.