

(2011) 04 GAU CK 0038

Gauhati High Court (Itanagar Bench)

Case No: Writ Petition (C) No. 131 (AP) of 2010

Shri Wetelum Yun

APPELLANT

Vs

State of Arunachal Pradesh and
Others

RESPONDENT

Date of Decision: April 28, 2011

Hon'ble Judges: B.D. Agarwal, J

Bench: Single Bench

Advocate: K. Ete, for the Appellant; G. Deka, Addl. Sr. Govt. Advocate for State R/Nos. 1, 2 and 3 and K. Jini, for Private R/Nos. 4 and 5, for the Respondent

Final Decision: Dismissed

Judgement

B.D. Agarwal, J.

The writ Petitioner is challenging the recommendation of the private Respondent Nos. 4 and 5 by the DPC for their promotion to the rank of Assistant Engineer (A.E) in the Rural Works Department (RWD), Govt. of Arunachal Pradesh and also the order dated 31.03.2010 issued by the Commissioner (RWD) regularizing the officiating promotion of the aforesaid private Respondents pursuant to the DPC recommendation.

2. Heard Mr. K. Ete, learned Counsel for the Petitioner as well as Ms. G. Deka, learned Additional senior Government Advocate for State Respondent Nos. 1, 2 and 3. Also heard Mr. K. Jini, learned Counsel for the private Respondent Nos. 4 and 5.

3. During the course of hearing learned Addl. Sr. Govt. Advocate also produced the relevant file of DPC proceeding, which contains the dossier of ACRs of the Petitioner and the private Respondents as well as vigilance report etc.

4. The admitted fact is that the writ Petitioner is a diploma holder whereas the private Respondents are degree holders. The other admitted fact is that the writ Petitioner joined the post of Junior Engineer (J.E) on 14.7.2004 whereas the private Respondent Nos. 4 & 5 joined the said post on 17.3.1997 and 14.3.1997 respectively.

5. The promotion to the post of A.E. in R.W.D. is governed by the rules called, "The Recruitment to the Posts of Assistant Engineer Rules, 2005 (in short, the Rules of 2005). As per the said Rules, the vacancy should be filled up by way of promotion and direct recruitment in equal ratio of 50:50. Clause 12 of the aforesaid Rules of 2005 lays down the procedure as to how the seniority should be counted for the purpose of promotion. Clause 12 of the said Rules is reproduced herein below for ready reference:

By promotion from amongst the Junior Engineers of the department who have 8(eight) years of regular service for diploma holders and 5(five) years of regular service for degree holders in the grade.

Provided that irrespective of seniority in the cadre of Junior Engineer, promotion to the post of Assistant Engineer shall be considered in order of seniority of completion of respective qualifying services

6. In view of the aforesaid proviso to Clause 12 of the said Rules, the private Respondents became eligible for promotion on 17.3.2002 and 14.3.2002 respectively, whereas, the writ Petitioner became eligible for consideration only on 14.7.2002.

7. Be that as it may, the vacancy arose during the year 2006-2007 and as per the judgment of this Court dated 25.11.2009 passed in WP(c) No. 447 (AP) of 2008, the writ Petitioner was also considered for promotion. It may also be mentioned here that the Recruitment Rules was amended in the year, 2008. However, since the vacancies arose prior to that, the DPC considered the promotion on the basis of the Rules, 2005. It is made clear that there was no wrangle about the applicability of the Rules of 2005 for filling up the vacant posts on promotion.

8. The promotion of the private Respondents has been challenged basically on the ground that the DPC did not consider the case of the writ Petitioner for promotion. Besides this, Shri K. Ete, learned Counsel for the writ Petitioner also submitted that even if the Petitioner's case was considered, it was not effective and meaningful since the Minutes of the DPC do not speak anything about the relative merits of the private Respondents vis a vis the writ Petitioner. In support of his submission, Mt. K. Ete, learned Counsel for the Petitioner has cited the judgment of the Hon'ble Apex Court rendered in [S.B. Bhattacharjee Vs. S.D. Majumdar and Others](#), The learned Counsel also submitted that in view of the judgment of the Hon'ble Supreme Court rendered in [Dev Dutt Vs. Union of India \(UOI\) and Others](#), the concerned authorities were incumbent to furnish entries recorded in the ACR of the writ Petitioner and having not done so, the DPC proceedings are liable to be set aside. Shri Ete also submitted that the legal issues can be raised at any stage.

9. Per contra, Mr. K. Jini, learned Counsel for the private Respondents submitted that the writ Petitioner has not challenged the fairness of consideration of the Petitioner's case by the DPC. The learned Counsel also submitted that the writ

petition has to be decided on the basis of the pleadings and the court cannot go beyond the averments made in the writ petition. In this way, it was the submission of the learned Counsel for the private Respondents that since the writ Petitioner has not alleged any mala fide or unfairness in the DPC proceeding there is no case for interference in the DPC recommendation.

10. The learned Counsel for the private Respondents also submitted that the DPC being an expert Body for assessing the relative merits of the candidates, the High Court cannot seat over the assessment so made by the DPC in exercise of writ jurisdiction. In support of this submission the learned Counsel for the private Respondents has placed the judgment of the Hon'ble Supreme Court rendered in [Smt. Nutan Arvind Vs. Union of India and another](#), as well as a judgment of Gauhati High Court rendered in Bapok Borang v. Arunachal Pradesh Public Service Commission, reported 2008 (Supp.) GLT 721. With regard to the alleged non-communication of the ACR entries, Shri Jini submitted that the judgment of the Hon'ble Apex Court has to be applied prospectively. Even otherwise this pleading was not raised in the writ petition.

11. The submission of Ms. G. Deka, the learned Addl. Sr. Govt. Advocate was almost in tandem to the submission of the learned Counsel for the private Respondents. The learned Addl. Sr. G.A. also submitted that since the issue of non-communication of entries of ACRs was not raised in the writ petition, the same cannot be taken into consideration in the second round of litigation.

12. After going through the averments made in the writ petition, it appears to me that the writ Petitioner has repeatedly alleged that the DPC had not considered the case of the writ Petitioner along with the other eligible candidates. On the contrary, the DPC had recorded in its Minutes of the meeting that the candidature of the writ Petitioner was also considered along with the private Respondents. In fact, the writ Petitioner's case was considered as per the High Court order dated 25.11.2009 and 5.2. 2010. The Minutes of the DPC meeting is supported by the documents in the file, produced by the learned Addl. Sr. G.A., which contains the ACRs dossiers as well as vigilance report. It is true that the Minutes of the meeting are not very elaborate one and only because of this, the relevant file of the DPC was called for. I have perused the same.

13. After going through the file, particularly the grading recorded in the ACRs of the Petitioner and the private Respondents, it is apparent that the performance of the private Respondent Nos. 4 and 5 were far better than the writ Petitioner from 2003 to 2007. Even the performances of some other junior officers are better than the writ Petitioner, but they did not come within the zone of consideration. It may also be motioned herein that the relevant Recruitment Rules do not provide any specific methodology for assessing the relative merit of the officers for their recommendation for promotion. Under such circumstances, it cannot be said that the performance of the writ Petitioner was not considered in proper perspective by

the DPC. In addition to the better ACRs of the private Respondents, they are also senior to the writ Petitioner as per Recruitment Rules for promotion.

14. With regard to non-communication of the entries of ACRs the learned Counsel for the Respondents rightly submitted that this submission of the writ Petitioner cannot be considered inasmuch as there is no averment in the writ petition. I have already mentioned earlier that the DPC recommendation was also challenged earlier by the writ Petitioner. In this way this is the second writ petition for the same issue and despite that no allegation was made about the non-communication of the ACR entries. Even otherwise, after such a long period, the technical objection of the writ Petitioner with regard to non-communication of the ACR entries cannot be taken into consideration.

15. In the result, the writ petition is dismissed. However, there shall be no order as to costs.