

GAHC040002702022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : WP(C) 98/2022

1:Mirpe Tato
S/o Late Bimir Tato,
Village Yaki Tato, PO/PS Kamba, District West Siang, Arunachal Pradesh and
presently serving as EAC (APCS) Sr. Grade.

VERSUS

1:THE STATE OF AP and Anr.
Represented by its Chief Secretary, Govt. of Arunachal Pradesh, Civil Secretariat,
Itanagar 791111

2:The Secretary
(Department of Personnel)
to the Govt of Arunachal Pradesh
Civil Secretariat
Itanagar 79111

Advocate for the Petitioner : T T Tara

Advocate for the Respondent : GA (AP)

**BEFORE
HONBLE MR. JUSTICE NANI TAGIA**

ORDER

Date : 16.03.2023

Heard Mr. T. T. Tara, learned counsel for the petitioner and Mr. S. Tapin, learned Senior Government Advocate for the State respondents.

2. The writ petitioner, who is an Arunachal Pradesh Civil Services, Senior Grade (for short, APCS Sr. Grade), has filed this writ petition, with two prayers, which are as under:

(i). a direction to the respondent authorities to promote him to the Arunachal Pradesh Civil Services, Selection Grade and Administrative Grade (for short, APCS Selection Grade and Admin Grade) from the date his batchmates were considered in the DPC held in the year 2018 and 2021, pursuant to which they were promoted with all consequential benefits of pay, seniority etc;

(ii). to direct the respondent authorities to promote the petitioners to APCS Admin Grade on Ad-hoc basis.

3. The petitioner, who was working as an APCS Sr. Grade was put under suspension on 13.02.2018 and pursuant thereto, a memorandum of charges was served upon the petitioner on 22.05.2019, *inter-alia*, for illegally issuing 152 numbers of Arms licences.

4. Pursuant to an order of this Court, dated 10.02.2021, passed in WP(C)143(AP)2020, the petitioner was reinstated on service as APCS Sr. Grade. A Departmental Promotion Committee (DPC) meeting for promotion to APCS Selection Grade from APCS Senior Grade was held on 27.07.2018, in

which proceeding, the recommendation of the DPC in respect of the petitioner was kept in a sealed cover because of pendency of SIC (VIG) P.S. Case No. 03/2018, under Sections 120(B)/468/471/188 IPC read with Section 13(2) PC Act, 1988& Section 25 (1B)(a)/30 of Arms Act 1959. While the petitioner is working as an APCS Sr. Grade Officer, pursuant to his reinstatement in terms of the order dated 10.02.2022, passed in WP(C)143(AP)2020, the recommendation of the petitioner, by the DPC, held on 27.07.2018 continues to be under sealed cover and accordingly, the petitioner at present is working as an APCS Sr. Grade Officer.

5. The State respondents have filed their counter-affidavit, wherein, it has been stated that because of the pendency the SIC Case against the petitioner, which has not yet been concluded, the recommendation of the petitioner for promotion from APCS Sr. Grade to APCS, Selection Grade, which was kept in a sealed cover by the DPC held on 27.07.2018, has not yet been opened.

6. In view of the above, the first prayer made by the petitioner for a direction to promote him to the post of APCS Selection Grade and Admin Grade cannot be granted by this Court.

7. Insofar as the second prayer of the petitioner seeking promotion on Ad-hoc basis is concerned, the petitioner has enclosed an Office Memorandum, dated 14.09.1992, issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, vide No. 22011/4/91-Estt. (A). Clause-5 of the OM, dated 14.09.1992 reads as under:

“..5. In spite of the sixmonthly review referred to in para 4 above, there may be some cases, where the disciplinary case/criminal prosecution against the Government servant is not concluded even after the expiry of two years from the date of the meeting of the first DPC, which keeps its findings in respect of the Government servant in a sealed cover. In such a situation the appointing authority may review the case of the Government servant, provided he is not under suspension, to consider the desirability of given him ad-hoc promotion keeping in view the following aspects:-

- a). Whether the promotion of the officer will be against the public interest;*
- b). Whether the charge are grave enough to warrant continued denial of promotion;*
- c). Whether there is any likelihood of the case coming to a conclusion in the near future;*
- d). Whether the delay in the finalization of proceedings, departmental or in a court of law, is not directly or indirectly attributable to the Government servant concerned; and*
- e). Whether there is any likelihood of misuse of official position which the Government servant may occupy after adjoc promotion, which may adversely affect the conduct of the departmental case/criminal prosecution.*

The appointing authority should also consult the Central Bureau of Investigation and take their views into account where the departmental proceedings or criminal prosecution arose out of the investigations conducted by the Bureau.”

8. Clause-5 of the OM, dated 14.09.1992 provides that where the disciplinary case/criminal prosecution against the Government servant is not concluded even after the expiry of two years from the date of the meeting of the first DPC, which kept its findings in respect of the Government servant in sealed cover, the appointing authority may review the case of such a Government servant, provided he is not under suspension, to consider the

desirability of giving him Ad-hoc promotion keeping in view the 5 (five) aspects enumerated, therein.

9. In the instant case, what has been noticed, is that the petitioner who was earlier put under suspension has been reinstated in service as APCS Sr. Grade pursuant to order of this Court, dated 10.02.2022, passed in WP(C)143(AP)2020 and the petitioner is working as an APCS Sr. Grade Officer. What has further been noticed here is that the case of the petitioner for promotion to the post of APCS Selection Grade from the post of APCS Sr. Grade, was kept in a sealed cover in a DPC held on 27.07.2018. The SIC vigilance case because of the pendency of which, the case of the petitioner was kept in a sealed cover in a DPC held on 27.07.2018, is stated to be still pending against the petitioner. More than 4 (four) years have expired since the case of the petitioner for promotion to a higher grade was kept in a sealed cover.

10. In view of the above, I find that the petitioner's case for Ad-hoc promotion to a higher grade merits consideration by the appointing authority in the light of Clause-5 of OM, dated 14.09.1992.

11. Mr. S. Tapin, learned Senior Government Advocate has also pointed out that the OM dated, 14.09.1992 has been updated by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training on 30.08.2022. He, however, submits that there has not been a substantial change insofar as the provision for Ad-hoc promotion in such a situation is concerned.

12. In view of the above, this writ petition stands disposed of, with a direction to the respondent authorities to consider the case of the petitioner

in the light of Clause-5 of the OM, dated 14.09.1992, by also taking in to account any addition/alteration/modification made by a subsequent update by the Department on 30.08.2022.

JUDGE

Comparing Assistant