



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

Case No. : WA 18/2022

1:Tab Techhi and Anr.

Presently serving as Deputy Superintendent of Police, State Disaster Response Force,
Chimpu, Papumpare District, PO/PS Itanagar, Arunachal Pradesh.
Phone No. 9485236611

2: Angit Tayeng

Presently serving as Deputy Superintendent of Police
Likabali
Lower Siang District
PO/PS Likabali
Arunachal Pradesh

VERSUS

1:THE STATE OF AP and 5 Ors.

Represented by the Chief Secretary, Govt. of Arunachal Pradesh, Itanagar.

2:The Chief Secretary

Govt. of Arunachal Pradesh
Itanagar.

3:The Commissioner (Home)

Govt. of Arunachal Pradesh
Itanagar.

4:The Under Secretary (Home)

Govt. of Arunachal Pradesh
Itanagar.

5:The Director General of Police

Police Headquarters
Govt. of Arunachal Pradesh
Itanagar.

6:The Departmental Promotion Committee
constituted for considering promotion to the post of APPS (Grade I) through its
Chairman
the Chief Secretary
Govt. of Arunachal Pradesh
Itanagar

Advocate for the Petitioner : Dicky Panging

Advocate for the Respondent : GA (AP)

::BEFORE ::

HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MRS. JUSTICE MITALI THAKURIA

For the appellants	: Mr. Dicky Panging, Mr. D. Tamuk, : Mr. M. Doje, Mr. T. Tayeng, Mr. Doge Lona, : Mr. Kirmar Ado, Advocates.
For the respondents	: Mr. S. Tapin, Senior Government Advocate, Arunachal Pradesh,
Date of hearing	: 30.11.2022.
Date of judgment	: 04.01.2023.

JUDGMENT & ORDER

(C.A.V.)

(K.R. Surana, J)

Heard Mr. D. Panging, learned counsel for the appellants. Also heard Mr. S. Tapin, learned Senior Government Advocate for the respondents.

2. This intra-court appeal is directed against the judgment and order dated 15.06.2022, passed by the learned Single Judge in W.P.(C) No. 99 (AP)/2021 and W.P.(C) 105 (AP)/2021. By the said impugned judgment, the writ petitions of the appellants were dismissed.

CASE OF THE APPELLANT IN THE WRIT PETITION:

3. The appellants were initially appointed as Sub-Inspectors in Arunachal Pradesh Police (APP for short). In due course of time, the appellants were promoted to the post of Inspector and thereafter, on their names being recommended by the Departmental Promotion Committee (DPC for short), the appellants were promoted to the rank of Deputy Superintendent of Police along with 15 others. The said post is Arunachal Pradesh Police Service (Entry Grade). The next higher grade is Arunachal Pradesh Police Service (Grade-I). The names of the appellants appear at serial nos. 6 and 8 respectively of the provisional seniority list of Arunachal Pradesh Police Service (APPS for short) (Entry Grade), which was issued by the Commissioner (Home), Govt. of Arunachal Pradesh vide order dated 18.06.2020. It is projected that final seniority list has not been prepared and therefore, seniority as per the said provisional seniority list is being followed and as the incumbents whose names appear at serial nos. 2, 3, 5 and 6 have superannuated, the names of the appellants would find place at serial no. 2 and 3 respectively. It is further projected that as per the conjoint reading of the provisions of Rule 3, 5 12 and 26 of the APPS Rules, 1989, the post of APPS (Grade-I) is liable to be filled up by promotion from the feeder post of Inspector of Police.

4. The Chief Secretary, Government of Arunachal Pradesh issued an O.M. No. AR-74/2013 dated 28.01.2014, fixing basic educational qualification as Graduation/ Bachelor Degree from a recognized University for promotion to Group-A and Group-B posts/services under the Government of Arunachal Pradesh. Moreover, by the said memorandum, all the Ministries/ Departments/ Organisations were directed to initiate proposals for carrying out necessary amendment in the relevant rules/ recruitment rules in terms of the said OM. However, due to wide-spread protests, the Cabinet, in its meeting held on 29.10.2014, exempted the Engineering Services from the purview of OM dated

28.01.2014. Later on, the Chief Secretary of the State, by OM dated 27.05.2015, suspended the earlier OM dated 28.01.2014 for a period of 4 (four) years, further permitting those Government servants who did not have Graduation Degree may acquire such educational qualification from any recognized University, and it was further mentioned that the OM dated 28.01.2014, prescribing minimum qualification for appointment to the Group-A and Group-B post would be reintroduced. Later on, vide OM dated 29.08.2019, the earlier OM dated 28.01.2014 was re-introduced.

5. Thereafter, the DPC held on 08.09.2020, recommended the promotion of one APPS (Entry Grade) officer, who though a Graduate, was junior to the appellants for the post of APPS (Grade-I). Accordingly, the Government by order dated 21.09.2020, promoted the said officer from APPS (Entry Grade) to APPS (Grade-I). However, in spite of several representations, as the grievance of the appellants was not redressed, the appellants, had approached this Court by filing a writ petition under Article 226 of the Constitution of India to assail the OM dated 28.01.2014, OM dated 29.08.2019, and other consequential actions, and for a direction to consider the case of the appellants for promotion to APPS (Grade-I).

CONTENTION OF THE RESPONDENTS IN THE WRIT PROCEEDING:

6. The respondent no. 5 had filed an affidavit-in-opposition and had justified the fixing of a minimum educational qualification for Group-A and Group-B posts, which was a policy decision of the Government, which supplements the existing Rules and therefore, it would not amount to supplanting the said Rules. It was also submitted that the amendment to the APPS Rules, 1989 was suggested and the Draft Recruitment Rules has been submitted to the Government for approval. It was also stated to the effect that

need was felt for having qualified personnel to hold the middle level and supervisory level to improve the quality and for better administration.

CONCLUSION AND DECISION OF THE LEARNED SINGLE JUDGE:

7. The learned Single Judge took note of the fact that after the OM dated 28.01.2014 was suspended, the Draft Recruitment Rules was prepared wherein the minimum educational qualification was prescribed and the same was forwarded to the Government for approval vide letter dated 22.07.2020 and pending approval of the Draft Recruitment Rules, the DPC had recommended the promotion of one APPS (Entry Grade) Officer to the post of APPS (Grade-I) post. However, the case of the appellants could not be taken up due to lack of acquiring Bachelor Degree and thus, the Draft Recruitment Rule was acted upon. Accordingly, by relying on the ratio of the case of (i) *Abraham Jacob & Ors. v. Union of India*, (1998) 4 SCC 65, (ii) *Vimal Kumari v. State of Haryana & Ors.*, (1998) 4 SCC 114, and (iii) *High Court of Gujarat & Anr. v. Gujarat Kishan Mazdoor Panchayat & Ors.*, (2003) 4 SCC 712, it was held that Rules, even in their draft stage can be acted upon. It was held that the object to be achieved by the Government is to bring administrative efficiency. It was also held that from a conjoint reading of OMs dated 28.01.2014 and 29.08.2019, the clear intention of the Government was to enforce minimum educational qualification. Accordingly, the writ petition was dismissed.

SUBMISSIONS BY THE LEARNED COUNSEL FOR THE APPELLANTS:

8. It was submitted that as the APPS Rules, 1989 was not amended, the DPC could not have excluded the candidature of the appellants for consideration for promotion. It was also submitted that nothing was brought on record to show that there was a very compelling or urgent need to conduct DPC and to promote one APPS (Entry Grade) Officer to the next higher post of

APPS (Grade-I) by taking recourse to Draft Recruitment Rules.

9. It was also submitted that the learned Single Judge had failed to consider that unless the Draft Recruitment Rules was notified, the same could not have been acted upon or allowed to prevail over the APPS Rules, 1989, for which the decision of the DPC not to recommend the name of the appellants was not sustainable on facts and in law. Moreover, it was submitted that as the APPS Rules, 1989 (as amended), framed under Article 309 of the Constitution of India was already holding the field, the OM dated 28.01.2014 and 29.08.2019 could not have been applied, which has the effect of allowing the executive instructions to prevail over the otherwise valid and lawful APPS Rules, 1989. Hence, it was submitted that the ratio of the case of (i) *Abraham Jacob (supra)*, (ii) *Vimal Kumari (supra)*, and (iii) *High Court of Gujarat (supra)* were erroneously applied in this case.

10. The learned counsel for the appellants has referred to the case of *Yumlam Kaha v. Tabak Hanker & 3 Ors., W.A. 166/2019, decided on 25.11.2021* by Division Bench of this Court, and it was submitted that the proposition of law laid down by the Supreme Court of India in the case of *Distt. Registrar, Palghat & Ors. v. M.B. Koyyakutty, AIR 1979 SC 1060: 1970 2 SCC 150*, was not brought to the notice of the Court.

11. Hence, it was prayed that the impugned judgment be set aside and the prayers made in the writ petition be allowed.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

12. The learned Senior Government Advocate has made his submissions in favour of the impugned judgment.

REASONS AND DECISION:

13. It is seen that vide OM dated 28.01.2014, the Government had decided that promotions to Grade-A and Grade-B posts would be from amongst those feeder level officers, who had Graduate Degree. Thereafter, vide OM dated 27.05.2015, the Government had suspended the said OM dated 28.01.2014, however, only for a period of 4 (four) years. Moreover, by the said OM, the Government had provided an option to those Government servants who did not have Graduation Degree to acquire such educational qualification from any recognized University. It is further noted that it was specifically mentioned therein that the OM dated 28.01.2014, prescribing minimum qualification for appointment to the Group-A and Group-B post would be reintroduced. Consequently, by OM dated 29.08.2019, the earlier OM dated 28.01.2014 was re-introduced.

14. It is seen that the APPS Rules, 1989 (as amended) does not prescribe any educational qualification to be eligible to be appointed to the post of APPS (Grade-I). Therefore, it cannot be said that in the APPS Rules, 1989, there is a Rule/ provision prescribing educational qualification, which is holding the field in the matter of promotion from the feeder post of APPS (Entry Grade) to APPS (Grade-I). Therefore, the Court is inclined to accept the submissions made by the learned Senior Government Advocate that prescription providing for minimum educational qualification in the OM dated 28.01.2014, would supplement the APPS Rules, 1989 and the same would not amount to supplanting the Rules.

15. A copy of the minutes of the DPC held on 08.09.2020 is annexed to the memo of appeal. On a perusal of the same it is seen that the names of 7 (seven) officers were sent to the DPC for consideration and that the candidature

of the appellants were considered by the DPC. However, on considering the OM of the Administrative Reforms Department, Government of Arunachal Pradesh, which provides that all promotions in Group-A and Group-B posts need to mandatorily have graduation as the qualification, the officer whose name appeared at serial no. 2 was found the only person who had qualified as he was having graduate degree and accordingly, only his name had been recommended for promotion. Thus, it is seen from the said minutes of the DPC held on 08.09.2020, that the DPC did not take into consideration the purported draft recruitment rules. Thus, we are unable to accept that the reliance of the learned Single Judge on the case of *Abraham Jacob (supra)*, *Vimal Kumari (supra)*, and *High Court of Gujarat (supra)*, was not proper.

16. In the said context, we are of the considered opinion that it is permissible for classification of officers in APPS (Entry Grade) for promotion to APPS (Grade-I) on the basis of educational qualification. In this regard, we find support from the judgment rendered by the Constitution Bench of the Supreme Court of India in the case of *State of Jammu & Kashmir v. Triloki Nath Khosa, (1974) 1 SCC 19*, para 1 and 50 are quoted below:-

"1. If persons drawn from different sources are integrated into one class, can they be classified for purposes of promotion on the basis of their educational qualifications? That is the issue for consideration before us.

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***50.** We are therefore of the opinion that though persons appointed directly and by promotion were integrated into a common class of Assistant Engineers, they could, for purposes of promotion to the cadre of Executive Engineers, be classified on the basis of educational qualifications. The rule providing that graduates shall be eligible for such promotion to the exclusion of diploma-holders does not violate Articles 14 and 16 of the Constitution and must be upheld."*

17. We may also refer to the decision of the Supreme Court of India in the case of *Distt. Registrar, Palghat (supra)*, cited by the learned counsel for

the appellant. Paragraphs 26 and 27, relevant to the present case (as extracted from SCC) are quoted below:-

"26. It will be seen that Triloki Nath's case is distinguishable from the one before us, at least, in three important aspects. Firstly, in that case, the statutory rule in question did not make any discrimination in relation to the source of recruitment; it simply provided that Graduates alone shall go into the higher cadre of Executive Engineers, irrespective of whether they were appointed as Assistant Engineers directly or by promotion. In the present case, the impugned notification prescribes a qualifying test for promotion not for all but only for one category of persons with reference to the manner in which they initially entered service. Secondly, in Triloki Nath's case the post of the Executive Engineer carried higher responsibility and duties of a supervisory character requiring higher mental equipment and administrative skill. Thus, there, the classification rested on intelligible differentia having a direct nexus to the object (viz, administrative efficiency), to be achieved. In the instant case, there is nothing on record to show that the duties discharged by the clerks of the Upper Division are substantially different from those in the Lower Division. Thirdly, in the instant case the statutory rule does not warrant the classification made by the impugned Government Order. The primary criterion for promotion to the Upper Division prescribed by Rule 28(b)(ii) is seniority if the person concerned is otherwise not unfit. The impugned Government order, impinges upon that statutory rule inasmuch as it lays down that even if a Lower Division Clerk who entered service as a result of exemption from possessing minimum educational qualification, satisfied the criterion of seniority-cum-fitness prescribed by this Rule, he shall not be considered for promotion unless he qualifies in the test.

27. The relevant statutory Rules governing the appellant do not provide any minimum general education qualification for promotion to the Upper Division."

18. From the above quoted observations of the Supreme Court of India, it is seen that on three aspects the case of *Triloki Nath (supra)* was found distinguishable. However, in the present case in hand all the said three factors are present. Thus, in the considered opinion of the Court, the cited case of *Distt. Registrar, Palghat (supra)*, would not help the appellant.

19. Thus, in light of the decision of the Constitution Bench of the Supreme Court of India in the case of *Triloki Nath Khosa (supra)*, there cannot be any view other than that the educational qualification can be a reasonable

classification for the DPC not to recommend the names of the appellants for promotion from APPS (Entry Grade) to APPS (Grade-1) post.

20. It is seen that vide OM dated 27.05.2015, the impugned OM dated 28.01.2014 was suspended for a period of 4 (four) years, but those Government servants who did not have Graduation Degree were put to clear notice that the OM dated 28.01.2014, prescribing minimum qualification for appointment to the Group-A and Group-B post would be reintroduced. Thus, we may presume that those officers, who did not have educational qualification of having graduate degree, were permitted to acquire such educational qualification from any recognized University. Thus, there was no impediment for the appellants to acquire graduation degree in the interregnum. It is not the case of the appellants that they were seeking some time to acquire graduate degree as they were undergoing the graduate course. Hence, it cannot be said that the appellants had no notice to acquire graduate degree.

21. Therefore, in light of the discussions above, we find that the learned Single Judge had discussed the relevant and material aspect of the case and thus, we do not find any infirmity in the impugned judgment and order dated 15.06.2022, passed by the learned Single Judge in W.P.(C) No. 99 (AP)/2021 and W.P.(C) 105 (AP)/2021. Therefore, this appeal fails and the same is liable to be dismissed.

22. Accordingly, we pass the following:

ORDER

23. This writ appeal stands dismissed. Under the circumstances, the parties are left to bear their own cost.

24. However, before parting with the records, we are inclined to provide that this order shall not be a bar for the appellants to seek permission from the competent authority to pursue and acquire graduate degree so as to become eligible for being considered for promotion in terms of the herein before referred OM No. AR-74/2013 dated 28.01.2014, issued by the Department of Administrative Reforms, Government of Arunachal Pradesh, under the signature of the Chief Secretary of the Government of Arunachal Pradesh. It is provided that if such an application is preferred by the appellants, the competent authority would consider the same and pass appropriate orders thereon sympathetically, yet in accordance with law.

JUDGE

JUDGE.

Comparing Assistant