



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

Case No. : WP(C)/45/2018

1. Shri S.K. Thongdok, presently serving as DySP Vigilance Department, Arunachal Pradesh Secretariat, Itanagar. Mobile No. 7085425617.
2. Shri Tapang Tatak, presently serving as DySP at Yingkiong, Upper Siang District, Arunachal Pradesh.
3. Shri Opir Paron Presently Posted as DySP at Roing, Lower Dibang Valley District, Arunachal Pradesh.
4. Shri Bito Kamdak Presently Posted as Asstt. Commandant, 2nd AAP, BN, Aalo, West Siang District, Arunachal Pradesh.
5. Shri Mudang Thakung, presently serving as DySP at office of the SP (SB) PHQ, Itanagar.
6. Shri Kakit Duggong, presently serving as DySP at Nyopin, Kurung Kumey District, Arunachal Pradesh.
7. Shri Tadong Minki, presently serving as DySP at Pangin, Siang District, Arunachal Pradesh.
8. Shri Kesang Younden, presently serving as Asstt. Commandant of 1st IRBN, Namsangmukh, Arunachal Pradesh. Changlang District,
9. Shri Nada Hailang, presently serving as Asstt.Commandant 3rd IRBN, Seijosa, East Kameng District, Arunachal Pradesh.
10. Shri S.N. Phaichulpa. Presently Serving as DySP, Seppa, P.O. & PS Seppa, District: East Kameng, Arunachal Pradesh.
11. Shri Kunsang Tsultin, presently serving as SDPO, Bhalukpong, West Kameng District Arunachal Pradesh.
12. Shri Modak Taipodia, presently serving as DySP at office of the SP (SB) PHQ, Itanagar.

..... Petitioners

-Versus-

1. The State of Arunachal Pradesh, represented by Chief Secretary, Government of Arunachal Pradesh, Itanagar.
2. The Principal Secretary/Commissioner (Home), Government of Arunachal Pradesh, Itanagar.
3. The Departmental Promotion Committee dated 05.04.2016 represented by its Chairman, of DPC dated 05.04.2016.

..... Respondents

By Advocates:

For the petitioners: Mr. Rintu Saikia
Mr. L. Nochi
Mr. B. Taipodia
Mr. R. Bori
Mr. B. Talukdar
Ms. J. Das

For the respondents: Mr. Lissing Perme, SC(Power)
Mr. RH Nabam, Addl. Advocate General(AP)
Ms. R. Basar, GA

:::BEFORE:::

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date of hearing : 19.07.2024

Date of Judgment: 19.07.2024

JUDGMENT & ORDER (ORAL)

Heard Mr. B. Taipodia, learned counsel for the petitioners. Also heard Mr. R. H. Nabam, learned Addl. Advocate General, Arunachal Pradesh, assisted by Ms. Riyum Basar, learned Government Advocate, appearing on behalf of all the respondents.

2. By way of instituting the present proceeding, the petitioners have prayed for a direction upon the respondent authorities for granting of retrospective effect to their promotion to the posts of Deputy Superintendent of Police(DySP) figuring in the Arunachal Pradesh Police Service as effected vide order, dated 20.08.2016, with effect from the date, the vacancies had so arisen in the said cadre of Deputy Superintendent of Police(DySP).

3. The facts requisite for considering the issue arising in the present proceeding is noticed as under:

The petitioners who were serving as Inspectors of Arunachal Pradesh Police, had their next promotional avenue to the posts of Deputy Superintendent of Police(DySP) figuring in the Arunachal Pradesh Police Service. The manner and method for filling up the posts of Deputy Superintendent of Police(DySP) figuring in the Arunachal Pradesh Police Service is regulated by the provisions of the Arunachal Pradesh Police Service Rules, 1989. In terms of the provisions of the said Rules, the posts in the cadre of Deputy Superintendent of Police(DySP) are filled up by way of direct recruitment as well as by way of promotion from the cadre of Inspectors of Arunachal Pradesh Police. Vacancies becoming available in the cadre of Deputy Superintendent of Police(DySP), a proposal came to be submitted before the Government on 28.01.2015, by the Police Headquarters for convening a Departmental Promotion Committee (DPC) meeting for considering the cases of eligible Inspectors for promotion to the vacant posts of Deputy Superintendent of Police(DySP) figuring in the Arunachal Pradesh Police Service. In terms of the said proposal; there were 20 posts

available against promotional quota in the said cadre of the Deputy Superintendent of Police(DySP).

The said process not having been taken to its logical conclusion; the petitioners, herein, approached this Court by way of instituting a writ petition being WP(c)457(AP)2015, praying for a direction upon the respondent authorities for consideration of their cases for promotion to the entry cadre posts of Arunachal Pradesh Police i.e. the posts of Deputy Superintendent of Police (DySP). This Court vide order, dated 08.10.2015, on appreciating the issues arising in the proceeding; was pleased to dispose of the said writ petition by directing the respondent authorities to consider the representation, dated 10.09.2015, submitted by the petitioners in the matter.

In terms of the directions passed by this Court vide the order, dated 08.10.2015, in the said writ petition being WP(c)457(AP)2015; the Commissioner, Home Department, Government of Arunachal Pradesh, Itanagar, proceeded to dispose of the said representation of the petitioners vide an order, dated 26.10.2015, directing therein, for holding of a fresh Departmental Promotion Committee(DPC) meeting to be convened by the Home Department at the earliest after receiving the views of the Law Department in the matter.

The said Departmental Promotion Committee(DPC) meeting as required to be so convened in terms of the directions passed vide order, dated 26.10.2015, having not being so convened; the petitioners again approached this Court by way of instituting a writ petition being WP(c)569(AP)2015. This Court, vide

order, dated 10.02.2016, on appreciating the contentions made in the matter by the learned Senior Government Advocate that the Departmental Promotion Committee(DPC) for the purpose of considering the cases of the eligible Inspectors of Arunachal Pradesh Police for promotion to the posts of Deputy Superintendent of Police(DySP), has been convened by the competent authority on 12.02.2016 at 3PM. Although, the meeting of the Departmental Promotion Committee(DPC) was not held on 12.02.2016, however, the said meeting was held on 05.04.2016 and thereafter, on consideration of the cases of the eligible Inspectors of Arunachal Pradesh Police in the zone of consideration, including that of the petitioners, herein; the selection committee proceeded to recommend the names of the petitioners, herein, for promotion against the said 20 vacant posts in the cadre of Deputy Superintendent of Police(DySP).

On receipt of the recommendations of the said Departmental Promotion Committee(DPC); the Chief Secretary to the Government of Arunachal Pradesh, vide order, dated 20.08.2016, proceeded to appoint the petitioners, herein, in the rank of Deputy Superintendent of Police(DySP). Thereafter, the petitioners were vide order, dated 24.08.2016, issued with transfer and posting orders.

4. It is to be noted that the cadre of the Deputy Superintendent of Police(DySP) is a common cadre between the various wings of the Arunachal Pradesh Police and a common recruitment is held for the post figuring in the said cadre.

5. The petitioners having been promoted vide order, dated 20.08.2016, to the post of Deputy Superintendent of Police(DySP) with prospective effect only; the petitioners had approached the respondent authorities by way of submitting a representation, dated 28.10.2016, praying before the respondent authorities for effecting their promotions with effect from the date, the vacancies in the cadre of Deputy Superintendent of Police(DySP) figuring in the Arunachal Pradesh Police Service, had actually arisen. The said representation not being considered by the respondent authorities; the petitioners have approached this Court by way of preferring the present proceeding.

6. Mr. Taipodia, learned counsel for the petitioners, after reiterating the facts as noticed hereinabove, has submitted that there being clear vacancies in the cadre of Deputy Superintendent of Police(DySP) figuring in the Arunachal Pradesh Police Service as of 2014 and the petitioners, herein, being eligible for being considered for promotion against the said posts; the non-consideration of the cases of the petitioners, was contended to be only on account of the delay occasioning on the part of the respondent authorities in convening the Departmental Promotion Committee(DPC) meeting for the said purpose.

7. Mr. Taipodia, learned counsel, has further submitted that no cogent cause or reason was assigned by the respondent authorities for the delay occasioning in convening the Departmental Promotion Committee(DPC) meeting, in question. The learned counsel has further submitted that the promotions as effected in the case of the petitioners vide order, dated 20.08.2016, having been so effected against the vacant posts which were so available with effect from

the year 2014; the respondent authorities are required to grant retrospective effect to the promotion of the petitioners in the cadre of Deputy Superintendent of Police(DySP) with effect from the year 2014 with all consequential service benefits.

8. Mr. Taipodia, learned counsel for the petitioners; in support of his submissions, has placed his reliance on the decision of a co-ordinate Bench of this Court in the case of ***Meyom Karge v. State of Arunachal Pradesh & ors.***, reported in ***2004 (supp) GLT 623***.

9. Mr. Nabam, learned Addl. Advocate General, Arunachal Pradesh, has contended that the petitioners having been promoted to the cadre of Deputy Superintendent of Police(DySP) after their cases were duly considered by the Departmental Promotion Committee(DPC) in its meeting held on 05.04.2016; the petitioners cannot claim for being granted retrospective promotion from a date prior to the date they were so promoted in pursuance to the recommendations made in their favour by the Departmental Promotion Committee(DPC).

10. It was further contended by the learned Addl. Advocate General, Arunachal Pradesh, that the Rules holding the field, having not provided for grant of retrospective effect to a promotion effected to the service with effect from the date the vacancy, which was utilized for the purpose, had so arisen; the petitioners cannot claim for grant of promotion to them with retrospective effect i.e. with effect from the date the actual vacancy utilized for the purpose,

had so arisen.

11. In the above premises; Mr. Nabam, learned Addl. Advocate General, Arunachal Pradesh, has further submitted that the claims as made by the petitioners in the present proceeding, is required to be rejected by this Court.

12. I have considered the rival contentions as advanced by the learned counsels appearing for the parties and also considered the materials placed on record.

13. It is not in dispute that the next promotional avenue available to the petitioners, herein, while serving as Inspectors of Arunachal Pradesh Police were the posts figuring in the cadre of Deputy Superintendent of Police(DySP) of the Arunachal Pradesh Police Service. As per the provisions of the Rules holding the field; the posts of Deputy Superintendent of Police(DySP) were required to be filled-up by way of direct recruitment as well as by way of promotion from the cadre of Inspector of Arunachal Pradesh Police.

14. Although proposals were initiated as of 2015 for filling up of 20 numbers of posts lying vacant in the cadre of Deputy Superintendent of Police(DySP) from the feeder cadre of Inspector of Arunachal Pradesh Police; it is seen that the said proposal on account of administrative reasons, was not taken to its logical conclusion and the meeting of the Departmental Promotion Committee(DPC) came to be convened only on 05.04.2016.

15. The Departmental Promotion Committee(DPC) in its meeting held on 05.04.2016; having recommended the names of the petitioners, herein, for promotion to the posts to the cadre of Deputy Superintendent of Police(DySP) of the Arunachal Pradesh Police Service; the respondent authorities vide order, dated 20.08.2016, had proceeded to promote the petitioners to the cadre of Deputy Superintendent of Police(DySP). Thereafter, vide order, dated 24.08.2016, the petitioners were issued with transfer and posting orders and accordingly, they are functioning as Deputy Superintendent of Police(DySP) having become a member of the Arunachal Pradesh Police Service.

16. The issue as arising in the present proceeding is as to whether the petitioners, herein, would be entitled to claim promotion with effect from the date, the vacancy had so arisen in the cadre of the Deputy Superintendent of Police(DySP) figuring in the Arunachal Pradesh Police Service.

17. A perusal of the Arunachal Pradesh Police Service Rules, 1989, would make it clear that no provision has been incorporated in the said Rules entitling the petitioners, herein, to receive promotion from the date of occurrence of the vacancy. Accordingly, the right of promotion would not crystallize on the date of occurrence of the vacancy, but such promotion would stand extended to the petitioners, herein, with effect from the date when it is actually effected.

18. Although the Departmental Promotion Committee(DPC) meeting was not convened by the authorities in the year 2014 and/or 2015 and was so convened only on 05.04.2016 and the promotion of the petitioners to the cadre of Deputy

Superintendent of Police(DySP) figuring in the Arunachal Pradesh Police Service, was so effected vide order, dated 20.08.2016; in absence of a provision in the Arunachal Pradesh Police Service Rules, 1989, entitling the petitioners, herein, to be so promoted to the cadre of the Deputy Superintendent of Police(DySP) with effect from the date the vacancy had so actually arisen in the said cadre; the petitioners, herein, have to be treated to have been duly promoted with effect from the date they were so promoted i.e. 20.08.2016 and not from a date prior, thereto.

19. Support in this connection is drawn from the decision of the Hon'ble Supreme Court in the case of ***Union of India & ors. v. K. K. Vadera & ors.***, reported in ***1989 Supp(2) SCC 625***, wherein, the Hon'ble Supreme Court had in this connection concluded as follows:

“5. We do not know of any law or any rule under which a promotion is to be effective from the date of creation of the promotional post. After a post falls vacant for any reason whatsoever, a promotion to that post should be from the date the promotion is granted and not from the date on which such post falls vacant.”

20. The said decision was considered by the Hon'ble Supreme Court with approval in its decision in the case of ***Nirmal Chandra Sinha v. Union of India & ors.***, reported in ***(2008) 14 SCC 29***, wherein, in paragraph No. 7 of the said decision; the Hon'ble Supreme Court had concluded as under:

“7. It has been held in a series of decisions of this Court that a promotion takes effect from the date of being granted and not from the date of occurrence of vacancy or creation of the post vide Union of India v. K.K. Vadera, State of Uttaranchal v. Dinesh Kumar Sharma, K.V. Subba Rao v. Govt. of A.P.3, Sanjay K. Sinha-II v. State of Bihar, etc.”

21. Having arrived at the above-noted conclusion; this Court would now

examine the decision rendered by a coordinate Bench of this Court in the case of ***Meyom Karge***(supra) as relied upon by the learned counsel for the petitioner.

22. On a perusal of the said decision of this Court; it is clear that the same is distinguishable on facts and accordingly, the same would not further the case of the petitioners, herein.

23. In view of the decisions of the Hon'ble Supreme Court as noticed hereinabove and also the fact that the provisions of the Rules governing the recruitment to the posts of the Deputy Superintendent of Police(DySP) in the Arunachal Pradesh Police Service, which does not provide for any provision entitling a promotee to receive his promotion from the date of occurrence of the vacancy; this Court is of the considered view that the petitioners, herein, are not entitled to the benefit of grant of retrospective effect to the promotion as effected in their respective cases vide the order, dated 20.08.2016 and the petitioners, herein, have to be deemed to have been promoted to the posts in the cadre of Deputy Superintendent of Police(DySP) figuring in the Arunachal Pradesh Police Service prospectively w.e.f. 20.08.2016 only.

24. In view of the above conclusions; this writ petition is held to be devoid of any merit and accordingly, the same stands dismissed. However, there shall be no order as to costs.

JUDGE

Comparing Assistant