

GAHC040004062024



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

Case No. : WP(C)/131/2024

Sapde Yomcha
presently serving as Assistant Engineer Kamba Electrical Sub Division, Department
of Power, PO and PS Kamba, West Siang District, Arunachal Pradesh

VERSUS

The State of AP and 4 Ors
through the Chief Secretary, Govt of Arunachal Pradesh, Itanagar 2:The Chief
Secretary
Age: 0
Occupation :

3:The Commissiojner
Age: 0
Occupation :

4:The Under Secretary
Age: 0
Occupation :

5:The Departmental Promotion Comittee
Age: 0
Occupation

Advocate for the Petitioner : Dicky Panging

Advocate for the Respondent : GA (AP)

**BEFORE
HONBLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

Judgment & Order(Oral)

Date : 18.07.2024

Heard Mr. D. Panging, learned counsel for the petitioner. Also heard Ms. P. Pangu, learned Government Advocate appearing for the respondents no. 1, 2 & 5 and Mr. L. Perme, learned Standing Counsel appearing for the Power Department representing the respondents no. 3 & 4.

2. As consented to by the learned counsels appearing for the parties, the present writ petition is taken up for final consideration and disposal.

3. The petitioner by way of instituting the present proceeding has raised a grievance with regard to the action/inaction on the part of the respondent authorities in not convening a Departmental Promotion Committee (DPC) meeting for consideration of the cases of the eligible Assistant Engineers (Electrical) including the petitioner herein, for promotion to the posts available in the cadre of Executive Engineer (Power).

4. The brief facts requisite for adjudication of the issues arising in the present proceeding is noticed as under:-

The petitioner herein, who was recruited as an Assistant Engineer (Electrical) on direct recruitment basis, vide an order dated 26.06.2009 has by now completed around 15 years of regular service in the grade of Assistant Engineer. It is the contention of the petitioner that the

respondent authorities had published an inter-se-seniority list of the incumbents in the cadre of Assistant Engineer (Electrical) vide Memo dated 08.07.2013 and the name of the petitioner figures at Serial No. 67 therein. It is the further contention of the petitioner that the incumbents who figured at Serial No. 1 to 66 of the said seniority list have since been promoted to the cadre of Executive Engineer and/or have retired from their services and accordingly, the petitioner, as on date figures at Serial No. 1 amongst the incumbents in the cadre of Assistant Engineer (Electrical) in the department.

The petitioner contends that the manner of recruitment to the post of Executive Engineer is governed by the provisions of "**The Recruitment to the posts of Executive Engineer Rules, 2014**". It is contended that in terms of the said Rules of 2014, recruitment to the post of Executive Engineer is to be effected by way of promotion from cadre of Assistant Engineers, who have completed 5(five) years of regular service in the grade. The petitioner further contends that the Government of Arunachal Pradesh in the Department of Administrative Reforms, vide an Office Memorandum dated 16.06.2016, had laid down that all the HODs are required to ensure that meetings of the DPC are held at least once in every 6(six) months. The petitioner being aggrieved by the inaction on the part of the respondent authorities in convening the meeting of the DPC for consideration of cases of the incumbents in the feeder cadre of Assistant Engineers for promotion to the cadre of Executive Engineer had approached the respondent authorities by way of preferring a representation dated 13.06.2023. The respondent authorities having not considered the said representation, the petitioner has instituted the

present proceeding.

5. Mr. D. Panging, learned counsel for the petitioner by reiterating the facts as noticed herein above has contended that although the said Rules of 2014, having not laid down the periodicity for convening the DPC meetings, the Office Memorandum dated 16.06.2016, has to be read into the said Rules of 2014 and accordingly, the departmental authorities were duty-bound to convene the DPC meetings for consideration for recruitment to the cadre of Executive Engineer. Mr. Panging, learned counsel has further contended that the petitioner has already completed around 15 years of service in the cadre of Assistant Engineer (Electrical) and there exist nothing adverse against him, which would have the effect of denying to the petitioner his due promotion to the cadre of Executive Engineer (Power).

6. Mr. D. Panging, learned counsel for the petitioner submits that the right to consideration for promotion has been held by the Hon'ble Supreme Court to be a fundamental right and accordingly, the inaction on the part of the respondent authorities in not convening the meetings of the DPC and considering the case of the petitioners therein for promotion to the cadre of Executive Engineer (Power) has the effect of violating the fundamental rights so vested in the petitioner herein. In the above premises, Mr. Panging, learned counsel prays that this Court would be pleased to direct the respondent authorities to convene the DPC meeting and consider the case of the petitioner therein, on its merits, for promotion to the cadre of Executive Engineer (Power).

7. Per contra, Mr. L. Perme, learned Standing Counsel appearing for the

Power Department has submitted that the file for holding of DPC meetings to fill up the vacant posts of Executive Engineer (Power) was processed at regular intervals but, on account of certain administrative difficulties, the said process could not be taken to its logical conclusion. Mr. Perme, learned Standing Counsel has clarified that the administrative difficulty involved includes absence of a final seniority list of Assistant Engineers, which could not be prepared on account of pendency of cases before this Hon'ble Court, filed by promotee Assistant Engineer (Electrical) claiming for retrospective promotion.

8. In this connection, Mr. Perme, learned Standing Counsel has further referred to the pendency of the proceedings in **WP(C)/149(AP)2023 (Marto Kamgo & Ors. Vs The State of Arunachal Pradesh & Ors.)**, which was filed by the promotee Assistant Engineer (Electrical), claiming regularization of their services as Assistant Engineer (Electrical) with retrospective effect i.e. w.e.f., the date they were so promoted to the cadre of Assistant Engineer (Electrical) on ad-hoc basis. In the above premises, Mr. Perme, learned counsel submits that there is no laches on the part of the departmental authorities in convening the DPC meetings and the non-convening of the DPC meetings were for reasons beyond the control of the departmental authorities.

9. I have considered the submissions made by the learned counsels appearing for the parties and also perused the materials available on record.

10. At the outset, it is to be noted that the manner of recruitment to the vacant posts figuring in the cadre of Executive Engineer is laid down in the

provisions of “**The Recruitment to the posts of Executive Engineer Rules, 2014**”. In terms of the provisions of the said Rules of 2014, more particularly, the schedule thereof, the post as figuring in the cadre of Executive Engineer is required to be filled up by way of promotion from the cadre of Assistant Engineer (Electrical). The said Rules of 2014, further provides that the incumbents in the cadre of Assistant Engineer (Electrical), who have completed 5(five) years of regular service in the grade and fulfills the educational qualification as mandated in the said Rules of 2014, would be eligible for consideration of their cases by the DPC for promotion to the cadre of Executive Engineer (Power).

11. It is not disputed that the petitioner is eligible for having his case considered for promotion to the cadre of Executive Engineer (Power) in terms of the said Rules of 2014. It is further required to be noted that the contention of the petitioner that his name figures at Serial No. 67 of the inter-se-seniority list of Assistant Engineer (Electrical) as published vide the notification dated 08.07.2013 and that, persons whose name figures at Serial No. 1 to 66 have been promoted to the cadre of Executive Engineer (Power) and or, have retired from their services has not been disputed by the respondent authorities. Further, the respondent authorities have not disputed the fact that as on date, there exists around 9(nine) vacancies in the cadre of Executive Engineer, which is now required to be filled up in terms of the provisions of the said Rules of 2014.

12. The grievance of the petitioner in the present proceeding is the non-convening of the DPC meetings for consideration of his case and that of other eligible incumbents in the cadre of Assistant Engineer (Electrical) for

promotion to the posts as figuring in the cadre of Executive Engineer (Power).

13. The respondent authorities, in justification of the delay as occasioning in convening the DPC meetings have contended that the same is on account of the proceedings as instituted by promotee Assistant Engineers (Electrical) before this Court, who have claimed for grant of retrospective effect to the promotions so effected in their respective cases to the cadre of Assistant Engineer (Electrical) w.e.f., the date they were so permitted to hold the post of Assistant Engineer (Electrical) on ad-hoc basis. In this connection, the respondent authorities have referred to the proceedings as pending before this Court in **WP(C)/149(AP)2023 (Marto Kamgo & Ors. Vs The State of Arunachal Pradesh & Ors.)**.

14. In view of the said contentions of the respondents, this Court had posed a query to the learned counsel for the parties as to whether there was any order passed by this Court in the proceedings of WP(C)/149(AP)2023, restraining the authorities from effecting promotions to the cadre of Executive Engineer.

15. The learned counsels appearing for the parties have on examination of the matter submitted that this Court had not passed any direction, restraining the respondent authorities from filling up of the vacant posts of Executive Engineer (Power) in the said case.

16. Having noticed the said position, this Court holds that the right to be considered for promotion has been settled to be a fundamental right by the Hon'ble Supreme Court in number of decisions.

17. The Hon'ble Supreme Court in the case of **Lift Irrigation Corp. Ltd. Vs Pravat Kiran Mohanty**, reported in **(1991) 2 SCC 295**, had held that there is no fundamental right to promotion, but an employee has only a right to be considered for promotion, when it arises, in accordance with the relevant rules.

18. The Hon'ble Supreme Court in the case of **Ajit Singh (2) Vs State of Punjab**, reported in **(1999) 7 SCC 209**, on examining the question whether right to be considered for promotion was a fundamental right, by emphasizing on *Article 14* and *Article 16(1)* of the Constitution of India, held that if a person who satisfies the eligibility and the criteria for promotion but, still is not considered for promotion, then there will be a clear violation of his/her fundamental rights.

19. The relevant observations made by the Hon'ble Supreme Court in the aforementioned decisions in this connection, are extracted herein below:-

“22. Article 14 and Article 16(1) are closely connected. They deal with individual rights of the person. Article 14 demands that the 'State shall not deny to any person equality before the law or the equal protection of the laws'. Article 16(1) issues a positive command that:

“there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State”.

It has been held repeatedly by this Court that clause (1) of Article 16 is a facet of Article 14 and that it takes its roots from Article 14. The said clause particularises the generality in Article 14 and identifies, in a constitutional sense "equality of opportunity" in matters of employment and appointment to any office under the State. The word "employment" being wider, there is no dispute that it takes within its fold, the aspect of promotions to posts above the stage of initial level of recruitment.

Article 16(1) provides to every employee otherwise eligible for promotion or who comes within the zone of consideration, a fundamental right to be "considered" for

promotion. Equal opportunity here means the right to be "considered" for promotion. If a person satisfies the eligibility and zone criteria but is not considered for promotion, then there will be a clear infraction of his fundamental right to be "considered" for promotion, which is his personal right.

"Promotion" based on equal opportunity and seniority attached to such promotion are facets of fundamental right under Article 16(1).

27. In our opinion, the above view expressed in Ashok Kumar Gupta and followed in Jagdish Lal and other cases, if it is intended to lay down that the right guaranteed to employees for being "considered" for promotion according to relevant rules of recruitment by promotion (i.e. whether on the basis of seniority or merit) is only a statutory right and not a fundamental right, we cannot accept the proposition. We have already stated earlier that the right to equal opportunity in the matter of promotion in the sense of a right to be "considered" for promotion is indeed a fundamental right guaranteed under Article 16(1) and this has never been doubted in any other case before Ashok Kumar Gupta from 1950.

20. The above position was further reiterated by the Hon'ble Supreme Court in the case of **H. M. Singh Vs Union of India**, reported in **(2014) 3 SCC 670**. The relevant conclusion of the Hon'ble Supreme Court in this connection in the said decision is extracted herein below:-

"28. The question that arises for consideration is, whether the non Consideration of the claim of the appellant would violate the fundamental rights vested in him under Articles 14 and 16 of the Constitution of India. The answer to the aforesaid query would be in the affirmative, subject to the condition that the respondents were desirous of filling the vacancy of Lieutenant-General, when it became available on 1-1-2007. The factual position depicted in the counter- affidavit reveals that the respondents indeed were desirous of filling up the said vacancy. In the above view of the matter, if the appellant was the seniormost serving Major-General eligible for consideration (which he undoubtedly was), he most definitely had the fundamental right of being considered against the above vacancy, and also the fundamental right of being promoted if he was adjudged suitable. Failing which, he would be deprived of his fundamental right of equality before the law, and equal protection of the laws, extended by Article 14 of the Constitution of India. We are of the view that it was in order to extend the benefit of the fundamental right enshrined under Article 14 of the Constitution of India, that he was allowed extension in service on two occasions, firstly by the Presidential Order dated 29-2-2008, and thereafter, by a further Presidential Order dated 30-5-2008. The above orders clearly depict that the aforesaid extension in service was granted to the appellant for a period of three months (and for a further

period of one month), or till the approval of the ACC, whichever is earlier. By the aforesaid orders, the respondents desired to treat the appellant justly, so as to enable him to acquire the honour of promotion to the rank of Lieutenant-General (in case the recommendation made in his favour by the Selection Board was approved by the Appointments Committee of the Cabinet, stands affirmed). The action of the authorities in depriving the appellant due consideration for promotion to the rank of the Lieutenant-General would have resulted in violation of his fundamental right under Article 14 of the Constitution of India. Such an action at the hands of the respondents would unquestionably have been arbitrary.”

21. Having noticed the fact that the right to consideration for promotion having been elevated to the status of a fundamental right by the Hon’ble Supreme Court in the decisions as noticed herein above, it is to be concluded that denial of such consideration to a person, otherwise qualified under the relevant rules for having his case considered for promotion, tantamounts to violation of the fundamental rights vested in this connection in the said person.

22. Applying the said decisions of the Hon’ble Supreme Court to the facts of the present case, it is seen that the petitioner who is otherwise eligible for being considered for promotion against the available vacant posts of Executive Engineer (Power) under the provisions of the said Rules of 2014, has been denied the due consideration required to be made in his case and thereby, his fundamental rights have been violated.

23. The justification advanced by the departmental authorities for the delay occasioning in convening the DPC meetings for consideration of cases of eligible Assistant Executive (Electrical) for promotion to the cadre of Executive Engineer (Power) has been duly considered by this Court, and this Court finds that the same are not of any substance and accordingly, stands rejected.

24. This Court, in the proceeding in WP(C)/149(AP)2023, having not restrained the respondent authorities from effecting promotions to the vacant posts figuring in the cadre of Executive Engineer (Power), the pendency of the said case could not have been projected as one of the reasons for delay in convening the DPC meetings in the matter by the respondent authorities.

25. The petitioner having brought on record the inter-se-seniority list of incumbents in the cadre of Executive Engineer (Power) and the contentions as made by the petitioner in connection thereto, having not been denied by the respondents, the respondent authorities ought to have taken into consideration, the said seniority list and proceeded to have the cases of the persons presently in the zone of consideration for promotion to the cadre of Executive Engineer (Power).

26. It is to be noted that the respondent authorities have not brought on record any material to demonstrate that there was a legal bar existing, restraining the respondent authorities for convening the DPC meetings for promotion of the incumbents in the feeder cadre of Assistant Engineer (Electrical) to the cadre of Executive Engineer(Power). Accordingly, this Court, in view of the above position as emanating from the materials available on record, is of the considered view that the respondent authorities are required to be directed to convene the DPC meetings for considering the cases of the eligible incumbents including the petitioner herein, in the cadre of Assistant Engineer (Electrical) to the cadre of Executive Engineer (Power) in terms of the provisions of the said Rules of 2014, and for taking the said process to its logical conclusion.

27. It is provided that in the event, there is a decision requiring for a recasting of the seniority positions of the petitioners in WP(C)/149(AP)2023, the same can be taken care of by the authorities by convening a review DPC meeting, if the occasion so demands. However, the same cannot be a reason for non-convening the DPC meetings for consideration of cases of the person like the petitioner in the cadre of Assistant Engineer (Electrical), against whom, there is no proceeding pending before this Court.

28. In view of the above position, the respondent authorities, are hereby directed to convene a DPC meeting as envisaged under the provisions of the said Rules of 2014 and to consider the cases of incumbents in the feeder cadre of Assistant Engineer (Electrical) for promotion to the available vacant posts in the cadre of Executive Engineer (Power) within a period of 2(two) months from the date of receipt of a certified copy of this order.

29. The further course of action as would be mandated in the matter be so taken by the departmental authorities basing on the recommendations as would now be made by the DPC in the matter.

30. With the above observations and directions, the writ petition stands disposed of.

JUDGE

Comparing Assistant