

GAHC040004992024



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

**Case No. : WP(C)/164/2024**

Toko Togur

Son of Late Toko Talam, presently serving as Deputy Director, Trade and Commerce,  
Govt of Arunachal Pradesh, C Sector, Itanagar, Papumpare District, Arunachal  
Pradesh

VERSUS

The State of AP and 3 Ors

represented through the Chief Secretary, Govt of Arunachal Pradesh, Itanagar

2:The Secretary (Trade and Commerce)

Age: 0

Occupation :

Govt of Arunachal Pradesh

Itanagar

3:The Director (Trade and Commerce)

Age: 0

Occupation :

Govt of Arunachal Pradesh

Itanagar

4:The Under Secretary (Trade and Commerce)

Age: 0

Occupation :

Govt of Arunachal Pradesh

Itanaga

**Advocate for the Petitioner** : , Along Tabang,Rage Koyu,Likha Tabin,Taba Tagum

**Advocate for the Respondent** : GA (AP),

**BEFORE  
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

**ORDER**

**Date : 03.12.2024**

Heard Mr. T. Tagum, learned counsel for the petitioner and Mr. R.H. Nabam, learned Addl. Advocate General for the State respondents.

**2.** In this petition, under Article 226 of the Constitution of India, the petitioner, namely, Shri Toko Togur, has prayed for issuing direction to the respondent authorities to constitute a review DPC to consider the case of the petitioner for promotion to the post of Deputy Director, Trade & Commerce, w.e.f. the date on which he was given officiating promotion to the post of Deputy Director, Trade & Commerce.

**3.** Mr. Tagum, learned counsel for the petitioner submits that while the petitioner was serving as Assistant District Education Officer (ADEO) in the Education Department, he was appointed as Ex-Officio Assistant Director in the Department of Trade & Commerce, on administrative exigency, without any extra remuneration, vide order dated 13.10.2005. Thereafter, the Government of Arunachal Pradesh had created one post of Deputy Director and one post of Assistant Director, along with other posts in the Department of Trade & Commerce, vide order dated 22.07.2009 and after creation of regular post of Assistant Director, Trade & Commerce, the petitioner was appointed to the post of Assistant Director, Trade & Commerce on deputation basis, vide order dated 18.11.2009 and the petitioner was released from the Education Department, so as to enable him to join the Department of Trade & Commerce on deputation basis, vide order dated 04.01.2010. Thereafter, the petitioner was permanently absorbed to the post of Assistant Director, Trade & Commerce, vide order dated

24.01.2012, w.e.f. 04.01.2010. Thereafter, the Government had created another post of Deputy Director, along with other post in the Department of Trade & Commerce, vide order dated 20.10.2015 and after creation of the post of Deputy Director, Trade & Commerce, the same was lying vacant. And as per the recruitment rules i.e. the General Arunachal Service Deputy Director, Trade & Commerce, Group 'A' (Amendment) Rules, 2015, the post of Deputy Director is to be filled up by 100% promotion from the post of Assistant Director, Trade & Commerce, who have completed five years of regular service in the grade and the present petitioner has also acquired the qualifying service period of five years for promotion to the said post on 04.01.2015. Thereafter, the petitioner was given officiating promotion to the post of Deputy Director, Trade & Commerce, vide order dated 04.12.2015, with regular pay scale of Deputy Director and the Government had taken a policy decision and directed all the head of the departments to hold DPC in every six months to ensure timely promotion of the employees of the State, vide Office Memorandum dated 16.06.2016 and in spite of such standing order, the DPC, in order to fill up the post of Deputy Director, Trade & Commerce, was not conducted by the respondent authorities, though the petitioner has given officiating promotion with regular pay scale of Deputy Director w.e.f. 04.12.2015. Thereafter, the DPC was held on 05.11.2019 and the petitioner was recommended for regularization of officiating promotion of the petitioner to the post of Deputy Director, Trade & Commerce, instead of regularizing the same w.e.f. 04.12.2015. After the recommendation of the DPC, dated 05.11.2019, the petitioner has been appointed to the post of Deputy Director, Trade & Commerce, w.e.f. 05.11.2019, ignoring and discarding the service length of the petitioner as Deputy Director, Trade & Commerce, which he had already served to the Department on

officiating basis, with regular pay scale since 04.12.2015. Mr. Tagum also submits that being aggrieved, the petitioner has approached this Court by filing the present writ petition praying for issuing direction to the respondent authorities to compute his length of officiating service as Deputy Director, Trade & Commerce, w.e.f. 04.12.2015. Mr. Tagum by referring to a note sheet of the Judicial Department of the Government of Arunachal Pradesh, which is available at page No. 64 of the writ petition, submits that the Judicial Department has also gave its opinion favouring the present petitioner. Mr. Tagum further submits that in a catena of decisions, Hon'ble Supreme Court has held that the officiating service of an employee cannot be ignored or discarded by the State authority and such length of officiating service of the employee must be counted and computed for the purpose of reckoning seniority in the service. In support of his submission, Mr. Tagum has referred to the following decisions:

- (i) **Union of India and Anr. vs. Harish Chander Bhatia and Ors.**, reported in (1995) 2 SCC 48.
- (ii) **L. Chandrakishore Singh vs. State of Manipur and Ors.**, reported in (1999) 8 SCC 287.
- (iii) **S. Sumnyan and Ors. vs. Limi Niri and Ors.**, reported in (2010) 6 SCC 791.

**4.** Per contra, Mr. Nabam, learned Addl. Advocate General for the State respondents submits that it is a well settled proposition of law that retrospective promotion cannot be granted to an employee. However, Mr. Nabam submits that DPC could not be conducted due to several reasons and in spite of that, the DPC was conducted on 05.11.2019, and the petitioner has already been promoted to the post of Deputy Director and he was given the scale of pay of Deputy

Director since the date of his officiating promotion w.e.f. 04.12.2015. However, Mr. Nabam submits that it is not known as to why the DPC has not counted the service rendered by the petitioner as officiating Deputy Director.

**5.** Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also gone through the decisions referred by Mr. Tagum, learned counsel for the petitioner.

**6.** In the case of **Harish Chander Bhatia** (supra), Hon'ble Supreme Court has held that:

“An officiating appointment for over a decade cannot be treated as fleeting appointment with no service benefits to be given. Any other view would very seriously prejudice such a service-holder who, even after having rendered service equal to those of permanent appointees for a long period, and that too for proper functioning of the Service, would be denied the benefit of the same for no cogent reasons. Any other view is bound to have a demoralising effect in the Service as a whole. As the appointments under Rule 25 are also to duty posts, which may form part of the strength of Service because what has been stated in Rule 4(3), we are of the view that justice of the case and the need to preserve the efficient functioning of the Service would require to treat the appointments of the respondents as permanent, despite their having been first appointment on officiating basis.”

**7.** Again, in the case of **L. Chandrakishore Singh** (supra), Hon'ble Supreme Court has held that:

“Even in cases of probation or officiating appointments which are followed by a confirmation unless a contrary rule is shown, the service rendered as officiating appointment or on probation cannot be ignored for reckoning the length of continuous officiating service for determining the place in the

seniority list. Where the first appointment is made by not following the prescribed procedure and such appointee is approved later on, the approval would mean his confirmation by the authority and shall relate back to the date on which his appointment was made and the entire service will have to be computed in reckoning the seniority according to the length of continuous officiation.”

**8.** Further, in the case of *S. Sumnyan* (supra), Hon’ble Supreme Court has held that:

“The other aspect of the matter which is to be noted is that when the respondents (sic appellants) were appointed to the service as Assistant Engineers on the recommendation of the A.P. PSC, the said appointment was on probation for a period of two years. Some of the appellants had successfully completed their probation period on 20-7-1989, after their cases had been taken up for regularisation by the A.P. PSC. Therefore, when considered from any angle there is no justification for denial of the benefit of seniority to the appellants from the date of their initial appointment which is also in tune with the legal principles laid down by this Court as referred to hereinbefore and in that view of the matter the aforesaid decision which is relied upon by the counsel appearing for the respondents is held to be not applicable to the facts and circumstances of the present case.”

**9.** The legal proposition, that can be crystallized from the aforementioned decisions, is that officiating service, rendered by an employee cannot be ignored or discarded by the State authority and the length of service on officiating basis must be counted and computed for the purpose of reckoning seniority in the service.

**10.** In the instant case, the petitioner was given officiating promotion to the post of Deputy Director, Trade & Commerce, w.e.f. 04.12.2015 and he has also been given the scale of pay and since 04.12.2015, as provided vide Office

Memorandum dated 16.06.2016, no DPC was conducted for consideration of regular promotion of the petitioner to the post of Deputy Director, Trade & Commerce and the DPC could not be held till 05.11.2019 and while the DPC was conducted on 05.11.2019, the petitioner was promoted on 05.12.2019, without considering the length of service rendered by him in officiating basis as Deputy Director, Trade & Commerce, since 04.12.2015, on which date he had already acquired the qualifying period of service of five years, for regular promotion to the said post as per the recruitment rules i.e. the General Arunachal Service Deputy Director, Trade & Commerce, Group 'A' (Amendment) Rules, 2015.

**11.** Since the petitioner had rendered his service as Deputy Director, Trade & Commerce on officiating basis since 04.12.2015, and since he has been given regular scale of pay for the post of Deputy Director, Trade & Commerce and other service benefits, and since he had acquired the length of service of five years for being promoted to the post of Deputy Director, this Court is of the view that the period of service rendered by him since 04.12.2015, ought to have been considered by the DPC, held on 05.11.2019 and since it was not considered by the DPC, serious prejudice is caused to him.

**12.** Under the aforesaid facts and circumstances, and taking note of the submissions of learned Advocates of both sides and also the legal proposition, as discussed herein above, this Court is inclined to allow this writ petition. The respondent authorities are directed to constitute a DPC to review the case of the petitioner for being promoted to the post of Deputy Director, Trade & Commerce, w.e.f. the date of his officiating promotion i.e. 04.12.2015, on which he was promoted as officiating Deputy Director, Trade & Commerce, keeping in mind the legal proposition enunciated herein above.

**13.** The above exercise has to be carried out within a period of three months

from the date of receipt of certified copy of this order. The petitioner shall obtain a certified copy of this order and place the same before the respondent authorities within a period of two weeks from today.

**14.** In terms of above, the writ petition stands disposed of.

**JUDGE**

**Comparing Assistant**