

GAHC040012702021



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

Case No. : WP(C)/440/2021

Tatum Nyigang
Age: 35
Occupation :
Address: Permanent resident of Paksing Village
PO/PS Kaying
Siang District Arunachal Pradesh
Presently working under the National Health Mission
at office of the District Medical Officer (DMO) Lemmi
Pakke Kessang District
Arunachal Pradesh.
Mobile No. 7627904077

VERSUS

- 1: THE STATE OF AP and 4 Ors.
Address: Represented by the Secretary Health and Family Welfare
Govt. of Arunachal Pradesh
Itanagar.
- 2: The Mission Director
Address: National Health Mission
Govt. of Arunachal Pradesh
Naharlagun
- 3: The Deputy Commissioner cum Chairman
Address: District Health Society
NHM, Lemmi
Pakke Kessang District
Arunachal Pradesh
- 4: The District Medical Officer (DMO)

Address:Lemmi
Pakke Kessang District
Arunachal Pradesh

5:Chuma Nabom
Address:Chairman
Pakke Kessang District Intellectual Forum (PDIF)
H.Q. Pakke Kessang
Lemmi
Arunachal Pradesh.
Mobile No. 8787314342. 8414093414

Advocate for : K. Tama
Advocate for : Taba Tagum

BEFORE
HONBLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Judgment & Order(Oral)

Date : 19-07-2024

Heard Mr. K. Tama, learned counsel for the petitioner. Also heard Mr. T. Tagum, learned Standing Counsel, Health Department, appearing for the respondents No.1, 2, 3 and 4 and G. Bam, learned counsel appearing for the respondent No. 5.

2. The petitioner in the present proceeding has presented a challenge to an order dated 16.12.2021, by which, the promotion as affected in his case to the post of District Account Manager (DAM) vide an order dated 19.07.2021, was withdrawn/revoked. The petitioner has further presented a challenge to a re-advertisement dated 20.12.2021, by which, the post of District Account Manager (DAM) of Pakke Kessang District was re-advertised.

3. The facts, in brief, requisite for the purpose of adjudicating the issues arising in the present proceeding are noticed as under;

4. The petitioner herein was initially appointed vide an order dated 30.12.2010, as a Block Accountant-cum-Data Assistant by the Mission Director, National Rural Health Mission, Government of Arunachal Pradesh and was posted at Arzoo-Anelih in the Office of District Medical Officer, Dibang Valley District, Arunachal Pradesh. Thereafter, the petitioner was transferred to Seijosa block, under Pakke Kessang District (Erstwhile East Kameng District) in the same capacity in 2014.

5. The vacancy having arisen in the post of District Account Manager (DAM), Pakke Kessang District under the National Health Mission, the petitioner was appointed to officiate against the said post vide an order dated 04.09.2019, issued by the Deputy Commissioner, Pakke Kessang District, Lemmi. The Deputy Commision-cum-Chairman, DHS, Pakke Kesang District, Lemmi vide an order dated 15.04.2020, invited applications from eligible candidates of Pakke Kessang District serving as Block Account Manager (BAM) under the National Health Mission, for promotion to the post of District Account Manager (DAM) under NHM, on contractual basis. The petitioner being eligible for being considered for promotion to the post of District Account Manager (DAM) submitted his application in response to the said order dated 15.04.2020. The case of the petitioner thereafter was considered by

the Departmental Promotion Committee and the said Committee on finding the petitioner suitable for the said promotion, made recommendation in his favour for such promotion. In terms of the recommendation, as made by the Departmental Promotion Committee, the Deputy Commissioner-cum-Chairman, DHS, Pakke Kesang District, Lemmi vide an order 19.07.2021, proceeded to promote the petitioner herein to the post of District Account Manager (DAM) on contractual basis against the existing vacancy under the National Health Mission in the Pakke Kessang District. The said appointment was on contractual basis for one year with consolidated pay of Rs.38,000/-(Rupees Thirty Eight Thousand only) per month.

6. The petitioner accordingly, on completion of the formalities mandated, joined against the said promotional post and was discharging his duty therein. The authorities of the National Health Mission on carrying out the requisite reviews with regard to the service rendered by the petitioner was extending the service of the petition from time to time. As the petitioner was continuing to discharge his duties as the District Account Manager (DAM), a representation came to be preferred by the Pakke Kessang District Intellectual Forum (herein after referred to as PKDIF), i.e. the respondent No.5 herein, requiring the respondent No.3 to cancel the promotion as made in respect of the post of District Account Manager (DAM), District Data Manager (DDM), District Programme Manager(DPM) and District Community

Mobilizer (DCM) under NHM, on the ground that the said promotions were so affected in clear violation of the terms of reference as was applicable against the said posts figuring in NHM. The said representation was responded to by the respondent No.3 vide a communication dated 16.11.2021, and therein had justified the promotion so affected. However, the organisation thereafter, persisted with the matter and vide a communication dated 20.11.2021, proceeded to issue a ultimatum upon the respondent No.3 to roll back the recruitment process as undertaken vide the advertisement in question and for re-advertising the posts involved, failing which, it was contended that agitational programmes, including Bandh call would be so undertaken. Thereafter, All Pakke Kessang District Student Union (APKDSU) (herein after referred to as APKDSU) issued a charter of demand requiring immediate cancellation of the promotions made and for re-advertisement of the posts as advertised vide advertisement dated 08.11.2021, failing which, a Bandh call was to be given on 13.12.2021 from 5 am to 5 pm.

7. It is seen that in terms of the agitational programme as initiated in the matter by APKDSU and PKDIF, vide an order dated 08.12.2021, the Mission Director, NHM, Arunachal Pradesh proceeded to direct that the whole process of recruitment to the post of District Account Manager (DAM) and District Data Manager (DDM) as carried out in Pakke Kessang District be cancelled with immediate effect, with further direction for initiation of fresh

recruitment against the said posts. In terms of the said developments, the respondent No.3, vide an order dated 09.12.2021, proceeded to direct the District Medical Officer, Pakke Kessang to issue re-advertisement with regard to the post involved, in terms of the Government directions as well as an Office Memorandum dated 29.08.2021.

8. Thereafter, vide an order dated 16.12.21, the respondent No.3, proceeded to notify that all promotions as affected in the Pakke Kessang District, including the promotion as affected in respect of the petitioner herein vide order dated 19.07.2021, would be withdrawn/revoked with immediate effect and the process involved be declared as Null and Void.

9. Upon cancellation of the order of promotion of the petitioner, the respondent No.3 proceeded to issue a fresh advertisement on 20.12.2021, for recruitment, amongst others, to the post of District Account Manager (DAM). Being aggrieved, the petitioner has instituted the present proceedings.

10. The learned counsel for the petitioner by taking this Court through the orders passed in the matter by the district authorities have contended that the cancellation of the promotion of the petitioner was so affected without issuing to him any notice and/or after giving him an opportunity of hearing him in the matter. The learned counsel for the petitioner has further submitted that the

promotions involved came to be interfered with only on the account of the pressure mounted upon the respondent authorities by the PKDIF and APKDSU and that there existed no error in the process as undertaken by the respondent authorities of NHM in promoting the petitioner to the post of District Account Manager (DAM), vide the order dated 19.07.2021.

11. The learned counsel for the petitioner submits that the petitioner has been rendering his service in terms of the interim directions passed by this Court in the matter and his services are being regularly extended by the NHM authorities after carrying out the review as mandated in this connection.

12. The learned counsel for the petitioner has submitted that the only ground urged by the PKDIF and APKDSU in their respective representation is that promotions as made, amongst others, to the post of District Account Manager (DAM) was so initiated and concluded in clear violations of the terms of reference as enclosed to the Office Memorandum dated 29.08.2021. Drawing the attention of this Court to the said Office Memorandum dated 29.08.2021, the learned counsel for the petitioner has submitted that the said Office Memorandum was issued only on 03.09.2021, prescribing the revised eligibility criteria for various post figuring in NHM, including the post of the District Account Manager (DAM). The learned counsel for the petitioner has submitted that the advertisement in the matter was issued on 15.04.2020 and his promotion as District

Account Manager (DAM) was so affected vide an order dated 19.07.2021, and the said steps were so taken much prior to the date of issuance of the Office Memorandum dated 29.08.2021 and accordingly, the prescriptions as brought into force vide the Office Memorandum dated 29.08.2021, cannot be given retrospective effects so as to invalidate the order dated 15.04.2020, by which, applications were called for promotion amongst others to the post of District Account Manager (DAM) as per the then prevailing norms.

13. Accordingly, the learned counsel for the petitioner in the above premises prays that the orders issued towards cancelling the promotion as well as the re-advertisement dated 20.12.2021, requires to be interfered with by this Court.

14. Mr. T. Tagum, learned Standing Counsel, Health Department, by referring to the affidavit filed in the matter by the respondents No.1, 2 and 4 has submitted that in view of the outrage of the local inhabitants of the area as projected by the PKDIF and APKDSU, the decision to revoke/withdraw the order dated 15.04.2020, as well as the order of promotion of the petitioner dated 19.07.2021 was requires to be taken by the authorities. It was further contended that the pressure as exerted by the said civil bodies led to the decision for revocation of promotion of the petitioner and for re-advertising the post as held by the petitioner. Mr. T. Tagum, by referring to the said affidavit has fairly submitted that the service of the petitioner is being renewed periodically and he is continuing in

his service as on date. It was further projected that the petitioner is a sincere and diligent official of the department.

15. The learned counsel for the respondent No.5 has adopted the argument as advanced in the matter by the learned Standing Counsel, Health Department.

16. I have considered the submissions made by the learned counsel for the parties and have also perused the materials brought on record.

17. It is not disputed that the respondent No.3 vide an order dated 15.04.2020 had invited applications from the persons serving in the NHM, against the posts as mentioned therein, for the promotion to various post including the post of District Account Manager (DAM) and eligibility criteria as spelt out therein where the eligibility criteria holding the field on the date the said order dated 15.04.2020, was so issued. Further, it is not disputed that the petitioner herein was so promoted by following the procedure as mandated in NHM for such promotion and after his case was so considered by the constituted Departmental Promotion Committee. Accordingly, the order dated 19.07.2021, promoting the petitioner as District Account Manager (DAM) on contractual basis in NHM has to be held to have been so issued after following the procedure as mandated at the relevant point of time.

18. A perusal of the grievance as raised in the matter by the civil bodies would reveal that the said bodies had objected to the promotion effected against various posts in NHM, Pakke Kessang District, including the post of District Account Manager (DAM) held by the petitioner herein, on the ground that the same were so affected in clear violation of the eligibility norms brought into operation vide an Office Memorandum dated 29.08.2021. The above being the crux of the grievance raised by the said bodies, a perusal of the Office Memorandum dated 29.08.2021 is mandated.

19. A perusal of the Office Memorandum dated 29.08.2021 reveals that the recruitment to the post as mentioned therein, including the post of District Account Manager (DAM), was required to be so carried out as per the eligibility criteria mentioned in the terms of reference annexed to the said Office Memorandum. A close perusal of the office Memorandum dated 29.08.2021, reveals that the same was so issued only on 03.09.2021. The advertisement inviting applications for the post of District Data Account (DAM) was issued by the respondent No.3 herein vide an order dated 15.04.2020 and the recruitment process on being concluded and the recommendation of the Departmental Promotion Committee having been received, the respondent No.3 had promoted the petitioner as the District Account Manager (DAM) of district concerned vide an order dated 19.07.2021. In other words, the process of recruitment to the post of District Account Manager (DAM) stood concluded with the issuance of the order dated 19.07.2021, promoting the petitioner

to the post of District Account Manager (DAM) and the said process having been concluded prior to issuance of the Office Memorandum dated 29.08.2021, the eligibility criteria as now prescribed under the provision of the said Office Memorandum dated 29.08.2021, cannot be made applicable retrospectively so as to invalidate the recruitment process initiated vide the order dated 15.04.2020 and concluded with the order of promotion of the petitioner on 19.07.2021. This aspect of the matter was not considered by the respondent authorities while proceeding to take decision in the matter towards withdrawing/revoking the promotion as affected in respect of the petitioner herein.

20. In view of the above conclusion as arrived at, and there being no allegation that the procedure adopted towards promotion of the petitioner to the post of District Account Manager (DAM) on contractual basis under NHM was not so done basing on the norms applicable at that relevant point of time, this Court is of considered view that the order dated 16.12.2021 issued toward revoking the order of promotion of the petitioner herein is not sustainable and accordingly, the said order dated 16.12.2021, to the extent that it withdraws/revokes the promotion as affected in respect of the petitioner to the post of District Account Manager (DAM) vide an order dated 19.07.2021, stands set aside.

21. The order dated 16.12.2021 having been interfered with by this Court, the promotion of the petitioner to the post of District Account

Manager (DAM) would stand revived and accordingly, the advertisement dated 20.12.2021, to the extent it initiates recruitment against the post of District Account Manager (DAM) of Pakke Kessang District also stands interfered with.

22. At this stage, it is noted that this Court while issuing notice in the matter on consideration of the materials coming into records had vide order dated 22.12.2021, provided that the operation of the impugned order dated 16.12.2021 shall remain suspended. Accordingly, the petitioner having been continuing in his service as District Account Manager (DAM) on contractual basis in NHM, it is directed that the petitioner shall continue to serve in such capacity, however, subject to the process of renewal of the contractual appointment as undertaken by the authorities of the NHM, periodically.

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

JUDGE

Comparing Assistant