

GAHC040015912019

2024:GAU-AP:846



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

Case No. : WP(C)/515/2019

Anjan Roy
S.I. S/o Ramesh Roy, C/o Principal Police Training Centre, Banderdewa, Papum Pare
Dist. AP

2: Ananto Boruah

Age:
Occupation :
S.I. S/o Lakshmi Pd. Boruah
C/o commandant 1st APPBn
Chimpu
Itanagar
Papum Pare Dist. A

VERSUS

THE STATE OF AP and 7 Ors.
represented by the Chief Secretary, Govt. of AP, Itanagar

2:The Secretary
Home

Age: 0
Occupation :
Govt. of AP
Itanagar

3:The Director General of Police

Age: 0
Occupation :
PHQ
Itanagar
Chimpu

AP

4:Chairman/Member
Departmental Promotion Committee

Age: 0

Occupation :

held on dated 27/08/2019 for promotion of Sub-Inspector (AAPBN) to the Grade of
Inspector (AAPBN)

represented by its Chairman

sri Kaling Tayeng

commissioner

Home

Itanagar

5:Shri Tapok Bitin (Inspector)

Age: 0

Occupation :

C/o Commandant

2nd AAPBn

Aalo

West siang Dist. AP

6:Lingdom Komi (Inspector)

Age: 0

Occupation :

C/o Commandant

1st AAPBn

Chimpu

Dist. Papum Pare

AP

7:Tomo Ete

(Inspector)

Age: 0

Occupation :

2nd AAPBn

BHQ

Aalo

West Siang Dist. AP

8:Karo Pertin

(Inspector)

Age: 0

Occupation :

C/o Commandant

1st AAPBn

Chimpur

Itanaga

Advocate for the Petitioner : 1 M Pertin, Sr. Advocate, Karyom Dabi,M Pertin,D Tatak,R. Riba

Advocate for the Respondent : GA (AP), A T Tara,T T Tara,D Loyi,Jungam Jini,Gamken Bam,Adam Tatak,Terji Kamchi

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

JUDGMENT & ORDER (ORAL)

17.09.2024

Heard Mr. M. Pertin, learned counsel, learned senior counsel, assisted by Mr. M. Yubbey, learned counsel for the petitioners. Also heard Mr. S. Tapin, learned Senior Govt. Advocate appearing for respondent nos.1 to 4; and Mr. J. Jini, learned counsel appearing for private respondent nos. 5, 7 and 8. None appears on call for the respondent no.6, on whom notice was served in a substituted manner by publication of notice in the Arunachal Times edition dated 03.05.2023.

2. The petitioners are serving as Sub-Inspectors in the Arunachal Armed Police Battalion ("AAPBn" For short). Based on the final seniority list of Sub-Inspectors in AAPBn, it is projected that the names of the petitioners appear at Sl. No. 9 and 12 respectively. It is projected that as per the provision of Subedar (Inspector) (Arunachal Armed Police Battalion) Group-B (Gazetted) (Non Ministerial) Recruitment Rules, 2008, a Sub-Inspector of AAPBn, having 3 (three) years of continuous service in the grade of Platoon Commander (Sub-Inspector) is eligible for promotion to the next higher post of Inspector.

3. The learned senior counsel for the petitioners has submitted that as

per OM dated 15.10.2010, the post of Inspector in AAPBn is required to be filled up from reserved or unreserved category in the ratio of 80:20. Accordingly, it is submitted that the said ratio in respect of the cadre of Inspector has to be maintained at all times. It is also submitted that previously 100 point roster was maintained for the said cadre, but consequent to the judgment of the Supreme Court of India in the case of *R.K. Sabharwal & Ors. v. State of Punjab & Ors., (1995) 2 SCC 745*, the State Govt. had notified an OM dated 15.10.2010 and the 100 point roster was replaced by a post based roster. Accordingly, it is submitted that for maintaining the ratio of 80:20 amongst unreserved and reserved category candidates, if there is an excess representation of any category, it is required to be adjusted in the future recruitment.

4. The learned senior counsel for the petitioners has referred to the Departmental Promotion Committee ("DPC" for short) Minutes held on 13.08.2012, wherein it is mentioned that the posts of Inspector at roster point nos. 1, 2, 3, 4, 6, 7, 8 and 9 were reserved for Arunachal Pradesh Schedule Tribes ("APST" for short) candidates, and the posts at roster point nos.5 and 10 were for unreserved category. Accordingly, as no suitable candidates from unreserved category were found available, it was recommended that the posts at roster point nos.5 and 10 (General) would be considered in the next DPC. The subsequent DPC was held on 09.01.2013 and in the said exercise, the posts at roster point nos.5 and 10 remained unfilled and it was recommended that the unreserved posts would be filled up on availability of candidates from general category in their term.

5. Thereafter, another DPC was held on 11.07.2013 to consider promotion of Sub-Inspector to the rank of Inspector in AAPBn and as no general category candidate was found available in the zone of consideration as per

seniority list in respect of roster point nos.5 and 10, the DPC had recommended the said two posts to be filled-up from the seniormost APST Sub-Inspectors for promotion to the rank of Inspector in AAPBn. Moreover, one vacancy arose in the post of Inspector in AAPBn due to retirement of one Inspector on superannuation on 31.05.2013. Accordingly, in respect of 3 (three) clear vacancies, the names of 3 (three) persons in the rank of Sub-Inspector were recommended for promotion to the rank of Inspector in AAPBn w.e.f. 11.07.2013.

6. On a query of the Court, the learned senior counsel for the petitioners has submitted that on 11.07.2013, when the DPC held, the petitioners did not have 3 (three) years of continuous service in the cadre of Sub-Inspector. In this regard, we may refer to the statements made in paragraph-10 of the writ petition, wherein it has been mentioned that the petitioners were appointed on 01.09.2010 and therefore, they attained 3 (three) years of continuous service in the grade on 01.09.2013 and it is further mentioned that the case of the petitioners for promotion to the rank of Inspector as per post based roster was not considered in the said three DPCs held on 13.08.2012, 09.01.2013 and 11.07.2013 on the ground that the petitioners have not attained 3 (three) years of continuous service in the grade of Sub-Inspector and the petitioners have no grievances at that relevant point of time. Another DPC was held on 10.11.2014 and though the petitioners had the qualifying service of 3 (three) years on 01.09.2013, but their case was not considered. Accordingly, the legality of the promotion given to the respondent no.5, namely, Shri Tapok Bitin, and respondent no.6, namely, Lingdom Komi in the DPC held on 17.10.2014 was assailed by the petitioners by filing WP(C) 92(AP)/2015.

7. This Court by judgment and order dated 05.05.2017, allowed the said

WP(C) 92(AP)/2015 by directing the State respondents to consider the cases of the petitioners, namely, Shri Anjan Roy and Shri Ananto Boruah, both Sub-Inspectors of AAPBn in the next DPC without fail and accordingly, the DPC recommendations in its meeting held on 10.11.2014 was set aside and quashed. Consequently, the promotion given to the respondent nos.5 and 6 was cancelled vide order dated 01.04.2019. However, the names of the private respondent nos.5 to 8 were once again recommended for consideration in the next DPC, which was held on 27.08.2019 and based on the recommendation of the DPC, the respondent nos.5 to 8 were appointed as Inspectors in AAPBn against the post based roster without considering the case of the petitioners. Accordingly, by filing this writ petition under Article 226 of the Constitution of India, the petitioners have assailed the DPC held on 27.08.2019 for the promotion of Sub-Inspectors in AAPBn to the grade of Inspector (AAPBn) and the petitioners have also prayed for setting aside the promotion order dated 17.09.2019 in respect of respondent nos.5, 6, 7 and 9 and for further direction upon the respondent authorities to consider the case of the petitioners in terms of judgment and order dated 05.05.2017, passed in WP(C) 92(AP)/2015.

8. The learned senior counsel for the petitioners has submitted that once the roster point nos.5 and 10 posts are earmarked for unreserved category, those posts cannot be filled up with candidates from reserved category and therefore, the case of the petitioners would have to be considered for promotion under the roster point as earmarked at Sl. Nos. 5 and 10 in the cadre of Inspectors.

9. In support of his contention, the learned senior counsel for the petitioners has placed reliance on the judgment of the Supreme Court of India in the case of *R.K. Sabharwal (supra)*. The relevant paragraph thereof was

reiterated in paragraph-25 of the judgment and order dated 05.05.2017, passed in WP(C) 92(AP)/2015. He has also relied on the decision of the Supreme Court of India in the case of *Mangat Ram v. State of Punjab & Ors., (2005) 9 SCC 323* and has submitted that in the said judgment, it is held that the reservation has to be worked out in relation to the post and the concept of vacancy has no relevance.

10. It is further submitted that notwithstanding that the posts which were filled up pursuant to DPC recommendation made on 11.07.2013, as the petitioners have now come within the zone of consideration, their cases are required to be considered notwithstanding that those appointments were not under challenge.

11. Opposing the prayer made in the writ petition and contention of the learned senior counsel for the petitioner, the learned Senior Govt. Advocate as well as the learned counsel for the private respondent nos.5, 7 and 8 have submitted that the posts under roster point nos.5 and 10 is admittedly filled up vide recommendation of the DPC held on 11.07.2013 and that on the said date, neither the petitioners had the requisite qualification of 3 (three) years of continuous service in the post of Sub-Inspector in AAPBn, and nor on obtaining the requisite qualification of the tenure of service of 3 (three) years, the appointments so made in roster point nos.5 and 10 were challenged and accordingly, the petitioners cannot challenge the recommendation and appointment of the private respondents to the post of Inspector.

12. The Court finds that in the judgment and order of this Court dated 05.05.2017, passed in WP(C) 92(AP)/2015, in paragraph-16, there is a categorical finding to the effect that the unreserved roster point nos.5 and 10 were already filled up as per the recommendation of the DPC dated 11.07.2013

and as such, the cases of the petitioners were not considered by the DPC dated 10.11.2014.

13. Be that as it may, it is the admitted case of the petitioners that after the DPC dated 11.07.2013, the next DPC was held on 10.11.2014. Therefore, in all probability, the post at roster point nos.5 and 10 can safely be presumed to have been filled up prior to the DPC held on 10.11.2014.

14. The petitioners have filed the earlier writ petition in the year 2015, i.e. WP(C) 92(AP)/2015 and the said writ petition was decided by judgment and order dated 05.05.2017. This Court in the said judgment and order dated 05.05.2017, had not interfered either with the DPC dated 11.07.2013 or not interfered with the appointment made in the post covered by roster point nos.5 and 10, although the said posts were filled up purportedly by reserved category candidates.

15. Therefore, as the persons who have already been appointed to roster point nos.5 and 10 pursuant to DPC dated 11.07.2013, cannot be adversely affected by any order passed by this Court in the present writ petition. It is not the case of the petitioners that any of the private respondents herein were appointed to the posts covered by roster point nos.5 and 10 and therefore, the petitioners were not selected and appointed to the post of Inspector by the DPC held on 27.08.2019. Nonetheless, by following the directions contained in the case of *R.K. Sabharwal (supra)*, the State Govt. through its concerned department, including the Home Department will be required to do an exercise so as to work out a scheme so that without disturbing the appointments, which has already been made to the posts at roster point nos.5 and 10, which is meant for unreserved class, shall have to be carved out so as to maintain the ratio of 80:20, which is the prescribed ratio for the recruitment rules as notified

vide notification dated 20.02.2008. Even if it means that the that the seniority position of the persons are to be readjusted, the same has to be done as per the principle laid down in the case of *Ajit Singh v. State of Punjab, (1999) 7 SCC 209 : (1999) 0 Supreme (SC) 1056*, so that the recruitment rules, i.e. Subedar (Inspector) (Arunachal Armed Police Battalion) Group-B (Gazetted) (Non Ministerial) Recruitment Rules, 2008 is scrupulously followed.

16. Therefore, in the exercise to be done, if the authorities find that for any reason whatsoever, the posts at roster point nos.5 and 10 falls vacant either by promotion, retirement, termination or death of any of the other incumbents of the gradation list of Inspectors, the said posts shall thereafter be filled up strictly in terms of the reservation policy of the State at the ratio of 80:20 amongst the reserved and unreserved categories and if the petitioners are found to be in the zone of consideration on the date those posts fall vacant, the State respondents shall consider the candidature of the petitioners for filling up the post of Inspector at roster point nos.5 and 10.

17. Accordingly, this writ petition stands partly allowed.

18. For the sake of clarification, it is provided that:

- I. The appointment of the private respondent nos.5 to 8 are not interfered with.
- II. The posts at roster point nos.5 and 10, which were already filled up by DPC dated 11.07.2013 are not interfered with as the petitioners were not qualified on the date of DPC to be promoted to the post of Inspector.
- III. If for any reason whatsoever, the posts at roster point nos.5 and 10 fall vacant, the State respondents in the Home Department shall

scrupulously follow the reservation policy and the said posts shall be filled up by persons from unreserved category.

- IV. In the event posts at roster point nos.5 and 10 fall vacant, the case of the petitioners for promotion shall be considered by the DPC.

JUDGE

Comparing Assistant