

GAHC020000582021



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

Case No. : WP(C)/22/2021

MR. TEMJENLIBA AND ANR
S/O REPACHOJANG, R/O SUNGOMEN WARD, MOKOKCHUNG,
NAGALAND

2: Mr. I. HOKIYE ZHIMO
S/O LATE IJEXU ZHIMO

R/O BAZAR WARD

KIPHIRE
DISTRICT- KIPHIRE
NAGALAN

VERSUS

THE STATE OF NAGALAND AND 2 ORS
REPRESENTED BY THE CHIEF SECRETARY, GOVT. OF NAGALAND,
KOHIMA, NAGALAND

2:THE COMMISSIONER AND SECRETARY/SECRETARY

DEPARTMENT OF WORKS AND HOUSING
GOVT. OF NAGALAND
KOHIMA
NAGALAND

3:THE ENGINEER-IN-CHIEF

NAGALAND PUBLIC WORKS AND DEPARTMENT
GOVT. OF NAGALAND
KOHIMA
NAGALAN

For the Petitioner(s)	: Mr. A. Zhimomi, Advocate
For the Respondent(s)	: Ms. Livika, Government Advocate
Date of Hearing	: 04.06.2024
Date of Judgment	: 04.06.2024

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH

JUDGEMENT AND ORDER (ORAL)

Heard Mr. A. Zhimomi, the learned counsel appearing on behalf of the Petitioners and Ms. Livika V. Sumi, the learned Government Advocate appearing on behalf of the Respondents.

2. The jurisdiction under Article 226 of the Constitution have been invoked by the two petitioners challenging the Memorandum dated 26.03.2018 whereby the Petitioners who were at Serial Nos. 471 and 472 have been held to be not eligible for further promotion to the higher grade.

3. The Petitioner No.1 was initially appointed as a Sectional Officer, Grade-I on the basis of an office order dated 15.06.1998. The said appointment was made on contract basis. The said engagement of the Petitioner No.1 was extended from time to time. Subsequently, vide an order dated 14.12.2006, the services of the Petitioner No.1 was regularized w.e.f. 26.10.2006.

4. The Petitioner No.2 was initially appointed on the basis of an

office order dated 09.06.2003 and was appointed as Sectional Officer, Grade-II on provisional basis. In the year 2007, vide an order dated 14.12.2007, the Petitioner No.2 was offered officiating promotion to Sectional Officer, Grade-I. Subsequent thereto, on 15.06.2009, the services of the Petitioner No.2 was also regularized. At this stage it is very pertinent to mention that both the Petitioners are Diploma holders in Mechanical Engineering as would appear in the Memorandum dated 26.03.2018 itself.

5. On 24.01.2012, a tentative seniority list of Junior Engineers serving in the Department of Works and Housing was circulated. In the said seniority list, the names of the Petitioners were at serial No.285 and 305. Sometime in the year 2016, the Petitioners came to learn that their names would be removed from the seniority list. Accordingly, the Petitioners along with two others submitted a representation on 21.03.2016 for inclusion of their names in the seniority list. Thereupon, on 26.03.2018, the seniority list was published wherein the Petitioners' name though were found at Serial Nos. 471 and 472 but a Note was appended in the said list wherein it was recorded that the persons at Serial Nos. 442 to 503, certificate course and others shall not be eligible for further promotion to the higher grade. It is also relevant to mention that subsequent thereto, vide an order dated 28.11.2019, the services of the Petitioners along with other Junior Engineers were confirmed by Government of Nagaland on completion of the probation period and on the recommendation of the State Medical Board. The Note-3 appended to the Memorandum dated 26.03.2018 had been assailed by the Petitioners on the ground that the said is contrary to

the Nagaland Engineering Service (Group-A and Group-B) Rules, 2012 (for short "the Rules of 2012") and more particularly Rule 7 which stipulates the method of recruitment and the eligibility for the purpose of promotion to the post have also been stipulated in Schedule-VII.

6. Mr. A. Zhimomi, the learned counsel appearing on behalf of the Petitioners has drawn the attention of this Court to Schedule-VII and submitted that to the post of Sub-Divisional Officer/Assistant Engineer/Assistant Architect, the method of recruitment is 60% direct recruitment and 40% by way of promotion. The promotion has to be made from amongst the Degree/Diploma holders in the concerned engineering discipline and who have completed minimum of 7 (seven) years of continuous service in the immediate lower grade in case of Diploma holders and 4 (four) years in the case of Degree holders on the basis of merit-cum-seniority. The learned counsel therefore submits that a perusal of Rule 3(9) of the Rules of 2012 defines the term "Diploma" to mean Diploma from a recognized Polytechnic/Institute. He therefore submits that admittedly, the Petitioners being Diploma holders in Mechanical Engineering as could be seen from the Memorandum dated 26.03.2018, the Petitioners could not have been debarred from promotion. He therefore submits that the said Note-3 attached to the seniority list is required to be interfered with insofar as the Petitioners are concerned.

7. This Court has duly taken note of that pursuant to the filing of the instant writ petition, an affidavit-in-opposition was filed by the Respondent State wherein it is the categorical stand of the Respondent

State that under the Nagaland Public Works Department, the cadre Department of Civil Engineers consist of PWD (R&B), PWD (Housing), PWD (National Highways), PWD (Planning & Design), whereas Mechanical Engineers consists only PWD (Mechanical). It was further stated that there are two separate seniority list maintained i.e. one for Civil Engineers and the other for Mechanical Engineers. The Petitioner No.1 who was initially appointed on contract basis on 15.06.1998 was regularized on 14.12.2006 whereas the Petitioner No.2 was initially appointed on 09.06.2003 on provisional basis and was regularized on 15.06.2009. It is the stand of the State Respondents that the Petitioners being Diploma holders in Mechanical Engineering were appointed under the Civil Engineering Department, PWD (R&B) and as such, the names of the Petitioners have all along been reflected in the tentative seniority list as well as the final seniority list issued under the Civil Wing instead of the Mechanical Wing. It was further mentioned that in Schedule-VII, Serial No.6 of the Rules of 2012 provides that the promotion to the post of Sub-Divisional Officer shall be filled from amongst the Degree/Diploma holders in the concerned engineering discipline. It was therefore the stand of the State Respondents that as the Petitioners were appointed under the Civil Engineering discipline but did not possess the Diploma in Mechanical discipline, their names are figured at Serial No. 471 and 472 with the remarks contained therein that they are not entitled to promotion. It has also been mentioned that the Petitioners have not challenged the Rules of 2012.

8. Ms. Livika, the learned Government Advocate appearing on behalf of the State Respondents submitted that taking into account the

promotion to the post of the Sub-Divisional Officer can only be filled up from amongst the Degree/Diploma holders in the concerned Engineering discipline, the Petitioners who were appointed to the Civil Wing cannot be granted promotion in view of the fact that they possessing a Degree/Diploma in Mechanical Engineering.

9. This Court upon hearing the counsels put a specific query upon the learned Government Advocate for the State Respondents as to whether the Rules of 2012 is applicable to both the wings of the Nagaland Public Works Department and as to whether the said Rules stipulates recruitment to the feeder post on the basis of Degree or Diploma of a particular Branch of Engineering. The learned Government Advocate submitted that the Rules of 2012 is duly applicable but for promotion, the Degree or the Diploma holders has to have the qualifications of the same discipline.

10. I have heard the learned counsels appearing on behalf of both the parties and have given the anxious consideration to their respective submissions.

11. From the stand which has been taken by the Respondent for debarring the Petitioners from being promoted is that the Petitioners have Diploma in Mechanical Engineering whereas in the wing where the Petitioners have been appointed, the qualification should have been Degree/Diploma in Civil Engineering. This Court has also taken note of the Rules of 2012 wherein as per Rule 5, the services of the Nagaland Public Works Department shall consist of different grades in each cadre which have been enumerated in Schedule I, II, III, IV, V

and VI.

12. This Court finds it very relevant at this stage to take into consideration that Rule 5 of the Rules of 2012 only mentions about Grade and cadre service and do not deal with the discipline. The relevance of which could be seen infra while discussing Serial No.6 of Schedule-VII of the Rules of 2012. Rule 7 of the Rules of 2012 stipulates the method of recruitment and as per the said Rule, the same shall be done either by direct recruitment or by promotion. It further stipulates that the qualifications for direct recruitment, criteria for promotion to various grades of the service and the ratio/quota for direct recruitment and promotion at each grade of service at the commencement of the Rules of 2012 shall be stipulated in Schedule-VII.

13. Now, let this Court deal with Schedule-VII of the Rules of 2012 and more particularly Serial No.6 which is reproduced herein below:

SCHEDULE-VII

Refer to Rule 7 of the Nagaland Engineering Service Rules, 2012 (Group A&B)

Sl. No.	Name of the post	Percentage of post filled up by		Eligibility and other conditions for promotions/recruitments
		Direct Recruitment	Promotion	
1	2	3	4	5
6	Sub-Divisional Officer/Asstt.	60%	40%	(i) 60% of the posts shall be filled by Direct Recruitment from

	Engineer/Asstt. Architect			amongst the Degree holders in the concerned Engineering Discipline of a recognized University. (ii) 40% of the posts shall be filled by promotion from amongst the Degree/Diploma holders in the concerned Engineering discipline and who have completed a minimum period of 7 (seven) years of continuous service in the immediate lower grade in case of Diploma holders, and 4 (four) years in case of degree holders on the basis of merit-cum-seniority.
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14. A perusal of the above quoted table would show that 60% of the posts in the Grade of Sub-Divisional Officer/Assistant Engineer/Assistant Architect would be filled up by way of Direct Recruitment from amongst the Degree holders in the concerned Engineering discipline of the recognized University. The remaining 40% of the posts are to be filled up by promotion from amongst the Degree/Diploma holders in the concerned Engineering discipline and who have completed a minimum period of 7 (seven) years of continuous service in the immediate lower grade in case of Diploma holders and 4 (four) years in the case of Degree holders on the basis of merit-cum-seniority. It is apposite to note that the stipulations contained in Serial No.6 of Schedule-VII do not distinguish between a Diploma holder in Mechanical Engineering with the Diploma holder in

Civil Engineering else, there would have been incorporation of discipline vis-à-vis the cadre. Unlike that, if this Court takes note of the qualifications necessary for direct recruitment to the post of Junior Engineer/Junior Architect/System Analyst/Shift Engineer which are the feeder post, there is a specific mention of a Degree or 3 (three) years Diploma in the concerned Engineering Branch recognized by the AICTE.

15. Therefore, in the opinion of this Court, when Rule 7 read with Serial No.6 of Schedule-VII of the Rules of 2012 does not bar consideration for promotion of a Degree or Diploma holder of any engineering discipline more so in the instant case Mechanical, the Respondents were therefore not justified in debarring the Petitioners herein for consideration of promotion by incorporating their names in Note-3 of the Memorandum dated 26.03.2018. The said Note-3 insofar as the Petitioners are concerned violates their fundamental rights under Articles 14 and 16 of the Constitution.

16. This Court has also taken note of that the Petitioner Nos. 1 and 2 herein were initially appointed as Sectional Officer Grade-I and Sectional Officer, Grade-II respectively and they were regularized on 14.12.2006 and 15.06.2009 respectively. The Respondents have regularized the services of the Petitioners in the Civil Engineering Cadre. Under such circumstances, now the Respondent Authorities, in the opinion of this Court, cannot debar the Petitioners from consideration for promotion to the next higher grade, if they are otherwise qualified, on the ground that they only have Degree/Diploma

in Mechanical Engineering. The said actions in the opinion of this Court amounts to be an action which is arbitrary and unreasonable which violates the mandate of fairness and Article 14 of the Constitution.

17. Accordingly, this Court therefore interferes with the Note-3 appended to the Memorandum dated 26.03.2018 only insofar as the Petitioners are concerned.

18. The Respondents are therefore directed to take appropriate steps in view of the above decision.

19. With above observations and directions, the instant petition stands allowed. No costs.

JUDGE

Comparing Assistant