

THE GAUHATI HIGH COURT

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

KOHIMA BENCH

Writ Petition (C) 97/2022

Miss Temsunaro,
Research Officer,
North East Zone Cultural Centre,
Dimapur, Nagaland.

.....Petitioner

-Versus-

1. The North East Zone Cultural Centre (NEZCC),
Through its Director, Dimapur, Nagaland,
Post Box-98
2. The Director,
North East Zone Cultural Centre (NEZCC),
Dimapur, Nagaland, Post Box-98;

.....Respondents

3. The Union of India,
Represented by Secretary, Ministry of Culture,
Government of India, 502-C,
Shastri Bhawan, New Delhi-110001.

..... Proforma-Respondents



BEFORE

For the Petitioner :- Smti. Longjem.

For the Respondents :- Mr. W.R. Ngulli;
CGSC.

Date of Hearing : 28.11.2023.

Date of Judgment & Order : 22.01.2024.

JUDGMENT & ORDER

Heard Imti. Longjem, learned counsel for the petitioner and also heard Mr. W.R. Ngulli, the learned Central Government Standing Counsel (CGSC) for the respondents.

2. In this petition, under Article 226 of the Constitution of India, the petitioner, Miss Temsunaro, has prayed for issuing direction to the respondent authorities to consider her promotion to the post of Section Officer (Documentation) or any other Class I/Group A Post, with effect from the date of promotion of her juniors and to restore her seniority in the promoted Grade vis-à-vis her juniors, with all consequential benefits.

3. The background facts, leading to filing of the present petition are adumbrated herein below:-

"The petitioner was initially appointed as Telephone Operator-Cum-Receptionist, which was a Class -III Post, on 14.10.1999, in the North East Zone Cultural Centre (NEZCC), Dimapur, vide Annexure-1. After successful completion of probationary period, she was confirmed in the said post vide Annexure-2. Thereafter, she was promoted to the post of Research Officer on 18.05.2006, which is a Class-II/Group B post, in the said organization, vide Annexure-4. Since then, she has been serving as Research Officer in NEZCC. In the said organisation, a post of Section Officer (Documentation), a Class-I Post, is lying vacant on account of voluntary retirement of earlier incumbent, who was promoted from the post of Research Officer. The petitioner is eligible for being promoted to the said Post or to any other Class-I Posts, as she fulfils the eligibility criteria. Thereafter, the petitioner had filed one representation to the Director for promoting her to next higher Grade. Thereafter, a Departmental Promotion Committee (DPC) was held and 10 persons of NEZCC were promoted to Class-I posts and amongst the promoted persons, three were junior to her. But, the case of the petitioner was not considered in spite of being eligible for promotion. She had filed several representations for promoting her and also to protect her seniority. But, the same has not been considered by



the authority. Being aggrieved she approached this court by filing the present petition."

4. Respondent Nos. 1 and 2 have filed their affidavit in opposition denying the assertions made by the petitioner. It is stated that three persons, whom the petitioner stated to be junior to her, in fact not junior to her, as in view of the seniority list submitted by her the name of Shri P. Younger Lemtor appears at Sl. No.9 and his seniority is counted with effect from 18.06.1996 and the name of Shri Asim Debnath appears at Sl. No.10 and his seniority is counted w.e.f. 13.05.1997, and the name of Shri Yashilemba appears at Sl. No. 12 and his seniority is counted w.e.f. 16.02.1999, whereas the seniority of the petitioner is counted w.e.f. 18.05.2006 and as such the petitioner is placed junior to the above mentioned 3 persons, in terms of seniority in the present cadre. It is also stated that in the said seniority list i.e. in Annexure-29, it has clearly been mentioned that seniority of the officers will be counted from date shown in the column No. 9 of the said list. It is also stated that the petitioner had submitted her first representation on 29.01.2021, and at the relevant time Shri Kiyasetuo Kire was in service as he was given the retirement on 13.12.2021, and there was no existing vacancy to consider the case of the petitioner. Thereafter, on 07.02.2022, 28.02.2022, and on 25.04.2022 she had filed other representations and the DPC was held on 07.09.2021 and 07.12.2021, and thereafter no DPC was held. It is also stated that the petitioner was not in the zone of consideration when the DPC was held on the aforementioned dates and that no Service Rule was violated.



Under the aforesaid facts and circumstances, it is contended to dismiss the petition.

5. The petitioner had also filed her affidavit in reply denying the assertions made by the respondent in the affidavit in opposition and also denied that she is junior to Shri P. Younger Lemtor, Shri Asim Debnath and Shri Yashilemba. It is also stated that she has the right to be considered for any Group A post and therefore, it is contended to allow the petition.

6. Mr. Imti Longjem, the learned counsel for the petitioner, submits that the petitioner had rendered 16 years' service as Research Officer, which is Grade-II post and she is eligible for promotion to any Group A post. Mr. Longjem further submits that the DPC of the NEZCC had recently promoted 10 persons to Group A post, but despite being eligible, the case of the petitioner was not considered. Mr. Longjem also submits that though the right to promotion is not a fundamental right, yet right to be considered for promotion is a fundamental right and as the case of the petitioner is not considered despite being eligible, and three persons, who were junior to were promoted to Group A posts and on that count her right stands violated and therefore, it is contended to allow the petition by issuing direction to the respondent authority to promote the petitioner and also to maintain her seniority.

7. Per contra Mr. W.R. Ngulli, the learned Central Government Standing Counsel (CGSC) for the respondents, submits that the petitioner was junior to the 10 persons who were promoted to Group



A posts and that though her name is in Sl.No.6, yet, her seniority, as per the said list, has to be counted from the date shown in the column No.9, and the date of counting seniority of petitioner is shown as 18.05.2006, and as such the petitioner is junior to the persons who have already promoted by the DPC. And therefore, it is contended to dismiss this petition.

8. In view of the assertions made by the parties in their respective pleadings and in view of the submissions so advanced by learned counsel for both the parties, the issues, that have arisen for adjudication by this court are formulated as under :-

- [i] whether the present petitioner is junior to the three persons, namely, Shri P. Younger Lemtor, Shri Asim Debnath and Shri Yashilemba, who were promoted to Group-A posts by the DPC, were junior to the petitioner?
- [ii] whether the petitioner had fulfilled the eligibility criteria for being promoted to any Group-A posts on 07.09.2021 and 07.12.2021, on which the DPC was held ?
- [iii] whether any post of Section Officer (Group A post) was lying vacant when the DPC was held ?

9. I have carefully gone through the petition as well as the documents placed on record.

10. Admittedly, here in this case the petitioner has not challenged the promotion order of Accountant -Ashim Debnath to the post of Accounts Officer, dated 12.05.2022, No. NEZCC/Estt-30/2020-21/90.



She has also not challenged the promotion order of UDC- Shri P. Yanger Lemtor to the post of Section Officer (Admn), dated 12.05.2022, No. NEZCC/Estt-30/2020-21/91, and promotion order of Programme Assistant -Shri Yashilembato the post of Exhibition Officer, dated 12.05.2022, No. NEZCC/Estt-30/2020-21/91. She has also not challenged the Seniority List of Staffs and Officers -dated 06.05.2008, No. NEZCC/ESTT-32/2002-03/6211.

11. It also appears from the Seniority List of Staffs and Officers - dated 06.05.2008, that the name of the petitioner finds mentioned at serial No.6, whereas the name of Shri P. Yanger Lemtor, Ashim Debnath, and Shri Yashilemba were at serial No.9, 10 and 11, respectively. But, as per column No. 10 of the said list, the seniority of the officers and staffs will be counted in the present grade from the date shown in the said column against their name. And as shown in the said column the seniority of the petitioner has to be counted with effect from 18.05.2006, and of Shri P. Yanger Lemtor has to be counted from 18.06.1996 and of Shri Ashim Debnath has to be counted from 13.05.1997 and of Shri Yashilemba has to be counted from 16.02.1999.

12. But, the fact remained that when the seniority list was published on 06.05.2008, the petitioner was holding Class II post and Shri P. Yanger Lemtor was holding the post of UDC (Programme) which was a Class-III post and of Shri Ashim Debnath was holding the post of Acct.-cum-Cashier, which was a Class-III post, Shri Yashilemba was holding the post of Programme Asstt., a Class-III post. And vide order



dated 12.05.2022, they were promoted to the post of Group-A Posts, as per Schedule 1 of Rule-4 of the Service Rule of NEZCC. Whereas, the petitioner was holding Group-B post since 18.05.2006. She has completed more than 14 years in the said post. Whereas, the qualifying service required for promotion to any post other than Director is minimum 7 years continuous service, in the immediate lower grade, under NEZCC. Moreover, the seniority of the said three persons in Class-III posts, cannot be counted against the seniority of the petitioner in Class-II post. The petitioner has rightly pointed this out in her reply affidavit. Further, it appears that the Service Rule is not clear in respect of feeder cadre for being promoted to Group-A posts. If 7 years continuous service in immediate lower grade is the qualifying service then a question arises as to how the said three persons, who were serving in Class-III posts on the relevant date, becomes qualified for being promoted to Group -A Posts.

13. This being the position, this court is unable to accept the contention of the respondent that the petitioner was not qualified for being promoted when the DPC was held on 07.09.2021 and 07.12.2021 and that she was not under the zone of consideration. If 7 years continuous service in immediate lower grade is the qualifying service period under Rule 5(b)(i) of the Service Rule of NEZCC, the petitioner was definitely under the zone of consideration for being promoted to any Class-I post, since she had already completed 14 years in Class-II posts.

Issue Nos.(i) and (ii) are answered accordingly.



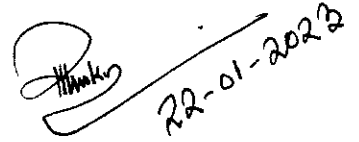
14. It also appears that after the retirement of Shri Kiyasetuo Kire from the post of Section Officer (Documentation) a Group -A post, the said post is lying vacant. The said post felt vacant on 13.12.2021. The DPS was held on 07.09.2021 and 07.12.2021. Therefore, the question of consideration of the case of the petitioner for being promoted to the said post does not arise. However, as contended by the petitioner, she could have been considered by the DPC to the posts, to which the other three persons were promoted. At least she has the right to be considered for being promoted to any Group-A posts, which is a fundamental right in view of decision of Hon'ble Supreme Court in **S.B. Bhattacharjee vs. S.D. Majumdar and others**, reported in **(2007) 10 SCC 513**.

Issue No.(iii) is decided accordingly.

15. In the result, I find sufficient merit in this petition and accordingly, the same stands allowed. The respondent authorities are directed to convene a DPC to consider the case of the petitioner for being promoted to the post of Section Officer (Documentation) or any other Group-A posts. In the event of the petitioner is found suitable by the DPC and promoted to any Group-A posts, then she has the right for such promotion from the date her juniors were promoted, with all consequential benefits, in view of 'next below rule' (see-**R.K. Sethi & Anr. Vs. Oil & Natural Gas Commission & Others**, reported in **(1997) 10 SCC 616**. The above exercise has to be carried within a period of 3 months from today.



16. In terms of above, this writ petition stands disposed of leaving the parties to bear their own cost.

A handwritten signature in black ink, followed by a diagonal line and the date "22-01-2022".

JUDGE

Deka