

GAHC020000502024

2025:GAU-NL:25



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

Case No. : WP(C)/9/2024

SHRI IMNANUNGSANG
SUPERMARKET DIMAPUR, HOUSE NO. 416, NAGALAND DIMAPUR

VERSUS

THE CHAIRMAN, DEVELOPMENT AUTHORITY OF NAGALAND
(DAN) AND 2 ORS
NAGALAND DIMAPUR

2:THE SECRETARY DEVELOPMENT AUTHORITY NAGALAND
NAGALAND DIMAPUR

3:SENIOR EXECUTIVE OFFICER
DEVELOPMENT AUTHORITY NAGALAND
NAGALAND DIMAPU

Advocate for the Petitioner : C. T. JAMIR, SR. ADV, I IMCHEN,ALIBA OZUKUM,ASA
RUTSA,TOSHI JAMIR,KROVI TSUKRU,NUNGSANG AIER,JIWALO APON,IMTILA
PONGEN

Advocate for the Respondent : STEPHEN YANTHAN,

Linked Case : WP(C)/151/2024

SHRI IMNANUNGSANG
SUPERMARKET DIMAPUR
HOUSE NO. 416
NAGALAND DIMAPUR

VERSUS

THE CHAIRMAN

DEVELOPMENT AUTHORITY OF NAGALAND(DAN) AND 2 ORS
NAGALAND DIMAPUR-797112

2:THE SECRETARY
DEVELOPMENT AUTHORITY OF NAGALAND
NAGALAND DIMAPUR-797112

3:SENIOR EXECUTIVE OFFICER
DEVELOPMENT AUTHORITY NAGALAND
NAGALAND DIMAPUR
797112

Advocate for : C. T. JAMIR
SR. ADV
Advocate for : STEPHEN YANTHAN appearing for THE CHAIRMAN
DEVELOPMENT AUTHORITY OF NAGALAND(DAN) AND 2 ORS

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

04.02.2025

Heard Mr. C.T. Jamir, learned senior counsel assisted by Mr. Aliba Ozukum, learned counsel for the petitioner. Also heard Mr. Stephen Yanthan, learned counsel representing the Development Authority of Nagaland, Dimapur (in short, DAN), for all the respondent Nos. 1 to 3 in both the writ petitions.

2. Petitioners and respondents in both the writ petitions are same and common and the issues involved in both the writ petitions are interconnected. As such and as agreed by the parties, both the writ petitions are taken up for consideration.

3. The Chairman of respondent DAN on 12th April, 2016 appointed the petitioner as LDA (Lower Division Assistant) in its establishment and posted him to the Office of its Electrical Division. Since then he has been continuing in service as LDA under DAN, Dimapur serving in its several branches like Electrical Division, Accounts Branch, Welfare Fund under Establishment Section, etc. as an when he was posted in those sections of DAN. Since 17.08.2021 petitioner is serving under Electrical Branch.

4. Since a post of UDA (Upper Division Assistant) was lying vacant under DAN, the petitioner on 17.08.2021 submitted a representation before the Chairman of DAN to consider him for his promotion to the said vacant post of UDA under DAN considering his seniority as LDA since 12.06.2021.

5. As his said representation was pending before the authorities of DAN for long, the petitioner again on 20.06.2023 submitted another representation for consideration of his promotion to UDA under DAN. As his representations were pending consideration, the petitioner on 13.03.2024, filed WP(C)/9/2024 praying amongst others for a direction to the respondent DAN to consider his case for promotion keeping his seniority in view and to dispose of his representation dated 20.06.2023.

6. The respondent DAN, on 11.07.2024, filed its affidavit in WP(C)/9/2024 annexing a Seniority List of LDAs serving under it Branch-Wise as on December, 2021 vide No. DAN/G-128/94/PT/16/1144-1145 dated 10.12.2021, issued by the Senior Executive Officer, DAN, where the name of the petitioner as LDA figured at Serial No. 4 under Technical Branch.

7. In the said list of LDA Seniority Branch-Wise, as on December 2021 issued by the respondent DAN on 10.12.2021, it was stated that — For any discrepancies regarding seniority, it should be brought to the knowledge of the Authority within one month from issue of the said order and that if no such complaint is received, the said order shall be treated as final.

8. Further, in the said list of LDA Seniority Branch-wise as on December 2021 dated 10.12.2021, it was also stated that the promotion shall be made as per vacancy arising from the Branch, where Accounts & Revenue Branch shall be clubbed to one and Establishment & Technical Branch shall be the other.

9. In the affidavit filed by the respondent DAN it was categorically submitted that the representation of the petitioner dated 17.08.2021 praying for his promotion to the higher post was kept on hold in view of the discussion that was going on in the Office of the DAN as well as the exercise that was being carried out in the various Branches such as Accounts Branch, Revenue Branch, Establishment Branch and Technical Branch

for streamlining and for smooth and proper functioning of DAN's Office since there are many clerical staff who have been engaged in different Branches performing their duties.

10. Further, in the said affidavit, the respondent DAN also stated that there is an existing list of LDA Seniority Branch Wise serving under DAN as on December 2021 issued on 10.12.2021 that was affixed in the Office Notice Board and in the said list dated 10.12.2021 it was clearly mentioned that if any discrepancies regarding seniority was found, it should be brought to the knowledge of the Authority within one month's time from issue of the said order and that if no complaint is received the said order was to be treated as final. Mr. Yanthan, learned counsel for respondent DAN stated that in said list dated 10.12.2021 the name of the petitioner figured at Serial No. 4 under the Technical Branch and that even after the lapse of one month's time period from issuance of said Order dated 10.12.2021 the petitioner did not bring any such discrepancy to the Authority of respondent DAN regarding his seniority and therefore, Mr. Yanthan, learned counsel submitted that the said list of LDA Seniority Branch Wise of DAN dated 10.12.2021 has attained finality.

11. Mr. Jamir, learned senior counsel for the petitioner submitted that the respondent DAN did not affix the said List of LDA Seniority Branch-wise of DAN dated 10.12.2021 as on December 2021 in the Notice Board and that for the first time the petitioner came to know about the said seniority list LDAs Branch-wise of DAN dated 10.12.2021 when the respondents in its affidavit filed on 11.07.2024 in WP(C) No. 9/2024 annexed the said list as Annexure-1.

12. Challenging the said List of LDA Seniority Branch Wise serving under respondent DAN as on December, 2021 issued vide No. DAN/G-128/94/PT/16/1144-1145 dated 10.12.2021, issued by the Senior Executive Officer, DAN, where the name of the petitioner as LDA figured at Serial No. 4 under Technical Branch, the petitioner filed the second writ petition, WP(C)/151/2024 wherein the Court on 06.08.2024, while issuing notice to the respondents, in the interim directed that the said List of LDA Seniority Branch Wise of DAN as on December 2021 issued on 10.12.2021 and all

consequential promotion made on the basis of the said List of LDA Seniority Branch Wise shall be subject to the outcome of the said writ petition.

13. On being enquired, both, the learned senior counsel, Mr. Jamir as well as Mr. Yanthan, learned counsel for the respondents DAN admitted the fact that the respondent DAN is having its only Office at Supermarket, Dimapur and that the DAN does not have any branch office in the State of Nagaland excepting its main office at Dimapur.

14. On perusal of the List of LDA Seniority Branch Wise of DAN as on December 2021 issued on 10.12.2021 serving in its four different branches, it is seen that in the Establishment Branch there are LDAs who were appointed in the Office of DAN on 22.06.2017 and 07.09.2017 and they have been placed at Serial Nos. 3 and 4, below the persons who were appointed in similar post of LDA in the Office of DAN on 25.10.2017 and 01.11.2017.

15. Similarly, from the said List of LDA Seniority Branch Wise of DAN as on December 2021 it is seen that in the Technical Branch the LDA who was appointed on 17.01.2018 has been placed at Serial No. 1, whereas persons appointed as LDAs on 11.03.2021 and on 13.08.2021 have been placed at Serial Nos. 2 and 3. Further, in the said List of LDA Seniority Branch Wise in the Technical Branch name of the petitioner, who was appointed on 12.04.2016 figured at Serial No. 4, LDAs appointed on 15.10.2018 and 17.01.2018 have been placed at Serial Nos. 5 and 6.

16. Person joining in any service is always concerned about his or her seniority in normal course. In the cases in hand, assuming that the List of LDA Seniority Branch Wise of DAN as on December 2021 issued on 10.12.2021 was put on the Notice Board as stated by the respondents and the petitioner in spite of noticing the discrepancy of his seniority in the said list of LDAs in the Notice Board did not brought it to the knowledge of the authority of DAN by filing and/or submitting his objection claiming his seniority from the date of his appointment as LDA above other LDAs, but at the same time, it cannot be for any other LDAs of DAN that on noticing the said List of LDA Seniority Branch Wise as on December 2021 issued on 10.12.2021 in the Notice

Board did not object before the authority of DAN regarding such discrepancies finding their names below those LDAs who were appointed much later than them and that they also remained silent like the petitioner, which is generally impossible.

17. At this juncture, Mr. Yanthan, learned counsel for the respondent DAN submitted that the said List of LDA Seniority Branch Wise of DAN as on December 2021 issued by its authorities on 10.12.2021 has not been acted upon till date, even before filing of both the writ petitions by the petitioner or before the interim order of the Court dated 06.08.2024 passed in WP(C) No. 151/2024.

18. From the affidavit of respondent DAN, it is also placed by Mr. Yanthan, learned counsel for the respondent DAN that till date from the said list of LDA Seniority Branch Wise as on December 2021 dated 10.12.2021 none of the LDAs, whose names figured in the four Branches have been promoted to the post of UDA under DAN. This clearly indicates that the said Seniority List of LDAs serving under DAN has not been acted upon.

19. From the said list of LDA Seniority Branch Wise as on December 2021 dated 10.12.2021 annexed to the affidavit filed by the respondents in WP(C)/9/2024, it is seen that it has six columns:- (i) Serial No., (ii) Name, (iii) Date of Birth, (iv) Appointment to the post, (v) Post and (vi) Remarks, having 22 (twenty two) names of LDAs in the four Branches (I) Account Branch (5 LDAs), (II) Revenue Branch (4 LDAs), (III) Establishment Branch (5 LDAs) and (IV) Technical Branch (8 LDAs).

20. It is also seen from the said Seniority List of LDAs Branch-wise dated 10.12.2021, the promotion are to be made as per the vacancy arising from the Branch where the Accounts Branch and the Revenue Branch are to be clubbed as one and the Establishment Branch and the Technical Branch are to be clubbed as the other. In that background it can be seen that that one will be selected for the post of UDA from the 9 LDAs out of Accounts Branch and Revenue Branch (5+4) and further, another will be selected for the post of UDA from the 13 LDAs from Establishment Branch and Technical Branch (5+8) as per the vacancy arising from the concerned Branch.

21. On being enquired as to the procedure adopted by the respondent DAN in

placing LDAs appointed much later in the said Seniority List of LDAs Branch Wise dated 10.12.2021 above the other LDAs, who were appointed much before, just like the present petitioner, Mr. Yanthan, learned counsel for the respondent DAN submitted that the respondent Authorities in the DAN adopted a certain policy.

22. Respondent DAN in its affidavit categorically stated that DAN is an Authority constituted in exercise of the power conferred by Section 73 of the Nagaland Town and Country Planning Act, 1966 and that it is not a full fledged Government Department and as of now the service rule is at the drafting stage. As such, it is governed by the resolutions passed and adopted by the Board of Directors as well as that of the Office Notifications, Orders and Memorandums issued by the Office of the DAN from time to time.

23. Being constituted under Section 73 of the Nagaland Town and Country Planning Act, 1966, i.e., under the Statute, the respondent Development Authority of Nagaland, Dimapur; DAN, Dimapur in short, is a State under Article 12 of the Constitution of India.

24. The respondent DAN in none of its affidavits specified the policy or provisions that it adopted while making some of its LDAs senior in the said Seniority List of LDAs Branch Wise dated 10.12.2021 whose appointments are much later and placing some of its LDAs in below the seniority list who were appointed much earlier, like the case of the petitioner in hand, in absence of its any service Rules.

25. Mr. Jamir, learned senior counsel for the petitioner on being enquired submitted that only to deprive the petitioner from promotion to the post of UDA, respondent DAN made such a Seniority List of LDAs Branch Wise as on December 2021 dated 10.12.2021.

26. In support of his case for the petitioner, Mr. Jamir, learned senior counsel relied on the decision of the Hon'ble Supreme Court in the case of ***T. Balsan (D) THR. LRS and Others -Vs- K. Kanagaraj and Others*** decided on 08.05.2023 reported in ***(2023) 7 SCC 614 = 2023 AIR SC 2860***, in which three Judges Bench of the Hon'ble Supreme Court have held that – "*In absence of any statutory provision or rule*

made thereunder or under proviso appointed to Article 309 of the Constitution of India, once an incumbent is appointed to the post according to rules, their seniority has to be counted from the date of appointment."

27. It is an admitted fact, as noted above, that the respondent DAN as on date, does not have any statutory Rules regarding promotion of its LDAs to the post of UDA in it. As such, in that backdrop, as per the law laid down by the Hon'ble Apex Court in the case of *T. Balsan (Supra)*, it is the seniority of an incumbent serving as LDA from his or her date of appointment is the sole basis for promotion to the post of UDA under respondent DAN.

28. It is already noted above that the respondent DAN in its affidavits did not state as to how it determined the seniority of its LDAs bypassing the date of their respective appointments in absence of any such Rules in force pertaining to the service conditions of the employee serving under the DAN.

29. After hearing the learned counsels for the parties and considering entire aspects of the matters and for the reasons above, the impugned Seniority List of LDAs Branch Wise of the respondents in the Development Authority of Nagaland, Dimapur (DAN) as on December 2021 issued by the Senior Executive Officer, the Development Authority of Nagaland, Dimapur under No. DAN/G-128/94/PT/16/1144-1145 dated 10.12.2021, being not in conformity with law, is hereby set aside and quashed.

30. Needless to say, in the absence of any statutory rules regarding promotion to the post of UDA under the respondent Development Authority of Nagaland, Dimapur, the said respondent for promotion to the post of its UDA, it must consider the seniority of the LDAs, serving under it, from their date of appointment as per the law laid down in the said judgment of the Hon'ble Apex Court in the case of *T. Balsan (Supra)*.

31. The Chairman of the Development Authority of Nagaland, Dimapur, respondent No.1 shall dispose of the representation of the petitioner dated 20.06.2023 [Annexure-G to WP(C) No. 9/2024] within a period of 30 thirty days from the date of receipt of the certified copy of this Order to be furnished by the petitioner, intimating him about the outcome of his said representation.

32. Petitioner shall submit the certified copy of this order before the Chairman, Development Authority of Nagaland, Dimapur, respondent No.1 along with a copy of his said representation dated 20.06.2023 forthwith, obtaining necessary acknowledgement with date in that regard.

33. With the above observations and directions both the Writ petitions of the petitioner, i.e., WP(C) No. 9/2024 and WP(C) No. 151/2024 are allowed to the extent above.

JUDGE

Comparing Assistant