IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPOA No.2593 of 2019
Decided on: 02.11.2026

Onkar Singh

...Petitioner

Versus

The State of Himachal Pradesh and others

...Respondents

Coram
Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge
Whether approved for reporting? [1]

For the petitioner: Mr. Nitin Thakur, Advocate.

For the respondents: Mr. Amandeep Sharma, Additional Advocate General, for respondents No.1 & 2.

Name of respondent No.3 stands deleted.

Jiya Lal Bhardwaj, Judge (Oral)

The petitioner by way of present petition has prayed for the following substantive reliefs:-

> *"i) That the action of the Respondent No 1 in promoting the Respondent No 3 as an Assistant Engineer as per Notification dated 28.1.2014 vide* ***Annexure P-6*** *may kindly be quashed and set-aside forthwith.*
>
> *ii) That the Respondent No 1 may be directed to consider and give the resultant promotion to the petitioner as an Assistant Engineer on regular basis w.e.f the date the promotion was due but was given to the Respondent No 3 on 28.1.2014 vide Annexure P-6 ; with all consequential benefits forthwith.*

---

[1] *Whether reporters of Local Papers may be allowed to see the judgment?*

2026:HHC:48770

> *iii) That the denial of consideration and resultant promotion to the petitioner either by promoting other general category incumbents against reserved post meant for the ST-HDM's or by giving for the excessive representation to other JE's on the promotional posts meant for HDM's as in (m) to (o) above may kindly be quashed and set-aside forthwith."*

2. Shorn of unnecessary details, the key facts of the case are that the petitioner, who belongs to Scheduled Tribe category was appointed as Draftsman in respondent No.1-Department on 20.03.1987. Thereafter, he was promoted to the post of Head Draftsman and joined his duties on 09.09.1992. As per the Recruitment and Promotion Rules called as "The Himachal Pradesh Forest Farming and Conservation Department Assistant Engineer Class-I (Gazetted), Recruitment and Promotion Rules, 1997 (in short 'R&P Rules'), there are 10 number of posts of Assistant Engineer. As per Rule 10, the method of recruitment to the post of Assistant Engineer is 40% by direct recruitment and 60% by promotion. As per Rule 11, case of recruitment by promotion, deputation, transfer, grade, 10% posts are to be filled from amongst the graduate Junior Engineer (University Graduate) or AMIE having 3 years regular or *ad hoc* service rendered up to 31.03.1991 or both as such, 20% by

2026:HHC:48770

promotion from amongst the Departmental Junior Engineers having 10 years regular service or regular combined with continuous adhoc (rendered upto 31-3-91) service, if any, in the grade and 30% by promotion from amongst the Map Officer having at least 3 years regular service or regular combined with continuous *ad hoc* (rendered up to 31.03.1991) service, if any, in the grade, failing which by promotion from amongst the Map Officer/Head Draftsman having 7 years regular service or regular combined with continuous *ad hoc* (rendered up to 31.03.1991) service if any, including the service rendered as Head Draftsman in the grade. For the purpose of promotion, a combined seniority list will be prepared and the Map Officer will be placed enbloc above the Head Draftsman without disturbing their inter-se-seniority in their respective cadre. Further the roster for filling up the posts by direct recruitment and by promotion has been prescribed.

3. The precise grievance of the petitioner is that as per the letter dated 25.11.2013 requesting to hold the Departmental Promotion Committee (in short ‘DPC’) for filling up two vacant posts of Assistant Engineers from amongst the Head Draftsman, one post was to be filled up

2026:HHC:48770

from Scheduled Tribe- Head Draftsman by way of replacement as per the reservation policy and reservation roster prepared by the respondents-State. However, the petitioner who belongs to Scheduled Tribe category and having the requisite qualification was not promoted and one Dorje Angchuk, who was working as Junior Engineer was promoted as per the Notification dated 28.01.2014 (Annexure P-6), whereas, as per Rule 11 of the R&P Rules, 30% posts were to be filled up from amongst the Map Officer having 3 years of regular service in the grade, failing which by promotion from amongst the Map Officer/Head Draftsman and as per Rule 11(i) only 10% posts are to be filled up from amongst the graduate Junior Engineer/AMIE and further as per Rule 11 (ii), 20% posts i.e. 1 post of Assistant Engineer was to be filled up from amongst Departmental Junior Engineers, which was filled up by Sh. Vinod Kumar and the remaining 30% posts i.e. 3 posts of Assistant Engineers were to be filled up from Map Officer, failing which, from amongst the Map Officer/Head Draftsman with 7 years' service or regular combined with continuous adhoc. Once two posts of Assistant Engineers had occurred or fallen vacant or become available to the share of Head Draftsman as on 01.11.2013,

2026:HHC:48770

respondent No.2 had written a letter to respondent No.1 on 25.11.2013 requesting to fill up these vacant posts from the Head Draftsman, yet respondent No.1 had promoted Sh. Dorje Angchuk, who was working as Junior Engineer. It has also been averred that respondent No.1 could not have promoted Dorje Angchuk as Assistant Engineer, when he was not eligible for promotion against the post.

4. As per the R&P Rules for the post of Assistant Engineer and further as per the reservation roster formulated by the respondents-State, coupled with the fact that no Scheduled Tribe category incumbent existed in the cadre of Assistant Engineers, then out of two vacant posts of Assistant Engineers available as on 01.11.2013, in order to ensure representation to the reserved Scheduled Tribe category, one post of Assistant Engineer was to be filled up from Scheduled Tribe Head Draftsman by way of replacement and model roster, but respondent No.1 has neither considered nor promoted the petitioner to the post of Assistant Engineer ,when the petitioner was the only Scheduled Tribe- Head Draftsman, which action on the part of the respondents is violative of Articles 14 & 16 of the Constitution of India and as such prayed for quashing the

2026:HHC:48770

promotion of Sh. Dorje Angchuk with a direction to the respondents to consider and promote the petitioner as Assistant Engineer on regular basis with effect from the date the promotion of Sh. Dorje Angchuk was made.

5. Respondents No.1 and 2 filed reply to the petition and in preliminary submissions averred that at present there are five sanctioned posts of Assistant Engineer (Civil) in the Himachal Pradesh Forest Department. Earlier 10 posts of Assistant Engineer (Civil) were created in the Forest Department. Later on 5 posts of Assistant Engineer (Civil) were abolished, vide office order No.FFE-B-C(7)-1/2002 dated 07.06.2004 and No.FFE-A(B)4-2/2008 dated 12.11.2009. As per the provisions of the R&P Rules contained in column Nos.10 and 11, the post of Assistant Engineer is required to be filled up 40% by direct recruitment and 60% by promotion from amongst the feeder categories of Junior Engineer (Graduate), Departmental Junior Engineer, Forest Map Officer/Head Draftsman. Rule 16 provides that the reservation for SCs/STs/Backward Classes/OBCs etc., shall be admissible subject to orders issued by the Government from time to time. As per provisions contained in sub-rule (2) of Rule 23 of the HP

2026:HHC:48770

Departmental Examination Rules, 1997 as amended from time to time, a Gazetted Officer irrespective of their age shall get further promotion whenever due only after passing the departmental examination. No post of Forest Map Officer is available in the Department and as per the Rules, only Forest Map Officer (Class-II Gazetted) is required to pass the departmental examination. As per prescribed ratio of Rules, out of three posts of Assistant Engineer (Civil), one post was manned by the Graduate Junior Engineer, one by the Departmental Junior Engineer and one post of FMO/Head Draftsman respectively prior to holding of the DPC meeting. Therefore, the existing vacancy of two posts of Assistant Engineer out of five posts, one post falls in the share of Departmental Junior Engineers equal to 0.66% (against 20% quota) and another goes to the share of FMO/Head Draftsman equal to 0.50% (against 30% quota) as one each was manned by the Departmental Junior Engineer and another by the FMO/Head Draftsman. The DPC for consideration of the eligible officials of the Departmental Junior Engineer and Map Officer/Head Draftsman Cadre (Class-III Non-Gazetted) for promotion of two vacant posts of Assistant Engineer (Class-I Gazetted) in the pay band of

2026:HHC:48770

Rs.15600-39100 + Rs.5400 Grade Pay was held on 28.01.2014 in the office of the Himachal Pradesh Public Service Commission (in short 'Commission') as the post of Assistant Engineer is a selection post. The Commission after going through the provisions of notified R&P Rules for the post of Assistant Engineer (Class-I Gazetted) and principles of promotion for a selection post notified by the Department of Personnel Notification No.Per(AP-II)-A(1)-1/80 dated 03/04.11.1981 including the existing instructions on reservation of post(s) in promotion notified by the Department vide Personnel letters dated 31.01.1989, 27.05.1996 and 20.08.1998 and also having examined the list of eligible officials of the respective feeder categories had considered the name of Sh. Dorje Angchuk from the category of Junior Engineer and Mangat Ram from the category of Map Officer/Head Draftsman, since they were at serial No.1 in their categories. Name of Nigma Nand was also considered against the anticipated vacancy of the year 2014. Accordingly, as per the recommendations of the Commission, promotion orders to the post of Assistant Engineer of Sh. Dorje Angchuk and Sh. Mangat Ram were issued vide Notification dated 28.01.2014. Sh. Dorje

2026:HHC:48770

Angchuk has retired from Government service after attaining the age of superannuation on 31.01.2014. After the retirement of Sh. Dorje Angchuk, promotion orders of Sh. Nigma Nand to the post of Assistant Engineer were issued, vide order dated 12.02.2014. At the time of DPC meeting, three posts of Assistant Engineers were already filled up, which were manned by Graduate Junior Engineer i.e. Sh. Rajesh Kumar (10% quota), one by Departmental Junior Engineer i.e. Sh. Vinod Kumar (20% quota) and one by Map Officer/Head Draftsman i.e. Sh. Bidhi Chand (30% quota). It was crystal clear that at that time one each post of Assistant Engineer was manned by each categories. Before holding the DPC meeting, only two posts of Assistant Engineer were lying vacant in the Department, which go to the share of direct recruitment quota (40%). The Department insisted the Commission for filling up these posts by promotion from amongst the feeder categories. Hence, according to the R&P Rules, one post goes to the share of Departmental Junior Engineer and another to Map Officer/Head Draftsman. As per the model roster register maintained by the Department in respect of Assistant Engineers applicable on promotion as per Department of Personnel instructions dated 20.08.1998,

2026:HHC:48770

for cadre of 2 to 13 posts, the roster is to be read from entry I under column Cadre Strength till the last post and then horizontally till the last entry in the horizontal row like ‘L’. All the posts of the cadre are to be earmarked for the categories shown under column initial appointment. While initial filling up will be by the earmarked category, the replacement against any of the post in the cadre shall be by rotation as horizontally against the last post of the cadre. The Department has rightly promoted Sh. Dorje Angchuk, being a Scheduled Tribe candidate and senior most Department Junior Engineer, against the point reserved for the candidates of Scheduled Tribe as per the model roster register maintained by the Department. The claim of the petitioner is not justified where he has claimed that both the posts were to be filled up from amongst the Head Draftsman. If both the posts were to be filled up from amongst the Head Draftsman, the same shall be contrary to the R&P Rules. The point reserved for Scheduled Tribe candidate has already been exhausted by promoting Sh. Dorje Angchuk and hence prayed for dismissal of the writ petition.

6. The petitioner filed rejoinder to the reply filed by

2026:HHC:48770

respondents No.1 & 2 and controverted the averments made therein.

7. I have heard the learned counsel for the parties and also gone through the record carefully.

8. Learned counsel for the petitioner has vehemently argued that since 30% promotion quota is meant for the category of Map Officer/Head Draftsman, Sh. Dorje Angchuk could not have been promoted against the two vacant posts of Assistant Engineer against 20% quota, since as per the rules applied for two vacant posts, the share comes to 0.40%, which does not entitle a category for the post when the right of consideration of a post for a category matures if the ratio comes to 0.50%. However, the said contention cannot be accepted for the simple reason that as per the R&P Rules for filling up the post of Assistant Engineer, initially there were 10 posts of Assistant Engineer, which were later on decreased to 5 posts of Assistant Engineer. Out of 5 posts, 3 posts of Assistant Engineers were manned each by Graduate Junior Engineer, Departmental Junior Engineer and Head Draftsman prior to the holding of the DPC meeting. There were only existing vacancies of two posts of Assistant Engineer out of 5 posts, 1 post falls in the

2026:HHC:48770

share of Departmental Junior Engineer equal to 0.66% against 20% quota and another goes to the share of FMO/Head Draftsman equal to 0.50% against 30% quota. As per the provisional seniority list of initial engineering staff i.e. Junior Engineer, Head Draftsman, Draftsman, Junior Draftsman and Surveyor as it stood on 01.07.2011 (page 55), Sh. Dorje Angchuk was at serial No.1 in the category of Junior Engineers and the petitioner was at serial No.6 in the category of Head Draftsman. Since two posts were to be filled up from the categories of Departmental Junior Engineer and Map Officer/Head Draftsman, Sh. Dorje Angchuk, who was at serial No.1, was rightly promoted to the post of Assistant Engineer from the category of Departmental Junior Engineer and Sh. Mangat Ram who was at serial No.1 in the seniority list of Head Draftsman was promoted to the post of Assistant Engineer. Subsequently after the retirement of Sh. Dorje Angchuk, Nigma Nand who was at serial No.2 in the seniority list of Departmental Junior Engineer was promoted to the post of Assistant Engineer and the petitioner who was at serial No.6 cannot claim that he ought to have been promoted instead of Sh. Dorje Angchuk for the reason that as per the existing vacancy of two posts of Assistant

2026:HHC:48770

Engineer out of five posts, one post falls in the share of Departmental Junior Engineer equal to 0.66% (against 20% quota).

9. Learned counsel representing the petitioner has vehemently argued that since one post falls to the share of Departmental Junior Engineer, even if 20% promotional quota/ratio as prescribed in the Rules is applied to two vacant posts then also, the same comes to 0.40%, which does not entitle a Departmental Junior Engineer category for a post when the right of allocation of post of the category matures since the ratio comes to below 0.50%. However, the said contention cannot be accepted for the reason that the existing vacancy of two posts cannot be filled up by applying the said ratio and it was rightly applied keeping in view the 20% quota prescribed to the category of Departmental Junior Engineers as per the R&P Rules and thus the said contention raised by the learned counsel for the petitioner is merit less and hence rejected.

10. Learned counsel representing the petitioner has placed reliance upon the Constitution Bench judgments of the Hon'ble Supreme Court in ***R.K. Sabharwal and others vs. State of Punjab and others,*** (1995) 2 SCC 745 and ***M.***

2026:HHC:48770

Nagaraj and others vs. Union of India and others, (2006) 8 SCC 212 and contended that since 30% posts of Assistant Engineers were to be filled up from the category of FMO/Head Draftsman, one post ought to have been filled up from the category of Scheduled Tribe and Dorje Angchuk though belongs to Scheduled Tribe category, but keeping in view the fact that against 20% quota, the ratio comes to below 0.40%, he ought not to have been considered for promotion to the post of Assistant Engineer.

11. No doubt as per the aforementioned judgments, the post after the quota is filled up, has to be filled up from the category from which it falls vacant, but in the present case, the above judgments are not attracted for the reason that there were two posts of Assistant Engineers lying vacant out of five posts and three posts were already filled up. One post each was manned by the Graduate Junior Engineer, Departmental Junior Engineer and Forest Map Officer/Head Draftsman and thus as per the R&P Rules, two posts were to be filled up from the officials of the categories of Departmental Junior Engineer and FMO/Head Draftsman since 20% and 30% quota prescribed to said categories respectively.

2026:HHC:48770

12. As per the reply filed by the respondents, Sh. Dorje Angchuk, being a Scheduled Tribe candidate and senior most Departmental Junior Engineer was promoted as Assistant Engineer against the post reserved for the candidates of the Scheduled Tribe as per model roster register, which fact has not been disputed by the petitioner. Once as per the model roster register the post of Scheduled Tribe was reserved for Departmental Junior Engineer, Sh. Dorje Angchuk was rightly promoted to the post of Assistant Engineer. It is not the case of the petitioner that Sh. Dorje Angchuk was not fulfilling the criteria and further he was not in the seniority list at serial No.1 of the Departmental Junior Engineers, since he himself has placed on record the provisional seniority list of Junior Engineers, Head Draftsman, Draftsman, Junior Draftsman and Surveyor of Forest Department as it stood on 01.07.2011. In this seniority list, the petitioner is at serial No.6 in the category of Head Draftsman and Sh. Mangat Ram who was at serial No.1 was promoted to the post of Assistant Engineer from the category of Head Draftsman and the said action on the part of the respondents cannot be said to be actuated with any malafide or they have committed any illegality. As

2026:HHC:48770

noticed above, after the retirement of Sh. Dorje Angchuk, the post which fell vacant from the category of Departmental Junior Engineer was filled up strictly as per the seniority list and a person who was at serial No.2 namely Nigma Nand, whose candidature was also considered by the DPC in its proceedings conducted by the Commission, was promoted and thus, it cannot be construed that any illegality has been committed by the respondents while making promotion of the said person after the retirement of Sh. Dorje Angchuk.

13. Learned counsel representing the petitioner has also placed reliance upon the judgment passed by a two-Judge Bench of the Hon'ble Supreme Court in ***R.S. Garg vs. State of U.P. and others***, (2006) 6 SCC 430 and contended that since the petitioner, who belongs to Scheduled Tribe category, has not been promoted, due representation has not been given to the category of Scheduled Tribe. However, the said contention cannot be accepted for the reason that since there were only two posts out of total five sanctioned posts, which fact has not been disputed by the petitioner, as per the R&P Rules governing the field, were to be filled up from the categories of Departmental Junior Engineer and

2026:HHC:48770

Map Officer/Head Draftsman and the DPC had considered the matter in right perspective and has rightly promoted Sh. Dorje Angchuk, who belongs to Scheduled Tribe category and was at serial No.1 in the seniority list for promotion to the post of Assistant Engineer and as such there is no illegality having been committed by the Commission while making recommendations and thereafter promoting Sh. Dorje Angchuk by respondent No.1 vide Notification dated 28.01.2014 (Annexure P-6)

14. Learned counsel representing the petitioner further vehemently argued that as per the model roster, the post was to be filled up from the Scheduled Tribe category only from the feeder category of Map Officer/Head Draftsman. However, the said contention cannot be accepted for the reason that out of five posts, three posts each were already manned by Graduate Junior Engineer, Departmental Junior Engineer and Map Officer/Head Draftsman and the rest two posts have been filled up giving due representation to the category of Departmental Junior Engineer and Map Officer/Head Draftsman, keeping in view 20% and 30% quota prescribed to their categories.

15. It is also necessary to take note of the fact that

2026:HHC:48770

initially Sh. Dorje Angchuk was impleaded as one of the respondents in the writ petition, however, on the oral request of learned counsel for the petitioner, his name was deleted vide order dated 23.03.2017. It is settled law that no order can be passed against any person without hearing him and at his back. Since name of Sh. Dorje Angchuk was ordered to be deleted from the array of parties at the instance of the petitioner, even on this count, no relief can be granted to him and as such the petition being devoid of any substance is hereby rejected.

16. Consequently, in view of the observations made hereinabove, I do not find any merit in the present petition and the same is accordingly dismissed. However, there shall be no order as to costs. Pending miscellaneous application(s), if any, also stand disposed of.

02nd November, 2026 **(Jiya Lal Bhardwaj)**
(Anurag) **Judge**