

**IN THE GAUHATI HIGH COURT**

**(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA,  
MANIPUR, TRIPURA MIZORAM AND ARUNACHAL PRADESH)**

**(ITANAGAR PERMANENT BENCH AT NAHARLAGUN)**

**Writ Appeal No. 02 (AP) of 2009**

**Ms. N. B. Doye & others**

**- Petitioners**

**- Versus -**

**Jarkar Gamlin & others.**

**- Respondents**

**BEFORE  
THE HON'BLE MR JUSTICE I.A. ANSARI  
THE HON'BLE MR JUSTICE P. K. MUSAHARY**

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**JUDGE**

**IN THE GAUHATI HIGH COURT**

**(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA,  
MANIPUR, TRIPURA MIZORAM AND ARUNACHAL PRADESH)**

**(ITANAGAR PERMANENT BENCH AT NAHARLAGUN)**

**Writ Appeal No. 02 (AP) of 2009****Appellants:**

1. **Ms. N. B. Doye,**  
Block Development Officer,  
Directorate of Rural Development,  
Arunachal Pradesh, Itanagar.
  
2. **Ms. I. R. Ering (Zirido),**  
Block Development Officer,  
Yingkiong CD Block, Yingkiong,  
District : Upper Subansiri,  
Arunachal Pradesh.
  
3. **Ms. Chare Ninu,**  
Block Development Officer,  
Rumgong CD Block, Rumgong,  
District : West Siang,  
Arunachal Pradesh.

**By Advocates :**

Mr. P. K. Tiwari,  
Mr. T. Pertin,  
Mr. A. K. Singh,  
Mr. S. Tapin,  
Mr. P Bul,

Mr. V. Pradhan,  
Mr. X. Gyati.

**-versus-**

**Respondents:**

1. **Jarkar Gamlin,**  
Assistant Project Officer (Monitoring),  
District Rural Development Agency,  
Aalo, District : West Siang,  
Arunachal Pradesh.
2. The Director,  
Directorate of Rural Development,  
Government of Arunachal Pradesh,  
Itanagar, Arunachal Pradesh.
3. The State of Arunachal Pradesh  
Through the Secretary, Department of  
Rural Development, Government of  
Arunachal Pradesh, Itanagar.

**By Advocates:**

Ms. G. Deka, Addl. Sr. Govt. Advocate, AP.  
Mr. K. Ete,  
Mr. N. Ratan,  
Mr. M. Kato,  
Mr. D. Padu,  
Mr. K. Tasso,  
Mr. G. Kato,  
Ms. S. Appa (for respondent No.1).

**BEFORE**

**THE HON'BLE MR. JUSTICE I. A. ANSARI  
THE HON'BLE MR. JUSTICE P. K. MUSAHARY**

Date of hearing : 04.01.2011.

Date of delivery of Judgment : 04.01.2011.

**JUDGMENT & ORDER**  
**(Oral)**

**(Ansari, J.)**

1. Heard Mr. P. K. Tiwari, learned counsel for the appellants, and Mr. K. Ete, learned counsel for the respondent No.1. Also heard Ms. G. Deka, learned Additional Senior Government Advocate, Arunachal Pradesh, appearing on behalf of the State respondents.

2. The respondent No.1 herein filed a writ petition, under Article 226 of the Constitution of India, putting to challenge the promotion of the present appellants made by orders, dated 30.5.2007, to the posts of Block Development Officer, in the Rural Development Department, Government of Arunachal Pradesh, against 10% quota of the cadres of Assistant Project Officer (M) and Assistant Project Officer (DWCRA). The writ petition gave rise to WP(C) No.197(AP)/2007, which has been disposed of, on 18.6.2008, by directing the State respondents to

promote the petitioner by either cancelling the promotion of one of the present appellants to the post of Block Development Officer or to sanction one more post of Block Development Officer, because, according to the learned Single Judge, there are, admittedly, 88 Community Development Blocks (in short, CD Blocks) in the State of Arunachal Pradesh and as against these 88 CD Blocks, only 56 posts of Block Development Officer have been sanctioned till date. The relevant observations made and the directions given by the learned Single Judge are reproduced below.

*"7. In the result, this writ petition is allowed, with the direction to the respondent authorities to either cancel the promotion of one of the private respondents to the post of B.D.O. or to sanction one more post of B.D.O., since admittedly, there are 88 Nos. of C.D. Blocks in the State of Arunachal Pradesh, out of which, only 56 posts of B.D.O. have been sanctioned till date. In view of above, in order to accommodate and promote the writ petitioner to the post of Block Development Officer, since the petitioner is possessing the requisite qualification and/or eligible criteria as per the existing Recruitment Rules and also considering the fact that the petitioner has a right to be considered for such promotion, it is hereby directed that the entire exercise for considering the case of promotion of the writ petitioner to the*

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*post of Block Development Officer (B.D.O.) shall be completed within a period of 3(three) months from the date of receipt of a certified copy of this Judgment and Order.”*

3. Aggrieved by the above observations and directions, the private respondents, in the writ petition, apprehending that their promotions or the promotion of one of them may be cancelled, have filed this appeal.

4. Notwithstanding the fact that there are, admittedly, 88 CD Development Blocks in the State of Arunachal Pradesh and the writ petition proceeds, as can be discerned from the averments made therein, as if 88 posts of Block Development Officers too stand sanctioned, there is no clear and categorical assertion in the writ petition that there are 88 sanctioned posts of Block Development Officer. As against this, the finding, in the writ petition, which we noticed above, is that there are only 56 posts of Block Development Officer sanctioned till date. In fact, in terms of the relevant Recruitment Rules known and styled as Block Development Officer (Group-B) Recruitment Rules, 2000, there are 56 posts of Block Development Officer and these posts are required to be filled up by *selection*. In terms of the relevant Recruitment Rules, there are three sources of entry to the posts of Block Development Officer, the sources being, namely, (a) 40% by promotion from the cadre of Jt. BDO, (b) 10% lateral

induction from the cadre of APO(M) and APO (DWCRA) in DRDAs and (c) 50% by transfer on deputation from the cadre of APCS (Junior). Since the sanctioned strength, in terms of the relevant Recruitment Rules, is 56, 10% quota, meant for the cadres of APO (M) and APO (DWCRA), would, if combined together, amount to 5.6% of the total sanctioned posts. This, in turn, means that barely 6 (six) posts of Block Development Officer would come to the combined quota of APO(M) and APO(DWCRA). In other words, only 6 (six) posts of Block Development Officer can be filled up or, rather, shall be filled up from the cadre of APO(M) and APO(DWCRA). There is nothing, in the writ petition, to show as to what is the total sanctioned strength of APO(M) and/or APO(DWCRA). There is also nothing in the Recruitment Rules to show as to how the 10% quota would be filled up from the said two cadres.

5. The appellants herein, admittedly, belong to the cadre of APO(DWCRA); whereas the writ petitioner-private respondent herein belongs to the cadre of APO (M). The contention of the writ petitioner-private respondent was that he was the seniormost APO(M) and he, being the seniormost APO(M) presently, ought to have been promoted to the post of Block Development Officer. It also transpires, during the course of hearing of this appeal, that as many as three members of the

cadre of APO (M) are already functioning as Block Development Officers. Considered in this light, it becomes clear that there is no room for any lateral induction from the cadre of APO(M) unless the facts disclosed in the writ petition are incorrect. There is even no indication, in the writ petition, as to what really the challenge of the writ petitioner was except the fact that, according to the writ petitioner, the entry to the cadre of Block Development Officer shall be in terms of the Recruitment Rules, which provide for selection for the purpose of entry to the cadre of Block Development Officer from the cadre of APO(M) and APO(DWCRA). It can also be noticed that under the said Recruitment Rules, there may, in a given situation, be a member of the cadre of APO(M), who may not fall within the zone of consideration for consideration to the post of Block Development Officer on the ground that a large number of members of the cadre of APO (DWCRA) are available and senior to the numbers of APO(M). It is not necessary, in the absence of anything indicated in the Recruitment Rules, that within the zone of consideration, both cadres, namely, APO(M) and APO(DWCRA), shall necessarily fall. It is, therefore, possible, in the absence of anything showing to the contrary, that a selection may be carried out from amongst members of one of the cadres only. In the case at hand, the appellants came to the cadre of APO (DWCRA) as far back as in the year 1994; whereas the writ



petitioner-private respondent became a member of the APO(M) in the year 2005.

6. There is, thus, no clear foundation laid in the writ petition for the purpose of upsetting the promotions of the present appellants. The Recruitment Rules not being under challenge, it was not within the province of the Court to direct the Government to consider the cases of the members of the said two cadres, namely, APO(M) and APO(DWCRA), either on the basis of seniority-cum-merit or merit-cum-seniority, for, both the courses of action are open to the Government and are, primarily, to be determined by the Government. On the basis of such a writ petition, there could not have been an order or direction to either cancel promotions of the present appellants or to sanction one more post of Block Development Officer to accommodate the writ petitioner-private respondent.

7. Situated thus, we are clearly of the view that the directions given by the judgment and order, under appeal, are not sustainable in law. This will, however, not debar or foreclose the writ petitioners-private respondents right to challenge the Recruitment Rules, if he is so advised, and/or file appropriate writ application challenging the promotions of the present appellants to the post of Block Development Officer.

8. In the result and for the reasons discussed above, while we set aside the directions given by the judgment and order, under appeal, to the State respondents to either cancel promotions of the present appellants or to sanction one more post of Block Development Officer to accommodate the writ petitioner-private respondent, we leave the writ petitioner-private respondent with liberty to approach this Court with appropriate application(s), in future, if so advised. The promotions of the present appellants, which we have not interfered with, shall be subject to, and be governed by, such further or other order or orders as may be passed in any proceeding which may be initiated, in accordance with law, by the writ petitioner-private respondents.

9. With the above observations and directions, the appeal shall stand disposed of.

10. The parties shall bear their own costs.

  
**JUDGE**

  
**JUDGE**

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