

IN THE GAUHATI HIGH COURT

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

ITANAGAR PERMANENT BENCH

WP(C) No. 449 (AP) of 2014

Sri Habung Lalin,
Son of Late Habung Taso,
Superintendent,
Office of the Chief Engineer (Power),
Eastern Electrical Zone,
Department of Power,
Itanagar, Pin - 791111.

..... Petitioner.

- Versus -

1. The State of Arunachal Pradesh,
Represented by the Secretary to the
Department of Power,
Government of Arunachal Pradesh,
Naharlagun, Pin - 791112.
2. The Chief Engineer (Power),
Eastern Electrical Zone,
Department of Power,
Itanagar, Pin - 791111.
3. Superintending Engineer (Coord),
A. P. Electrical Circle No. 1,
Department of Power,
Naharlagun, Pin - 791112.
4. Executive Engineer (E) HQ,
A. P. Electrical Circle No. I-cum-Coord,
Department of Power,
Naharlagun, Pin - 791112.

5. Shri Taso Tajo,
Superintendent,
Office of the Superintending Engineer,
Zero Electrical Circle,
P.O. - Zero, Arunachal Pradesh,
Pin - 791120.
6. Shri K. Norbu,
Superintendent,
Office of the Superintending Engineer (Electrical),
Dirang Electrical Circle,
P.O. - Dirang, Arunachal Pradesh,
Pin - 790101.

..... Respondents.

Advocates for the Petitioner : Mr. Manik Chanda,
Mr. Lobsang Tenzin,
Mr. Imar Lollen,
Mr. Kirpok Eshi,
Mr. Lham Tsering.

Advocate for the Respondents : Ms. Geeta Deka,
Sr. Govt. Advocate.
Arunachal Pradesh,
For Respondents No. 1 to 4.

BEFORE

THE HON'BLE MR. JUSTICE M. R. PATHAK

Date of Hearing : 09.05.2016

Date of Judgment & Order : 09.05.2016

JUDGMENT AND ORDER

Heard Mr. M. Chanda, learned counsel assisted by Mr. L. Tenzin learned counsel for the petitioner and Ms. G. Deka, learned Senior Govt. Advocate, Arunachal Pradesh for the State Respondents No. 1 to 4.

2) Office Note reveals that Notice of this case were sent to the private respondents No. 5 & 6 by registered post with AD on 16.12.2014 and the AD card of private respondent No. 5 returned back to the Registry after such service of notice. But neither the un-served notice nor the AD card regarding service of notice on respondents No. 6, have been received back by the Registry. In terms of the order dated 03.12.2014 passed earlier in this case; the petitioner took steps on the private respondents No. 5 & 6 by personal/dasti service routed through the Registry of this Court. By filing an affidavit on 12.05.2015, the petitioner submitted that personal/dasti service of notice of this case has been made on the respondent No. 5 on 20.12.2014, whereas, the respondent No. 6, refused to accept such personal/dasti service of notice from the petitioner.

3) As such, it can be presumed that private respondents No. 5 & 6 are well aware of the present petition and in spite of that they have chosen not to contest the proceeding and therefore, this matter proceeded ex parte against them.

4) The petitioner herein is aggrieved by the decision of the respondents in the Power Department of the State, communicated on 11.08.2014, by the respondent No. 4, the Executive Engineer (E) HQ, A.P. Electrical Circle No. I cum Coord, whereby, the official respondents denied pro forma promotion under 'Next Below Rule' to the petitioner in the post of Superintendent in the Power Department of the State with effect from 06.04.1999.

5) In the year 1986 the petitioner was appointed as 'Upper Division Clerk' in the Office of the Executive Engineer, Department of Power, Government of Arunachal Pradesh at Bomdila Electrical Division and later on 27.03.1991 he was promoted as 'Assistant'. While working as Head Assistant in the Office of the Executive Engineer (Electrical), Department of Power, Naharlagun Electrical Division, the Office of the Accountant General (A&E), Meghalaya, Arunachal Pradesh and Mizoram, Shillong vide EO No. DA Cell/193 dated 30.12.1996 selected the petitioner for the post of Divisional Accountant (on deputation basis) in the pay scale of Rs. 1400/- to Rs. 2600/- in the combined cadre of Divisional Accountants under the administrative control of the Office of the

Accountant General (A&E), Meghalaya, Shillong and posted him on deputation as Divisional Accountant in the Office of the Executive Engineer, P.W.D, Sangram, Arunachal Pradesh. Accordingly, the petitioner with the consent of the Power Department of Arunachal Pradesh joined as Divisional Accountant, on deputation basis, in the Office of the Executive Engineer, P.W.D, Sangram, under the administrative control of the Accountant General (A&E), Meghalaya, Shillong.

6) The respondent No. 3, Superintending Engineer (Coord), A.P. Electrical Circle No. 1, Naharlagun by his order dated 27.05.1997 promoted the petitioner to the post of Superintendent on adhoc basis in the scale of pay of Rs. 1600/- to Rs. 2500/- directing him to join within thirty days specifying that failing on his part to join within the said period his said adhoc officiating promotion would be treated as cancelled. The petitioner accordingly on 27.05.1997 submitted a representation before the respondent No. 3 for the retention of his promotion on pro forma basis, to which said respondent did not file a reply.

7) The respondents in the meanwhile published a seniority list of Assistant/ Head Assistant in the Power Department of the State as on 28.02.1999 wherein the petitioner's seniority position was at Serial No. 11 and respondent Nos. 5 & 6 stood at Serial Nos. 16 & 17, below the petitioner.

8) The respondent No. 3, Superintending Engineer (Coord), A.P. Electrical Circle No. 1, Naharlagun again by his order dated 06.04.1999 promoted the petitioner to the post of Superintendent on adhoc basis in the scale of pay of Rs. 5500/- to Rs. 9000/- directing him to join within sixty days stating that failing on his part to join within the said period his promotion would be cancelled.

9) By an order dated 11.10.1999, the Superintending Engineer (Coord), A.P. Electrical Circle No.1, respondent No. 3 promoted the respondent Nos. 5 and 6, junior to the petitioner, to the post of Superintendent in the Department of Power of the State on temporary basis in the pay scale of Rs. 5500/- to Rs. 9000/-. Accordingly the said two respondents joined their service.

10) The Accountant General (A&E), Meghalaya, Shillong by its order dated 17-12-1999, repatriated the petitioner from the borrowing department to the lending department and accordingly, the petitioner joined his parent department i.e. the department of power, and the respondent No.2, Chief Engineer, (Power), by his order dated 07-02-2000 appointed the petitioner as an Assistant. The petitioner being aggrieved with the said repatriation order of the Accountant General (A&E), Meghalaya, Shillong, approached this Court in WP(C) No.1117 of 2000 and the Court by its order dated 08-03-2000 passed in said WP(C) No.1117/2000, set aside the repatriation of the petitioner from the borrowing department and accordingly, the respondent No.2, the Chief Engineer (Power) by his office order dated 02-06-2000 relieved the petitioner from the establishment of the Department of Power in the afternoon of 03-02-2000 directing him to report to the Executive Engineer (PWD), Bameng Division, PWD, AP, Bameng as Divisional Accountant on deputation for further duties. Pursuant to the same, the petitioner joined his service on deputation basis.

11) The respondent No.3, the Superintending Engineer (Coord), AP Electrical Circle, vide order dated 07-04-2000, promoted the petitioner to officiate as Superintendent purely on temporarily basis in the scale of pay of Rs. 5500/- to Rs. 9000/- and posted him to the office of the Superintending Engineer (E), Miao Electrical Circle with an observation that the temporary officiating promotion will not confer upon the petitioner any right to claim seniority, regular promotion as Superintendent and further that he should report the duty to his said place of posting within 60 days from the date of issuance of the order failing which promotion of the incumbent will be treated as cancelled. On receipt of the order dated 07-04-2000, the petitioner on 20-01-2000 submitted a representation before the Superintending Engineer (Coord), AP Circle No.1 stating that he has been promoted to the post of Superintendent only on temporary basis and he is unable to join the said post as he is working on deputation basis and requested the authorities for retention of his promotional post till he returns from deputation. In the said representation, petitioner also pointed out that when he repatriated from deputation, he found that the parent department had already filled up the promotional post of Superintendent by promoting respondent Nos. 5

and 6, who are 3 years juniors to him and accordingly requested the authority concerned to provide him seniority which he entitled by virtue of the order dated 27-05-1997 so that he can join the post of Superintendent to which the respondent No.3 replied that fixation of seniority depends upon joining the post of Superintendent. As the petitioner did not join within 60 days, the respondent No.3 by his order dated 04-12-2000 cancelled his earlier order dated 04-07-2000 noted above.

12) By an order dated 11-07-2011, the Superintending Engineer (E), AP Electrical Circle No.1 cum Coordination vide order dated 11-07-2011, as per the recommendations of the Departmental Promotion Committee (DPC) held on 06-07-2011, promoted the petitioner to the post of Superintendent in the scale of pay of Pay Band 2 of Rs.9300/- to Rs. 34,800/- with Grade pay of Rs.4600/- per month plus other allowances as admissible with effect from the date he assumes charge of the post and was placed under the Chief Engineer (Power), Eastern Electrical Zone at Itanagar against the existing vacancy. Consequent upon the said promotional order, dated 11-07-2011, the petitioner was released from the post of Divisional Accountant on deputation. Further consequent upon the said promotional order dated 11-07-2011, the Executive Engineer (EE), Naharlagun Electrical Division, Department of Power, on 05-08-2011 released the petitioner from the said division directing him to report before the Chief Engineer (Power) Eastern Electrical Zone at Itanagar. Accordingly, the petitioner joined his parent department as Superintendent on 08-08-2011. In the meanwhile, the respondents in the Power Department published a provisional seniority list of Superintendent under the Department of Power as on 31-08-2009 wherein names of the private respondent Nos. 5 and 6 figured as serial Nos. 11 and 12 which does not contain the name of the petitioner.

13) The petitioner on 18-10-2013 submitted a representation before the Superintending Engineer (Coord), AP Electrical Circle No.1, requesting to give him retrospective promotion to the post of Superintendent in the Department of Power on the basis of proforma promotion under next below rule with effect from 27-05-1997 with full pay protection without losing seniority. However, the

respondents in the Power Department vide communication dated 11-08-2014, rejected the prayer of the petitioner regarding his retrospective promotion to the post of Superintendent on the ground that if a Govt. Servant is given three times promotion within a span of three years and he fails to join in the post without any compelling circumstances cannot be given retrospective promotion and service benefits to the Govt. employee to the higher post is given only from the date he actually joined to the post and that the petitioner did not represented for proforma promotion before accepting the present promotion (to the post of Superintendent).

14) Submitting on behalf of the petitioner, Mr. Chanda, submitted that as the petitioner was on deputation, the respondent Nos. 5 & 6, who were juniors to the petitioner in the post of Assistant have been promoted to the higher post of Superintendent disregarding his seniority, as such he is entitled to all the benefits in the parent department which is given to the person junior to him or those who are similarly situated when he was on deputation. It is also submitted that the respondents in the Power Department did not state anything when the respondents No. 5 & 6 were considered for regular promotion to the post of Superintendent and when such DPC was held for their appointments to the said post of Superintendent. Moreover, the promotional order to the post of Superintendent of the petitioner issued by the respondent No. 3 on 27-05-1997, 06-04-1999 and 04-07-2000 were purely on temporary basis and not against any regular sanctioned post.

15) The official respondents contested the matter by filing their affidavit. Appearing for the State respondents Ms. G. Deka, learned Senior Government Advocate, submitted that while he was on deputation, on three occasions i.e. on 27-05-1997, 06-04-1999 and 04-07-2000 the petitioner was promoted to the post of Superintendent on purely temporary & adhoc basis from the seniority list of Assistant/Head Assistant with a condition therein that he should report in the new post within 30/60 days respectively from the date of issuance of such order of promotion, failing which, those orders will be treated as cancelled and that the petitioner on 04-07-1997 submitted a representation stating that he wished

to complete the deputation period with effect from 13-01-1997 to 13-01-1999. The respondents stated that after the second promotional order of the petitioner on 06-04-1999 he submitted another representation requesting to retain him up to 13-01-2000 or till further extension of deputation is allowed by the Accountant General (A&E), Shillong. As the petitioner did not join within the time prescribed, the respondents vide order dated 11-10-1999 promoted the next incumbents, who were juniors to the petitioners, have been promoted as those posts cannot be kept vacant for an indefinite period and the respondent Nos. 5 & 6 have been appointed as Superintendent to fill up such post in the exigency of work and in the interest of public.

16) The State respondents submitted that though the petitioner was promoted to the post of Superintendent for the third time on 04-07-2000, while he was on deputation, the petitioner submitted a representation on 21-08-2000, requesting the authority to give him seniority position with effect from 27-05-1997 but by communication dated 04-12-2000, the petitioner was informed that the vacancy occurred from time to time is not to be kept unfilled, waiting for an indefinite period for his return to the parent department and therefore the vacancies as available in that period have to be filled up by promoting next senior Assistant or whether the parent office shall asked the Accountant General (A&E), Shillong for his repatriation to the parent department. The petitioner was also informed by the said communication dated 04-12-2000 that fixation of his seniority in the promotional post of Superintendent depends on his joining to the promotion post only. As the petitioner did not join within the time specified, the third promotional order of the petitioner was also cancelled on 04-12-2000. The respondents admitted the fact that the petitioner was promoted to the post of Superintendent by an order dated 11-07-2011 while he was on deputation considering his promotion along with 3 others, as per the recommendations of the DPC held on 06-07-2011 and he joined the said post on 08-08-2011. The respondents also admitted that though the petitioner was senior to the respondent Nos. 5 & 6 in the list of Assistants/Head Assistants as on 28-02-1999, but as he did not join the post of Superintendent in terms of the earlier promotion orders dated 27-05-1997 & 06-04-1999 his name did not figure in the

seniority list of Superintendent as on 31-08-1999, in which the names of the private respondents are reflected. The respondents further stated that the name of the petitioner however, figures in the seniority list of Superintendent as on 31-08-2014 as he joined in such capacity on 30-08-2011.

17) The respondents in the Power Department also submitted that while the petitioner was on deputation under the Accountant General (A&E), Shillong, as Divisional Accountant, he was promoted to the post of Superintendent on four occasions which he refused by not joining the promotional post within the time specified except submitting representation seeking seniority from 1997 which goes to show that he was not interested in the said post and that he joined the promotional post of Superintendent only on 08-08-2011 in terms of the order dated 11-07-2011 when the DPC recommended him on 06-07-2011. According to the respondents, as the petitioner earlier refused his promotion to the post of Superintendent on three occasions while he was on deputation and failed to join the said post without any compelling situation, his claim for Pro Forma Promotion as per Next Below Rule vide his representation dated 18-12-2013 cannot be accepted.

18) With regard to the promotion based on seniority cum merit, Mr. Chanda, learned counsel for the petitioner submitted that an officer on deputation has a legal right to claim promotion to a higher post in the parent department provided his service in the lending/borrowing department is satisfactory and as there was nothing adverse on record against the petitioner in the Accountant General (A&E), Shillong, the borrowing department, where he was on deputation and therefore, it is submitted that the petitioner is entitled to get the benefit of promotion to the post of Superintendent on the basis of Pro Forma Promotion with arrear pay and allowances from the date when his juniors, like respondent Nos. 5 & 6 were promoted to the post of Superintendent. It is seen that the respondents in the Power Department did not reply to the same except making a statement that the matter is subjudiced in the present proceeding. From the provisional seniority list of Superintendent under Department of Power as on 31-08-2014, annexed to the affidavit filed by the official respondents, it can be seen

that the respondent No. 5 joined the post of Superintendent on 01-11-1998 whereas respondent No. 6 joined the said post on 03-11-1999 where their seniority positions are at Serial Nos. 12 & 13 respectively, wherein the seniority position of the petitioner has been shown at Serial No. 19 and his date of joining as Superintendent has been reflected as 30.08.2011.

19) It is also submitted on behalf of the official respondents that if the petitioner is found to be entitled for promotion to the post of Superintendent from the date when his immediate juniors were promoted to the said post, than he shall not be paid any arrear back wages for the said post till he actually joined the post of Superintendent, since he did not work in the said post during that period

20) The (Group-C Posts) Recruitment Rules 1982, a statutory Rule under Article 309 of the Constitution has been framed by the State Government to regulate the method of recruitment to the post of Superintendent (Non-Gazetted) (Group-C) in the Arunachal Pradesh State Secretariat and other departments, both major & minors of the Government of Arunachal Pradesh and the said Rules provides that the post of Superintendent in the Ministry/ Departments of Arunachal Pradesh is a 'Non Selection' post and the manner of recruitment to said post is promotion only on seniority cum fitness basis from the grade of Assistants having 5 years experience where the period of probation is 2 years.

21) Mr. M. Chanda, placed his reliance on the judgments of the Hon'ble Supreme Court as well as of this High Court reported in (i) AIR 1965 SC 868, (ii) (1988) 2 SCC 850, (iii) (1995) Supp 3 SCC 133, (iv) (1996) 7 SCC 260, (v) (2008) 4 GLT 363 and (vi) 1998 (4) GLT 347. Perused and considered the judgments cited on behalf of the petitioner.

22) Regarding deputation, the Hon'ble Supreme Court in the case of *State of Punjab -Vs- Inder Singh*, reported in (1997) 8 SCC 372 have observed that –

"The concept of 'deputation' is well understood in service law and has a recognised meaning. "Deputation" has a different connotation in service law and the dictionary meaning of the word "deputation" is of no help. In simple words "deputation" means

service outside the cadre or outside the parent department. Deputation is deputing or transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis. After the expiry period of deputation the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per the Recruitment Rules. Whether the transfer is outside the normal field of deployment or not is decided by the authority who controls the service or post from which the employee is transferred. There can be no deputation without the consent of the person so deputed and he would, therefore, know his rights and privileges in the deputation post."

23) In the case of *State of Mysore -Vs- M.H. Bellary*, reported in AIR 1965 SC 868, a Full Bench of the Hon'ble Supreme Court have held that –

"The service of an officer on deputation in another department is treated by the rule as equivalent to service in the parent department and it is this equation between the services in the two departments that forms the basis of rule. So long therefore as the service of the employee in the new department is satisfactory and he is obtaining the increments and promotions in that department, it stands to reason that that satisfactory service and the manner of its discharge in the post he actually fills, should be deemed to be rendered in the parent department also so as to entitle him to promotions which are often on seniority-cum-merit basis. What is indicated here is precisely what is termed in official language the "Next Below Rule" under which an officer on deputation is given a paper-promotion and shown as holding a higher post in the parent department if the officer next below him there is being promoted. If there are adverse remarks against him in the new department or punishments inflicted on him there, different considerations would arise and these adverse remarks etc. would and could certainly be taken into account in the parent department also, but that is not the position here. In view of the facts of the case it is not necessary to discuss this aspect in any detail or any further."

24) Considering the above, a three Judges Bench of Hon'ble Apex Court in the case of *State of Mysore -Vs- P.N. Nanjundiah*, reported in (1969) 3 SCC 633, have held that –

"So long as the service of the employee in the new Department is satisfactory and he is obtaining the increments and promotions in that Department, it stands to reason that the satisfactory service and the manner of its discharge in the post he actually fills, should be deemed to be rendered in the parent Department. Also so as to entitle him to promotion which are seniority-cum-ment basis."

25) The Hon'ble Apex Court in the case of *R.K. Sethi -Vs- Oil & Natural Gas Commission*, reported in (1997) 10 SCC 616 have held that –

"The "next below rule" in service jurisprudence seeks to ensure that if a junior employee is given promotion without considering his senior then the senior

employee can claim the right to be considered for such promotion with effect from the date on which the junior was so promoted."

26) With regard to the pro forma promotion on next below rule to the petitioner, the respondents submitted that following the provisions of sub-clause 2 (a), (b) & (c) clause 10 of Chapter 55 relating to Pro Forma Promotions laid down in the Swamy's Complete Manual on Establishment & Administration, they passed the impugned order dated 11.08.2014 rejecting the claim of the petitioner for his promotion to the post of Superintendent with retrospective effect stating that he failed to join in the post in time without any compelling circumstances in spite of giving him three promotions. The respondents have annexed a copy of said 'Chapter 55' of Swamy's Complete Manual on Establishment & Administration in their affidavit and clause 2 of said chapter provides the 'guiding principle for the working of the next below rule' and it provides that –

"The intention of the so-called rule was apparently that an officer out of his regular line should not suffer by forfeiting acting promotion which he would otherwise have received had he remained in his regular line. From that it follows that that fortuitous acting promotion of someone junior to an officer who is out of the regular line does not, in itself, give rise to a claim under the 'next below rule'. Before such a claim is established, it should be necessary that all the officers senior to the officer who is out of his regular line have been given acting promotion, and also the officer next below him, unless in any case the acting promotion is not given because of inefficiency, unsuitability or leave. In the event of one of these three bars being applicable to the officer immediately below the officer out of his regular line, then some other officer, even more junior, should have received acting promotion and the officer, if any, in between should have been passed over for one of these reasons."

27) In the case of *Union of India -Vs- Hemraj Singh Chauhan*, reported in (2010) 4 SCC 290 the Hon'ble Supreme Court have held that –

"36. It is an accepted legal position that the right of eligible employees to be considered for promotion is virtually a part of their fundamental right guaranteed under Article 16 of the Constitution. The guarantee of a fair consideration in matters of promotion under Article 16 virtually flows from guarantee of equality under Article 14 of the Constitution."

28) The Hon'ble Supreme Court in the case of *Paluru Ramkrishnaiah -Vs- Union of India*, reported in (1989) 2 SCC 541, have held that –

"It is the settled service rule that there has to be no pay for no work i.e. a person will not be entitled to any pay and allowance during the period for which he did not perform the duties of a higher post although after due consideration he was given a proper place in the gradation list having deemed to be promoted to the higher post with effect from the date his junior was promoted. So the petitioners are not entitled to claim any financial benefit retrospectively. At the most they would be entitled to refixation of their present salary on the basis of the notional seniority granted to them in different grades so that their present salary is not less than those who are immediately below them."

29) In the case of *State of Haryana -Vs- O.P. Gupta*, reported in (1996) 7 SCC 533, the Hon'ble Apex Court have held that –

"There has to be "no pay for no work", i.e., a person will not be entitled to any pay and allowance during the period for which he did not perform the duties of higher post, although after due consideration, he was given a proper place in the gradation list having been deemed to be promoted to the higher post with effect from the date his junior was promoted. He will be entitled only to step up the scale of pay retrospectively from the deemed date but is not entitled to the payment of arrears of the salary."

30) In the present case it is not the case of the respondents that there is any adverse entry or any adverse remarks against the petitioner during his deputation while serving in the borrowing department or any during his service in the parent department. Further, it is also not the case of the said respondents that the petitioner is not eligible for promotion to the post of Superintendent in the Power department. Moreover, the rules regulating the recruitment to the post of Superintendent in Non-Gazetted Group-C posts in the State, in force, namely, the (Group 'C' Posts) Recruitment Rules 1982, a statutory Rule under Article 309 of the Constitution of India, provides that the post of Superintendent in the Secretariat and other Departments of the State is a 'Non Selection' post and an Assistants with 5 years experience are eligible for promotion to the said post on seniority cum fitness basis. From the first three promotional orders to the post of Superintendent offered by the respondents in the Power Department to the petitioner earlier on 27.05.1997, 06.04.1999 and 04.07.2000, while he was serving under the Accountant General (A&E), Shillong, Meghalaya, on deputation, in it can be seen that those were on purely temporary and adhoc basis, that too without any selection or regularisation by the DPC. Further those orders clearly stated that such officiating adhoc promotion will not confer upon

him any right to claim seniority etc. for the purpose of regular promotion as Superintendent. It is also seen that officiating promotion order of the respondents No. 5 & 6 to the posts of Superintendent dated 11.10.1999 was any selection by the DPC, whereas it is only by the order dated 04.07.2011, the respondents in the Power department promoted the petitioner, while he was on deputation, to the post of Superintendent after due selection by the DPC.

31) As per the Rules in force, the benefit of officiating promotion under the 'Next Below Rule' should be always, subject to the fulfillment of the conditions laid down thereunder, only against promotions in a cadre in vacancies of more than 90 (ninety) days duration, in the other words, the initial vacancy as well as subsequent vacancies on the basis of which the benefit is to be continued should each be more than 90 days duration and the benefits should not be allowed in respect of promotion against a chain of vacancies which taken together extend beyond 90 days. Further as per the Rules in force the benefit envisaged under the 'Next Below Rule' may be allowed to the officers working outside their regular line in dispensation of the requirement of 'one for one' and 'promotion of at least one junior' subject to the fulfillment the conditions (a) that a post within the cadre remains unfilled for want of an approved person junior to the officer, and (b) the vacancy caused in the cadre is not filled by making promotion on adhoc basis till the release of the next panel when some juniors become eligible for promotion. But, in the present case though by the orders dated 27.05.1997, 06.04.1999 and 04.07.2000 gave officiating promotion to the petitioner to the posts of Superintendent but those were on purely temporary and on adhoc basis and those orders did not state whether the vacancy is regular or not and also nor stated about the period of vacancy, whether it is more than 90 days or not. The official respondents by the impugned order dated 11.08.2014 while refusing to grant promotion to the petitioner with retrospective date as that of his junior on the ground that within a span of three years he failed to join the post of Superintendent without any compelling circumstances, but they did not state whether such promotion includes regular promotion only or also includes promotion purely temporary & adhoc basis. Though the official respondents by its reply dated 04.12.2000 stated that it informed the petitioner that vacancy

occurred from time to time cannot be kept unfilled waiting for his coming back to the parent department for indefinite period and if he do not join in time vacancy shall be filled up by promoting next senior Assistant or the lending department shall ask the office of the Accountant General (A&E), Shillong for his repatriation back to the parent department. But the respondent did not state anything nor place any record to show as to when they asked the Accountant General (A&E), Shillong for repatriation of the petitioner. Further, the respondents also did not state that whether by regular promotion selecting through DPC or by adhoc promotion without any selection of DPC they are going to fill up the post of promotion.

32) From the above, the Court is of the considered opinion that the petitioner cannot be put to any prejudice so far his service career in the parent department is concerned, i.e. in the department of Power of the State of Arunachal Pradesh. The petitioner was on deputation at all relevant times, when his juniors were promoted to the post of Superintendent in the parent department, as such service rendered by him under the Accountant General (A&E), Shillong are to be computed for determining his seniority & promotion and other service benefits. Therefore the petitioner cannot be deprived of the benefits those are conferred on a deputationist and as such he is entitled to get all the benefits of deputationist including promotion in the parent department.

33) For the reasons above, the impugned order dated 11.08.2014 passed by the official respondents in the Power department of the State of Arunachal Pradesh is hereby set aside and quashed.

34) As the private respondents have been shown senior to the petitioner allowed them to superseded the petitioner in violation of relevant promotion and established service rules, as such the official respondents No. 1 to 4 shall give 'Pro Forma Promotion' under 'Next Below Rule' to the petitioner to the post of Superintendent in the Department of Power of the State of Arunachal Pradesh from the date when his immediate juniors, private respondents herein were promoted to the said post of Superintendent. Accordingly, said official respondents No. 1 to 4 shall issue necessary order in this regard showing the

seniority of the petitioner above the private respondents in the post of Superintendent and shall give him all other service benefits, including consideration for further promotion, which are admissible to him under the relevant Service Rules.

35) However it is made clear that the petitioner shall not be entitled to any arrear back wages for his promotion to the post of Superintendent from the date his juniors were promoted, but his pay and allowances shall be fixed notionally from the date on which his juniors were promoted to the said post of Superintendent in the Department of Power of the State of Arunachal Pradesh, so that his present salary is not less than to those who are immediately below him.

36) With the aforesaid observation and direction this writ petition stands allowed to the extent indicated above. There shall be no order as to costs.

JUDGE

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