

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

**ITANAGAR BENCH**

[Arunachal Pradesh]

**WP(C) 270(AP)2009**

*Shri R. A. Goel*

*EE (PWD), Retd.*

*P.O.- Jairampur, District : Changlang*

*Arunachal Pradesh.*

..... *Petitioner*

- *Versus* -

- 1.** *The State of Arunachal Pradesh  
Represented by the Chief Secretary, Government of Arunachal  
Pradesh, Itanagar, District : Papum Pare.*
- 2.** *The Commissioner, Public Work Department, Government of  
Arunachal Pradesh, P.O. :-Itanagar, District : Papum Pare.*
- 3.** *The Chief Engineer, Public Work Department(Eastern Zone),  
P.O. :-Itanagar, District : Papum Pare, Arunachal Pradesh.*

..... *Respondents*

Advocates for the petitioner :- Mr. A. Apang  
Ms. L. Lombi

Advocate for the respondents :- Ms. G. Deka, Addl. Senior Government Advocate

**P R E S E N T**

**THE HON' BLE MR. JUSTICE P K MUSAHARY**

Date of hearing :- **10.03.2010**

Date of Judgment & order :- **10.03.2010**

**JUDGMENT AND ORDER(ORAL)**

Heard Mr. A. Apang, learned counsel for the petitioner.  
Also heard Ms. G. Deka, learned Addl. Senior Government  
Advocate, Arunachal Pradesh, for all the Official respondents.

2. In this writ petition, the petitioner has prayed for issuing a *writ of mandamus* directing the respondents to grant him exemption from passing the Departmental Examination with effect from the date when he attained the age of 50 years on 20.05.2001 or from the date when his second increment was due i.e. 19.02.2002, whichever is later but not from 19.05.2008 i.e. when he attained the age of 57 years. The petitioner has made the aforesaid claim on the basis of Office Memorandum dated 17.12.1987 issued by the Deputy Director of Administration of CPWD (Annexure-I to the writ petition).

The pleaded case of the petitioner is that he attained the age of 50 years on 20.05.2001 while he was working as an Executive Engineer on promotion in the month of August, 2000. The petitioner could not pass the Departmental Examination and as such, he has been requesting the authorities concerned for exemption from passing the Departmental Examination since 23.04.2002 but the same was not considered on the ground that a departmental proceeding was pending against him. On the same ground, subsequent increments have been denied to the petitioner without considering his representations submitted to the respondent Commissioner, Public Works Department, Government of Arunachal Pradesh, Itanagar, through proper channel, from time to time. However, the respondent Commissioner, aforementioned, passed an order dated 26.05.2009 (Annexure-V to the writ petition) exempting the petitioner from passing the Departmental Examination w.e.f. 19.05.2008 in terms of Ministry of Urban Development, Government of India's Letter No. 23/1/98-EC-II dated 14.07.1999 also allowing him to draw the periodical increments held up, if any, after waiving of relevant clause as specified under CPWD Manual, Vol-II. In the meantime, the petitioner retired on superannuation on 31.05.2009 as he had attained the age of 58 years. However, being dissatisfied and aggrieved by the aforesaid order, the petitioner, after his retirement, submitted a representation before the respondent Commissioner on 15.06.2009 but it failed to evoke any response till date. Having no other alternative, the petitioner has approached this Court for redressal of his grievances.



3. The respondent authorities have not come forward with their stand in this matter by filing any affidavit-in-opposition till date. Ms. G. Deka, learned Addl. Senior Government Advocate, Arunachal Pradesh, submits that inspite of several correspondences made with the authorities concerned, she did not receive any instructions from the authorities concerned till date. While granting 2(two) weeks' further time to learned Addl. Senior Government Advocate, an order was passed by this Court on 17.02.2010 to the effect that in the event of not filing any counter affidavit, appropriate order shall be passed if necessary considering the same to be violation of this Court's order. Inspite of such specific order, the respondent authorities have preferred not to file any counter affidavit in the matter. In absence of counter affidavit, the averments made by the petitioner in this writ petition can be treated as correct and true.

4. It is an admitted position/fact that the petitioner retired on superannuation on 31.05.2009 as he had attained the age of 58 years on that date. Calculated from the date of retirement on 31.05.2009, it can be held that the petitioner attained the age of 50 years on 20.05.2001. This is borne on the service record of the petitioner maintained by the authorities concerned and there is no denial or controversy on the same.

5. Regarding pendency of departmental proceeding, it is submitted by Mr. Apang, learned counsel for the petitioner, that no show-cause notice was ever issued on the petitioner before and/or after his retirement and as such, there is no question of pendency of any departmental proceeding against him. The learned counsel further submits that had there been such departmental proceeding against the petitioner, it would have been reflected in the order dated 26.05.2009.

6. From the aforesaid order dated 26.05.2009, it is apparent that the Public Works Department under the State of Arunachal Pradesh granted exemption to the petitioner w.e.f. 19.05.2008 in terms of Government of India's O.M. dated 17.12.1987. For better appreciation, the said O.M. dated 17.12.1987 is reproduced below :

***"Government of India  
Directorate Central of Works  
Central Public Works Department***

*New Delhi dated the 17 Dec. 1987*

**OFFICE MEMORANDUM**

**Subject :** *Grant of exemption from passing/appearing in the Departmental Examination prescribed for Executive Engineers.*

.....

*It is brought to the notice of all Chief Engineers/Superintending Engineers/Executive Engineers (Both Civil and Electrical) that in case any Executive Engineer has crossed or crosses 50 years of age without passing the Departmental Examination prescribed for the Executive Engineers, it is for the concerned Superintending Engineers(not for individual as being done earlier) to bring the name(s) of such Executive Engineers to the notice of this Directorate to consider his/their cases (a) based on Confidential Reports/Service Records etc., at least when the 2<sup>nd</sup> annual increment will be required for following the exemption from the aforesaid examination and thereby granting 2<sup>nd</sup> increment in time.*

2. *Superintending Engineers are therefore requested to follow up these instructions in future.*

Sd/-

*Deputy Director of Administration"*



7. Once it is accepted that the Government of India's Office Memorandum dated 17.12.1987 is being followed in the matter of exemption from passing the Departmental Examination, the respondent authorities cannot escape from implementing the same and thereby, giving the benefit of exemption from passing the Departmental Examination from the date of petitioner's attaining the age of 50 years on 20.05.2001 and he was allowed to go on retirement on 31.05.2009. There having no dispute on the date of attaining the age of 50 years on 20.05.2009, retirement on 31.05.2009 and no departmental proceeding pending against the petitioner, there is no conceivable ground for withholding or denying the benefit of exemption from passing the Departmental Examination to him from the date of attaining the age of 50 years on 20.05.2001. In view of above, I find merit in this writ petition and the same accordingly stands allowed.

8. It is hereby directed that respondent no. 2[Commissioner, Public Works Department, Government of Arunachal Pradesh, Itanagar] shall pass necessary order[s] allowing the petitioner, exemption from passing the Departmental Examination w.e.f. 20.05.2001 in terms of Government of India's O.M. dated 17.12.1987, within a period of 1(one) month from the date of receipt of a certified copy of this order.

9. There shall be no order as to costs.

  
**JUDGE**

*Bikash*