

**IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)**

ITANAGAR PERMANENT BENCH

WP(c) 318(AP)2012

Smt. Ayem Doso

Presently serving as Peon
Directorate of Relief, Rehabilitation &
Disaster Management, Govt. of A.P.,
Itanagar, Arunachal Pradesh.

.....Petitioner

By Advocates:

Mr. Dicky Panging
Mr. Ojing Pada
Mr. Duge Soki
Mr. N. Dai
Mr. Vijay Jamoh

-Versus-

- 1.** The State of Arunachal Pradesh represented by the Secretary, Relief, Rehabilitation & Disaster Management, Government of Arunachal Pradesh, Government of Arunachal Pradesh, Itanagar.
- 2.** The Director, Relief, Rehabilitation & Disaster Management, Government of Arunachal Pradesh, Itanagar.
- 3.** The Departmental Promotion Committee held on 14.06.2011
- 4.** Sri Talin Ekke, LDC, Office of the District Relief, Rehabilitation Officer, Daporijo, District Upper Subansiri, Arunachal Pradesh.

.....Respondents

By Advocate:

Ms. Goter Ete, Addl. Senior Government Advocate

:::BEFORE:::

HON'BLE MR. JUSTICE AJIT BORTHAKUR

Date of hearing : 20-12-2016

Date of Judgment & Order: 20-12-2016

JUDGMENT & ORDER(ORAL)

Heard Mr. Dicky Panging, learned counsel for the petitioner. Also heard Ms. Goter Ete, learned Addl. Senior Government Advocate, for State Respondents No. 1 to 3. None appeared for respondent No. 4.

2. By the present petition filed under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of:- (i). Departmental Promotion Committee(DPC), held on 13.06.2011, whereby the private Respondent No. 4 was recommended for promotion to the post of Lower Division Clerk(LDC, for short) and, (ii). impugned Order, dated 14.06.2011, issued by the respondent No. 2, the Director, Relief, Rehabilitation & Disaster Management, Arunachal Pradesh, Itanagar, promoting the Respondent No. 4 to the post of LDC, by superseding the petitioner.

3. Petitioner's case, in brief, is that, presently, she is the senior-most Peon in the Directorate of Relief, Rehabilitation & Disaster Management, Government of Arunachal Pradesh, Itanagar. She was initially appointed as an un-skilled contingency Peon in the said Directorate on 03.06.2002. Thereafter, the petitioner was appointed as officiating night chowkidar on temporary basis in the same Department, vide order, dated 05.06.2003. The private Respondent No. 4 Sri Talik Ekke was also appointed to the post of Peon on officiating basis in the said Department, vide order, dated 27.02.2004. Thereafter, in accordance with the recommendation of the Departmental Promotion Committee(DPC), the service of petitioner was regularized in the post of Night Chowkidar w.e.f. 01.06.2003 i.e. the date on which she was appointed on officiating basis. The private Respondent No. 4 was also regularized w.e.f. 12.04.2005 on which date, the Departmental Promotion Committee(DPC) sat.

4. According to Mr. Panging, learned counsel for the petitioner, the posts of Peon, Chowkidar, etc., are feeder posts to the post of LDC and governed by " The General Arunachal Pradesh Group 'C'(Ministerial) Common Recruitment Rules, 2008", which postulates that 10% of posts shall be filled-up by promotion, from amongst any Group 'D' staff, who have rendered 5(five) years regular service in the grade of Group 'D', possessing matriculation qualification with minimum typing speed of 30wpm to be qualified by the test conducted by the Department.

5. Mr. Panging, learned counsel for the petitioner, further submits that on 14.06.2011, a Departmental Promotion Committee(DPC) was held for various posts of the Department and the name of the private Respondent No. 4 was recommended by the DPC for promotion to the post of LDC though he is junior to the petitioner and upon such recommendation, on the same date i.e. 14.06.2011, Respondent No. 4

was promoted to the post of LDC by superseding the petitioner. Aggrieved by the same, petitioner submitted a representation before the Respondent No. 2 i.e. Director, Relief, Rehabilitation & Disaster Management, Itanagar, on 21.06.2011, highlighting her grievances and thus, prayed for consideration of her case, for promotion. When the Respondent No. 2 did not act on the said representation, she submitted a Legal Notice, on 18.04.2012, to the said authority, requesting re-consideration of DPC's recommendation and to promote the petitioner to the post of LDC. However, nothing positive has taken place, as yet. Being aggrieved with such illegal action of the authorities concerned, the instant petition has been filed by the petitioner, praying for issuance of writ in the nature of *mandamus* or *certiorari* or direction of like nature.

6. State Respondents No. 1 to 3 have filed the counter affidavit. The moot contention of the State Respondents is that the petitioner was duly recommended by the Department along with other eligible candidates for consideration for promotion by the Departmental Promotion Committee(DPC). The DPC meeting was conveyed by the Department vide Circular dated 13.06.2011. State Respondents have further contended that promotion to private Respondent No. 4 was effected on the basis of the Departmental Promotion Committee(DPC) held on 14.06.2011 which was held only after taking into account all the eligible candidates falling within the zone of consideration, from the feeder grade i.e. Group 'D'. According to the State Respondents, reply to the Legal Notice was furnished to the petitioner, on 22.05.2012, wherein it was clearly stated that ***it was found that the promotion was effected on the basis of the DPC's recommendation.*** The State Respondents' contention is that since promotion of private Respondent No. 4 to the post of LDC was effected only on the basis of the recommendation of the DPC that sat on 14.06.2011, as such, no illegality has been committed by the respondent authorities and therefore, the instant writ petition be dismissed.

7. Private Respondent No. 4, by filing his counter affidavit, contends that he was promoted to the post of LDC on the recommendation of the Departmental Promotion Committee (DPC) held on 14.06.2011, in which, the cases of other eligible candidates were also taken-up by the DPC for consideration. The other contention put forth in

his counter affidavit is that he has already completed 7(seven) years of service in the Department during which period, no adverse remark was recorded by his superior authority. That apart, he contends that he has passed Class-XII whereas the petitioner has passed Class-X. Moreover, he possesses all the requisite technical qualifications like Diploma in Computer Applications(DCA) and Type-writing. Private Respondent No. 4 also contends that the petitioner failed in the typing speed test conducted by the Department for promotion to the post of LDC.

8. I have heard the rival submissions and have also gone through the affidavits of the rival parties.

9. Upon considering the matter in its entirety and taking into consideration the submissions of the rival parties, more particularly, taking into account, the admitted seniority position of the petitioner over the private respondent No. 4, this Court is of the considered view that this writ petition can be disposed of with a direction to the State Respondents to consider the case of the writ petitioner along with other eligible candidates, if any, for promotion to the post of LDC, without disturbing the services of the private respondent No. 4, as LDC.

10. In that view of the matter, and in the interest of justice, it is hereby directed that the Department concerned shall consider the case of the petitioner for promotion to the post of LDC along with other eligible candidates, if any, by conducting a meeting of the Departmental Promotion Committee(DPC), within a period of 3(three) months from the date of receipt of a certified copy of this order.

12. However, it is hereby made clear that the services of private respondent No. 4, as LDC, shall not be disturbed.

13. The writ petition accordingly stands disposed of. There shall be no order as to costs.

JUDGE

Bhask