

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

ITANAGAR BENCH

W.P. (c)92(AP)2015

1. Sri Anjan Roy, Sub-Inspector
S/o Ramesh Roy
C/o Principal PTC, Banderdewa
Itanagar, Arunachal Pradesh.
Mobile No. 9402454231.
2. Sri Ananto Boruah, Sub-Inspector
S/o Lakshmi Pd. Boruah
C/o Commandant, 1st AAPBn
Chimpu, Itanagar, Arunachal Pradesh.

.... Petitioners

-Versus-

1. State of Arunachal Pradesh represented through chief Secretary, Government of Arunachal Pradesh, Itanagar.
2. The Secretary(Home), Government of Arunachal Pradesh, Itanagar.
3. The Director General of Police, PHQ, Government of Arunachal Pradesh, Itanagar.
4. Sri Dharmendra Sharma, Principal Secretary, Home, Chairman of DPC held on 10.11.2014 to consider the promotion of S.I. to Inspector in AAPBn.
5. Smt. Indra Mallo, Secretary Health, Government of Arunachal Pradesh, Member of DPC held on 10.11.2014 to consider the promotion of S.I. to Inspector in AAPBn.
6. Sri N. Payang, Inspector General of Police(Admn.), PHQ, Itanagar, Government of Arunachal Pradesh, Member of DPC held on 10.11.2014 to consider the promotion of S.I. to Inspector in AAPBn.
7. Sri(Inspector) Tapok Bitin, O/o Commandant, 2nd AAPBn, Aalo, West Siang.
8. Sri(Inspector) Lingdom Komi, O/o Commandant, 1st AAPBn, Chimpu, Itanagar.

9. Sri Tomo Ete, Sub-Inspector, 2nd AAPBn, BHq, Aalo, Distt - West Siang, PO/PS - Aalo, A.P.

10. Sri Karo Pertin, Sub-Inspector, 1st AAPBn, Chimpu, Itanagar, Distt - Papum Pare, PO/PS - Itanagar, A.P.

..... *Respondents*

By Advocates:

For the petitioners : Mr. Muk Pertin, senior counsel
Mr. Wintet Sawin
Mr. Karyom Dabi
Mr. Chakter Gongo
Mr. Lissing Perme
Mr. Krishna Dubey
Mr. S. Ringu

For the respondents : Mr. Kardak Ete, Sr. Addl. Advocate
General, Arunachal Pradesh
Ms. Anima Mize, Addl. Sr. G.A.

Mr. Kento Jini

:::BEFORE:::

HON'BLE MR. JUSTICE AJIT BORTHAKUR

Date of hearing : 28.04.2017

Date of Judgment: 05.05.2017

JUDGMENT & ORDER(CAV)

Heard Mr. Muk Pertin, learned senior counsel, assisted by Mr. Wintet Sawin, learned counsel, appearing on behalf of the petitioners.

Also heard Mr. Kardak Ete, learned Senior Additional Advocate General, Arunachal Pradesh, assisted by Ms. Anima Mize, learned Addl. Senior Government Advocate, appearing on behalf of State Respondents; as well as Mr. Kento Jini, learned counsel for private Respondents No. 9 and 10.

2. By filing the petition under Article 226 of the Constitution of India, the petitioners have challenged the legality and validity of the Minutes of the Departmental Promotion Committee(DPC) meeting held on 10.11.2014 for consideration of promotion of Sub-Inspector to Inspector, AAPBn.

3. The facts of the case, in brief, is that, the petitioners are direct recruitee and they were appointed as Sub-Inspector, on 01.09.2010. Presently, they are serving as Sub-Inspector in their respective places of posting. The petitioners have completed 4 years, 2 months and 9 days, at the time when the impugned Departmental Promotion Committee(DPC) meeting was held on 10.11.2014. It is the contention of the petitioners that from the date of their joining in service, their seniority were counted as direct recruitee.

4. For promotion to the post of Inspector, as per Column 12 of the Recruitment Rules, namely, Subedar(Inspector)(Arunachal Armed Police Battalion)Group 'B' (Gazetted)(Non-Ministerial) Recruitment Rules 2008(hereinafter referred to as 'Rules of 2008'), it is stipulated that a Sub-Inspector(AAPBn) having 3 years continuous service in the grade of Platoon Commander(Sub-Inspector) is eligible.

5. The petitioners, herein, contend that the State Government have issued Office Memorandum, dated 15.10.2010, regarding the introduction of post based roaster in place of fulfilling 100 point roaster and clarification thereof as per roaster in the ratio of 50:50, 80:20, 75:25 or as prescribed in the rules to promote and direct recruit and it should be drawn in relation to the number of posts in the respective cadre/grade. At any point of time, the number of employee recruited on the basis of promotion or direct recruitment should not exceed the ratio prescribed in the respective Recruitment Rules. In case, it is found that either of the promote or direct recruit exceeds the ratio prescribed, the vacancy which has occurred in the cadre should be filled up by promotion or by direct recruitment till the ratio prescribed is achieved. The percentage of reservation in the ratio of 80% reserved for APST and 20% of un-reserved posts for general category candidate or such ratio as prescribed in the Recruitment Rules for particular post should be worked out in relation to the number of posts in direct recruitment quota. The vacancies arising in the cadre against direct recruitment quota after the initial posts are filled as per the reservation order, should be filled from amongst the category to which the post belonged in the roster. In case, it is found that either of the reserved or un-reserved categories exceeds the ratio prescribed the vacancy which has occurred in the cadre, should be filled from either of reserve or un-reserved category till the ratio of

80:20 is achieved. After completing the adjustment as indicated above, a tally should be made to determine the actual percentages of representation of appointee belonging to the different categories in the cadre. If there is an excess representation of any of the category or if total representation of the reserved category exceeds the reservation, it shall be adjusted in the future recruitment. Vacancies arising from retirement, promotion, etc. of candidates belonging to such category shall be filled-up by appointing candidate belonging to such category to which the relevant roster point against which the excesses occurred, belong to.

6. The petitioners contend that apart from Office Memorandum dated 15.10.2010, a review OM dated 02.07.1997, issued by the Department of P & Tribunal, in the light of Apex Court's judgment dated 16.09.1999, which observed that once the percentage of prescribed category have been reached, the posts falling vacant thereafter should be filled up by replacement principle i.e. the post vacated by a SC and that vacated post should be filled up by a person of general category candidate.

7. It is the contention of the petitioners that after joining their service on 01.09.2010, the Department concerned has conducted DPC on 13.08.2012 and as per that roster point, the first batch of Sub-Inspector were promoted to the post of Inspector and as such, the roster point will start from 1, 2, 3, 4, 6, 7, 8, 9, which are reserved for APST and roster point No. 5 and 10 are reserved for General candidates. Accordingly, the said DPC recommended the above-mentioned Sl. Nos. except Serial Nos. 5 and 10 for promotion to the rank of Inspector, AAPBn w.e.f. 13.08.2012. It was mentioned that the cases of Serial Nos. 5 and 10 will be considered in the next DPC.

8. It is the further contention of the petitioners that the second DPC dated 09.01.2013, have shown roster point No. 11 and 12 as reserved category and accordingly, they have been promoted to the post of Inspector and in the Minutes, it is clearly mentioned that the roster point No. 5 and 10 which are unreserved, will be filled-up on availability of candidate from the General category in their turn.

9. It is also the contention of the petitioners that by the third DPC held on 11.07.2013, 3(three) APST candidates were promoted to the rank of Inspector w.e.f. 11.07.2013. in the said DPC minutes, it was clearly mentioned that out of 12 sanctioned post, 10 posts are already filled-up and two posts are vacant against roster point No. 5 and 10 and since there was no general candidate as per seniority list, the DPC had considered two posts to be filled up from the senior-most APST Sub-Inspector for promotion as Inspector.

10. The petitioners further contend that in the first DPC dated 13.08.2012, second DPC dated 09.01.2013 and third DPC dated 11.07.2013, they do not have any grievances as they did not complete three years of regular service but while the fourth DPC dated 10.11.2014, they had already attained qualification service for consideration and had by then, rendered the service of 4 years 2 months and 9 days in the cadre. In the minutes of third DPC, it is clearly mentioned that as there is no general category candidate available in the zone of consideration, the case of roster points No. 5 & 10 will be considered in the next DPC. The contention of the petitioners is that since roster points No. 5 & 10 is kept for General category and both the petitioners belonged to the General category, their cases were to be considered in the fourth DPC as they have already attained qualification service, the respondent authorities considered the case of Devendra Kr. Roy who belonged to General category but he had already retired from service on superannuation, and according to the minutes of DPC, the last person promoted is Marto Bam against roster point No. 12 against the reserved quota though the DPC members have recommended the name of Tapok Betin S.I. and Lingdum Kom S.I. for promotion to the rank of Inspector AAPBN with prospective effect 10.11.2014 but they have not shown their roster point No. by assuming that their roster point is 13 & 14 but till date, the roster No. 5 & 10 which were kept for General quota, has not been considered. The petitioners contend that since they have attained the qualifying service, their case could have been considered by the DPC and since the case of roster point No 5 & 10 has not been considered, giving of promotion to roster point No. 13 & 14 seems that APST quota which is for reserved category, has already exceeded the reservation ratio prescribed i.e. 80:20, therefore, the DPC dated

10.11.2014 is to be reviewed and the DPC minutes dated 10.11.2014 is not complied as per the Office Memorandum issued on 15.10.2010.

11. According to Mr. Pertin, learned senior counsel, in the fourth DPC, there were two vacant post and as per the wording of the second DPC, roster point No. 5 and 10 which were unreserved, will be filled from General category in their turn and in the third DPC, the roster point No. 5 and 10 was not considered since there were no available candidate in the zone of consideration as per the seniority list. The DPC had considered two posts to be filled up by APST candidate for the post of Inspector but in the fourth DPC, the committee did not consider the said roster point though there were available and qualifying candidates in terms of service length, in the grade. As such, the minutes of the Departmental Promotion Committee(DPC), impugned, is illegal as they have given excess promotion to the APST candidate and it violates the provision of Articles 14 and 16 of the Constitution of India.

12. Mr. Pertin, learned senior counsel, further contends that since the authority concerned failed to implement the post based roster in place of running 100 point roster, the petitioners submitted their representation on 10.11.2014 for consideration of their case in accordance with roster point No. 5 and 10 to be filled up from the General category candidates.

13. According to the petitioners, the third DPC held on 11.07.2013 overlooked the availability of General candidates and the vacant posts were filled-up from APST candidates in contrary to the Minutes of the DPCs dated 13.08.2012 and 09.08.2013, wherein it was clearly written that the roster point, in question, which are unreserved shall be filled up from amongst the general candidates which move was in taken up in order to achieve 80:20 ratio prescribed by the National Commission for Scheduled Tribe held on 14.08.2008. It was again clarified that reserve category should not exceed the prescribed format.

14. According to Mr. Pertin, learned senior counsel, the DPC dated 10.11.2014 also overlooked the Office Memorandum dated 15.10.2010 by completely ignoring the post based roster and the said DPC is not in consonance with the wordings of first, second and third DPCs. It is therefore prayed that the above illegality and

irregularity can be rectified either by the review DPC or by setting aside the DPC dated 10.11.2014.

15. The State Respondents, by filing their counter affidavit, submits that due to non-availability of eligible non-APST candidates, unreserved Roster Points No. 5 and 10 were kept vacant as per the recommendation of the Departmental Promotion Committee(DPC) meetings held on 13.08.2012 and 09.01.2013. Later on, the post was filled up by the senior most APST candidate as per the recommendation of the Departmental Promotion Committee(DPC) dated 11.07.2013 inasmuch there were no General Category candidates available in the zone of consideration as per the seniority list of AAPBn.

16. The State Respondents have further contended that though the petitioners had completed the requisite length of service as Sub-Inspector at the time of holding of Departmental Promotion Committee(DPC) dated 10.11.2014 but their seniority position were below Sri Tapok Pertin and Sri Lingdum Komi inasmuch as unreserved Roster Point No. 5 and 10 were already filled-up as per the recommendation of DPC dated 11.07.2013 and as such, the cases of the petitioners were not considered by the DPC dated 10.11.2014.

17. So far as the petitioners' representation dated 10.11.2014 is concerned, the same was duly considered and disposed of by the Assistant Inspector General of Police(e), PHQ, Itanagar, vide order, dated 08.05.2015, as per available records. The State Respondents have therefore prayed that the instant writ petition be dismissed at the threshold.

18. In response to the averments made in the affidavit-in-opposition filed by the State Respondents, the petitioners, by way of filing an affidavit-in-reply, contend that the petitioners have completed the requisite qualifying length of service at the time of conduction of Departmental Promotion Committee(DPC) dated 10.11.2014 but the cases of the private Respondents No. 7 and 8 were illegally considered against the principle of post based Roster.

19. The petitioners further contend that the State Respondents were trying to divert the core issue of Post Based Roster. The claim of the petitioners is based on the roster policy/scheme and not on seniority basis, as such, the seniority of Respondents No. 7 and 8 have no relevancy. It is the contention of the petitioners that in the DPCs dated 07.08.2012 and 03.01.2013, the State Respondents have categorically identified that the roster point No. 5 and 10 which are unreserved will be filled upon from the General Category candidates as per their availability and as per their turn. That apart, as per Office Memorandum dated 15.10.2010, it is clearly held that in case, if it is found that either of the reserved or unreserved categories exceeds the ratio prescribed, the vacancy which have occurred in the cadre, should be filled from either of reserved or unreserved category till the ratio of 80:20 is achieved. Presently, 100% posts are occupied by APST candidates and as per Office Memorandum No. 36012/2/96-Estt(res) Part-V at Paragraph No. 5, it has been clearly mentioned that "***It is axiomatic in service jurisprudence that any promotions made wrongly in excess of any quota are to be treated as adhoc. This applies to reservation quota as much as it applies direct recruits and promotees cases***".

20. According to the petitioners, their representation was disposed of by the authority concerned only upon receipt of their Notice dated 18.03.2015 and that too, not in accordance with law but as per post based Roster, which is highly illegal and therefore, the promotion of private Respondents No. 7 and 8 is liable to be set aside and quashed.

21. The newly impleaded private Respondents No. 9 and 10, by filing his affidavit-in-opposition, contend that as per norms of the Service Rules, they being eligible candidates falling within the zone of consideration for promotion as per the requirement laid down in the Rules of 2008, at present, there are 2 vacancies that have arisen in the Department out of 12 sanctioned promotional post of Inspector in AAPBn and the same falls under the reserved post based roster. Therefore, they are eligible to be considered for the said vacancies as the roster point No. 5 and 10

which were kept as unreserved post as per 80:20 roster point system, has already been filled up by APST candidate.

22. Mr. Jini, learned counsel, further contends that at the relevant point of time when their unreserved post was to be considered, no candidate belonging to unreserved category was available within the zone of consideration and even if it is an unreserved post, APST candidate can compete to that post on their own merit. It has been contended by the private Respondents No. 9 and 10 that the petitioners are junior to the private Respondents No. 7, 8, 9 and 10 as per the seniority list. That apart, according to the private Respondents No. 9 and 10, the State Government cannot carry forward the vacancy for 3 years and as their slot were filled-up by reserved candidates, the petitioners' turn would arise only when roster point No. 5 and 10 will fall vacant. Now as the Roster Point No. 11 and 12 is vacant, as such, the candidates belonging to the reserved category only will be eligible to be considered as per interpretation of the Office Memorandum.

23. It is the contention of the private Respondents No. 9 and 10 that since the vacancy that have arisen is exclusively for reserved category, therefore, the concerned authority has sought for the ACRs of private Respondents No. 9 and 10 for consideration by the Departmental Promotion Committee(DPC). According to them, due to non-availability of eligible unreserved category candidates, the Roster Point No. 5 and 10 were kept vacant as per recommendation of DPCs dated 13.08.2012 and 09.01.2013 and they were subsequently filled-up by senior most APST/reserved category candidate on merit as per the recommendation of the DPC dated 11.07.2013.

24. According to Mr. Jini, learned counsel, if the instant writ petition is allowed, it would vitiate the 80:20 reservation policy followed in the State Roster system. According to learned counsel, the crux of the post-based roster is that the unreserved post can also be filled up by reserved category as per their own merits.

25. Upon going through the rival pleadings, it appears that the respondent authorities have admitted to the petitioners' averment as in Paragraph No. 4 of the writ petition, to the effect that the State Government have issued O.M. dated 15.10.2010, regarding the introduction of post based roster in place of fulfilling 100 point roster and clarification thereof as per roster in the ratio of 50:50, 80:20, 75:25 or as prescribed in the rules to promote and direct recruit and it should be drawn in relation to the number of posts in the respective cadre/grade. At any point of time, the number of employee recruited on the basis of promotion or direct recruitment should not exceed the ratio prescribed in the respective Recruitment Rules. In case, it is found that either of the promote or direct recruit exceeds the ratio prescribed, the vacancy which has occurred in the cadre should be filled up by promotion or by direct recruitment till the ratio prescribed is achieved. The percentage of reservation in the ratio of 80% reserved for APST and 20% of un-reserved posts for general category candidate or such ratio as prescribed in the Recruitment Rules for particular post, should be worked-out in relation to the number of posts in direct recruitment quota. The vacancies arising in the cadre against direct recruitment quota after the initial posts are filled as per the reservation order, should be filled from amongst the category to which the post belonged in the roster. In case, it is found that either of the reserved or un-reserved categories exceeds the ratio prescribed the vacancy which has occurred in the cadre, should be filled from either of reserve or un-reserved category till the ratio of 80:20 is achieved. After completing the adjustment as indicated above, a tally should be made to determine the actual percentages of representation of appointee belonging to the different categories in the cadre. If there is an excess representation of any of the category or if total representation of the reserved category exceeds the reservation, it shall be adjusted in the future recruitment. Vacancies arising from retirement, promotion, etc. of candidates belonging to such category shall be filled-up by appointing candidate belonging to such category to which the relevant roster point against which the excesses occurred, belong to.

26. It is also seen that as per the Minutes of Departmental Promotion Committee (DPC) Meeting, dated 13.08.2012, the State Respondents have categorically

stipulated that ***"the case of Sl. No. 5 and 10(General) will be considered in next DPC."***

27. In similar tune, as per the Minutes of Departmental Promotion Committee (DPC) Meeting, dated 09.01.2013, the State Respondents had again categorically stipulated that ***"The Roster Point No. 5 and 10 which are unreserved, will be filled-up on availability of candidates from general category in their turn."***

28. Situated thus, Mr. Pertin, learned senior counsel appearing on behalf of the petitioners, has relied upon the decision rendered in the case of ***R. K. Sabharwal & ors. v. State of Punjab & ors.***, reported in ***(1995) 2 SCC 745***, wherein the Supreme Court, in relevant paragraph, have observed as under :

"When a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve points, it has to be taken that the posts shown at the reserve points are to be filled from amongst the members of reserve categories and the candidates belonging to the general category are not entitled to be considered for the reserved posts. On the other hand, the reserve category candidates can compete for the non-reserved posts and in the event of their appointment to the said posts, their number cannot be added and taken into consideration for working out the percentage of reservation. For making any provision for reservation of appointments or posts in favour of any Backward Class of citizens, it is incumbent on the State Government under Article 16(4) of the Constitution of India to reach a conclusion that the Backward Class/Classes for which the reservation is made is not adequately represented in the State Services. When the State Government after doing the necessary exercise makes the reservation and provides the extent of percentage of posts to be reserved for the said backward class then the percentage has to be followed strictly. The prescribed percentage cannot be varied or changed simply because some of the members of the backward class have already been appointed/promoted against the general seats. The fact that consideration number of members of a backward class have been appointed/promoted against general seats in the State Services may be a relevant factor for the State Government to review the question of continuing reservation for the said class but so long as the Instructions/ rules providing certain percentage of reservation for the backward classes are operative the same have to be followed."

29. In view of the foregoing discussions and well-established law laid by the Apex Court regarding the issue, at hand, this writ petition is hereby disposed of by directing the State Respondents to consider the cases of the present petitioners Sri Anjan Roy and Sri Ananto Boruah, both Sub-Inspectors of AAPBn, for promotion to the rank of Inspector, in the next Departmental Promotion Committee(DPC), without fail.

30. Resultantly, the impugned Departmental Promotion Committee(DPC) Meeting, dated 10.11.2014, is hereby set aside and quashed.

31. The connected interlocutory application accordingly stands disposed of.

JUDGE

Bikash