

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

ITANAGAR PERMANENT BENCH

Writ Appeal 40(AP)2010

Union of India represented by the Deputy Director,
Subsidiary Intelligence Bureau(SIB), Ministry of Home Affairs,
Govt. of India.

.....Appellant

-Versus-

Shri Nani Riku S/o Shri Nani Kechi PO & PS - Ziro
District - Lower Subansiri District, Arunachal Pradesh.

.....Respondent

Advocate for the appellant:

Mr. Pritam Taffo, Assistant Solicitor General

Advocates for the respondent:

Mr. Nani Tagia, senior counsel

Mr. Hage Lampu

:::BEFORE:::

HON'BLE MR. JUSTICE KALYAN RAI SURANA

HON'BLE MR. JUSTICE MIR ALFAZ ALI

Date of hearing : 27-03-2018

Date of Judgment & Order: 27-03-2018

JUDGMENT & ORDER(ORAL)

(By Kalyan Rai Surana, J.)

Heard Mr. Pritam Taffo, learned Assistant Solicitor General for the appellant. Also heard Mr. Nani Tagia, learned senior counsel, assisted by Mr. Hage Lampu, learned counsel, appearing on behalf of the sole respondent.

2. This intra-Court appeal is directed against the judgment & order dated 14.05.2001 passed by the learned single Judge of this Court in WP(c)119(AP)2000.

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3. In brief, the facts of the case, is that, on 07.08.1997, an Advertisement was published, amongst others, in "The Arunachal Times", inviting applications for appointment to 50 nos. of posts of Assistant Central Intelligence Officer(General) Grade-II (hereinafter referred to as 'ACIO'). The vacancies were to be filled-up from the candidates domiciled in the North-Eastern States and the selections were to be made through competitive examination comprising of written examination and oral interview. Accordingly, on 08.02.1998, the written examination was held and 17(seventeen) candidates were declared to have been passed including the writ petitioner (respondent, herein). On 17.09.1998, the viva voce test was held and the select list consisting of 13 candidates was published by the concerned authorities in the month of May, 1999, wherein the name of the respondent appeared at Sl. No. 10. It was projected that out of the said select list, only 5(five) appointments were made, out of which, 2(two) candidates surrendered their candidatures, hence, the respondent approached this Court, for appointment to the resultant vacancy. The learned single Judge, upon considering the fact that 2(two) candidates had surrendered their candidatures, directed the respondent who was placed at Sl. No. 10 of the select list to be appointed to one of such vacancy to the post of ACIO, directing that the respondent be appointed within 1(one) month from the date of production of the certified copy of the order. Against the said judgment & order dated 14.05.2001 passed by the learned single Judge, the appellant preferred an application before this Court for review being Rev. Pet. 03(AP)2001. The learned senior counsel for the respondent has submitted that the said review petition was withdrawn and thereafter, another review petition was preferred by the appellant which was registered as Rev. Pet. 09(AP)2001 and the same was dismissed by the learned single Judge vide order dated 20.05.2005. Aggrieved by the said order, the appellant preferred an appeal before this Court which was registered as W.A.19(AP)2005. The Division Bench of this Court vide order dated 18.05.2006, dismissed the writ appeal as well as the application for condonation of delay, with an observation that the said order will not prevent the appellant to challenge the order passed in the writ petition in which event, the matter shall be heard on its own merits. The appellant, thereafter, filed another Writ Appeal, challenging the order dated 14.05.2001 passed by this Court in WP(c)119(AP)2000 which was

registered as W.A. 370/2007. The Division Bench of this Court vide order dated 08.10.2007 dismissed the said appeal at the admission stage by recording that nothing was brought to their notice to demonstrate that the judgment under appeal, called for interference. Aggrieved by the said order, the appellant preferred a Special Leave Petition (SLP) before the Hon'ble Apex Court which was registered as Civil Appeal No. 6873/2008. The Apex Court by observing that the Division Bench of this Court should have given proper reasons, set aside the impugned order and remitted the matter to this Court for a fresh decision in accordance with law. This is how the present appeal has been revived and has come up for hearing.

4. Mr. Taffo, learned ASG, has projected that the correct state-of-affairs could not be placed before the learned single Judge. In this context, it is stated that the advertisement was invited for filling up 50 posts of ACIO for the entire North-Eastern Region and therefore, the selection process was meant for the entire North Eastern Region and not confined to the selection of candidates only for the State of Arunachal Pradesh. By referring to the select list which is annexed as Annexure-1 to the appeal, it is projected that the select list consisted of 100 candidates and the name of the respondent was placed at Sl. No. 85. It is further projected that even if the 2(two) candidates who had surrendered their candidatures are accounted for, the candidates who were at the top of the short-listed candidates that had remained after the selection of 48 out of 50 posts, would have to be selected and therefore, it was wrongly projected before the learned single Judge that out of 17 candidates for the State of Arunachal Pradesh, 2(two) candidates had surrendered their appointment and therefore, based on the incorrect projections, this Court had arrived at a finding that the respondent was placed at Sl. No. 10, should be given the appointment.

5. Mr. Taffo, learned ASG, further submitted that at the relevant time, the respondent had filed a contempt petition before this Court for non-compliance of the order dated 14.05.2001 passed by this Court in WP(c)119(AP)2000 which was registered as Cont. Case(c) 16(AP)2001 and the concerned officials

being summoned to answer the charge of contempt, they made a conditional appointment of the respondent on 18.09.2001 as ACIO and he was permitted to join the said post on 24.02.2001. It is further submitted that the respondent having been provisionally allowed to join as ACIO, he was allowed to draw his salary but he was not found to be eligible for appointment as his position was at Sl. No. 85 of the select list.

6. Mr. Taffo, further submitted that these facts were not correctly presented before the learned single Judge. However, it is submitted that these facts were brought to the notice of the appellate Court in the appeal but the said appeal was decided against the appellant at the first round.

7. Mr. Taffo, has relied upon Annexure-2 and 2A series, showing the list of various candidates for 50 posts including the list of persons from the State of Arunachal Pradesh who were appointed for selection to these posts.

8. Mr. Tagia, learned senior counsel, appearing on behalf of the sole respondent, has made his submissions in support of the judgment impugned herein and has stated that by now, the respondent has put in 18 years of service and if the appointment of the respondent is disturbed, at this stage, he would have no scope for any employment in his life.

9. Having heard to the submissions of the learned counsels for both sides, the materials placed on records have been perused. It would be relevant to extract Paragraphs No. 7, 8 and 10 of the affidavit-in-opposition filed by the appellant in the writ petition i.e. WP(c)119(AP)2000 as under:

"7. That with regards to the averment made in para 7 of the writ petition, the deponent has denied the same to the extent of records and begs to submit that in the interview which was held for the post of A.C.I.O.-II(G) for the North Eastern Region has completed in proper manner and only 13 Nos. candidates have been selected. But

out of that 13 candidates, only 8 candidates secured the position of the merit list and offered appointment letter and the writ petitioner could not secured position within the available vacancies at present and consequently, he could not be offered appointment on the basis of that recruitment process. Though the writ petitioner was empanelled in the selection list of 13 candidates but could not required merit position and cannot claim the right of appointment for the post. The deponent has appointed 8 candidates in the 8 vacancies presently available in Deponent's department. Hence the contention of the writ petitioner avert in this paragraph are not true and deponent is ready to produce all the relevant documents before this Hon'ble Court at the time of hearing.

8. That with regards to the averment made in para 8 of the writ petition, the deponent has denied the same to the extent of records and begs to submit that the 13 candidates has been selected in the comparative merit list. Out of the 13 candidates, 8 candidates have been appointed by considering their merit as there is only 8 vacancies available in the Deponent's Department. the deponent shall ready to produce the relevant documents like selection etc. before the Hon'ble Court at the time of hearing.

10. That with regard to the averment made in para 10 of the writ petition, the writ petitioner had approached to the AD/E, SIB, Itanagar, to know about his appointment in the rank of ACIO/II/G, whether he was selected. In this regard, the office of the Deponent had sent a TPM to IB, Hqrs., New Delhi, about the position. IB, Hqrs. have intimated to the deponent that out of 13 candidates only 8 candidates who have secured the position in the merit list were issued the appointment. Accordingly, the writ petitioner was intimated verbally. The deponent is ready to produce all the relevant documents before this Hon'ble Court at the time of hearing.

10. From the perusal of the above relevant paragraphs of the affidavit-in-opposition filed in the writ proceeding, it is seen that the case projected by the appellant in this appeal was not the case projected in the writ petition. It is further more seen that although the learned ASG has submitted that the respondent was given conditional appointment on 18.09.2001 and he was allowed to join on 24.09.2001, the order of conditional appointment of the respondent is not a part of the writ petition. Under the circumstances, we find that the materials which has now been relied upon by the appellant, were not placed before the learned single Judge in the writ petition, therefore, the case now presented in the appeal, is based on additional documents which were not a part of the writ petition.

11. It would not be out of place to mention herein that the respondent having been appointed on 18.09.2001 and allowed to join on 24.09.2001 cannot be made to suffer so as to lose his service after about 17½ years of continuous service because at this stage, if his service is disturbed, the respondent would not get any employment in the future and it will cause irreparable jeopardy to him and his family. It would also not be out of place to mention that if the appellant had given a conditional appointment to the respondent, he must have been appointed in a substantive post otherwise the appellant would not have been provided with any salary or emolument, therefore, at this stage, this Court is of the view that the appellant did not take the stand which was taken before the learned single Judge, therefore, this Court does not find any reason to interfere with the order dated 14.09.2001 passed by this Court in WP(c)119(AP)2001.

12. There is one further reason not to interfere with the appointment of the respondent. A perusal of the record reveals that this appeal was first dismissed for non-prosecution by order dated 30.01.2011 and it was subsequently restored on 31.10.2013. The appeal was dismissed for the second time for non-prosecution on 09.06.2014 and it was subsequently restored vide order dated 11.05.2017 passed by this Court in MC(WP)14(AP)2014. These dismissals had further caused the delay in disposal of the appeal.

13. In view of the above discussions, we do not find any merit in this appeal, therefore, the same is hereby dismissed. There shall be no order as to costs.

JUDGE

JUDGE

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