

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

ITANAGAR PERMANENT BENCH

WP(c) NO. 30(AP)2018

Sri Raj Kumar Reddy
Presently serving as Reporter(English)
Legislative Assembly Secretariat
Arunachal Pradesh, Naharlagun.

.....*Petitioner*

- *Versus* -

1. The State of Arunachal Pradesh, through the Secretary, Legislative Assembly, Government of Arunachal Pradesh.
2. The Secretary, Legislative Assembly Secretariat, Arunachal Pradesh, Naharlagun.
3. The Joint Secretary, Legislative Assembly Secretariat, Arunachal Pradesh, Naharlagun.

.....*Respondents*

Advocates for the petitioner : Mr. Dicky Panging
Mr. Vijay Jamoh
Ms. Diana Tamuk
Mr. Marconi Doji
Ms. Mina Gibi

Advocates for the respondents: Mr. Goter Ete, Addl. Sr. Govt. Advocate

::B E F O R E:::
HON'BLE MR. JUSTICE AJIT BORTHAKUR

Date of hearing : 04.09.2018

Date of Judgment & order : 31.10.2018

JUDGMENT AND ORDER(CAV)

Heard Mr. Dicky Panging, learned counsel, appearing on behalf of the petitioner.

Also heard Ms. Goter Ete, learned Addl. Senior Government Advocate, appearing on behalf of all the respondents.

2. By this petition preferred under Article 226 of the Constitution of India, the petitioner, who is presently serving as Reporter(English) in the Legislative Assembly Secretariat, Arunachal Pradesh, has basically challenged the inaction on the part of the respondent authorities to hold the regular Departmental Promotion Committee(DPC) for promotion to the vacant post of the Chief Reporter(Group'A') in the Legislative Assembly Secretariat which is lying vacant for the last more than 2(two) years.

3. The petitioner's case, in a nut-shell, is that he was appointed to the post of Reporter(English) in the Legislative Assembly Secretariat, Arunachal Pradesh, Naharlagun, vide order, dated 10.03.1997 and accordingly, he was regularized in service vide order, dated 03.03.1998. Serving thus, one Sri S. Roychoudhury, who was working as Chief Reporter, Legislative Assembly Secretariat, Arunachal Pradesh, retired from service on superannuation on 31.12.2015. The said post having fallen vacant, necessary process was initiated by the authorities concerned to fill-up the said post in terms of the relevant Recruitment Rules. In the meantime, the provisional seniority list of Reporters(English) of Legislative Assembly Secretariat was notified by the Assembly Secretariat vide O.M., dated 24.04.2017, wherein, the petitioner, being the senior-most eligible Reporter was placed at Sl. No. 1. Thereafter, requisite No Objection Certificates(NOCs) were issued by the concerned Deputy Commissioner in favour of the petitioner and 6(six) other persons as was the norm set by the State Government for consideration of the Government employees to the promotional post. Accordingly, the Vigilance Clearance Certificates were also issued by the Under Secretary(Vigilance), Government of Arunachal Pradesh, vide O.M., dated 29.05.2017, in favour of the petitioner and 2(two) other persons. In the meanwhile, the Speaker, Legislative Assembly, Arunachal Pradesh, directed the authorities concerned to constitute the Departmental Promotion Committee(DPC) for promotion to the post of Chief Reporter in terms of the relevant Recruitment Rules and also to publish the Final Seniority List. Since then, the matter never progressed further. Aggrieved by the inaction on the part of the respondent authorities, despite being eligible in terms of the relevant provisions of ***The Chief Reporter(Group 'A'), Legislative Assembly Secretariat Recruitment(Amendment) Rules, 2015***, the petitioner submitted a representation, dated 29.12.2017, to the Secretary, Legislative Assembly Secretariat, to consider his case for promotion to the post of Chief

Reporter. It is stated at the Bar that the case of the petitioner was not considered even after the relevant file was processed and put-up before the respondent authorities.

4. It is the specific case of the petitioner that though he is eligible to be considered for promotion to the post of Chief Reporter as per the relevant provisions of the amended Rules of 2015, which clearly stipulates that the vacancies to the post of Chief Reporter is to be filled-up by way of 100% promotion from amongst the English Reporters of Arunachal Pradesh Legislative Assembly Secretariat, and having three years regular and continuous service in the grade, on promotion, but, the respondent authorities, for reasons best known to them, have not acted favourably in his matter, till date. Needless to say that the representation, dated 29.12.2017, is yet to be considered and disposed of by the authorities concerned. In such circumstances, the petitioner has been deprived of his rightful claim for consideration for promotion to the post of Chief Reporter.

5. According to the petitioner, the seniority list, dated 24.04.2017, wherein he has been placed at Sl. No. 1, is the updated list in respect of the Reporters (English) of the Legislative Assembly Secretariat and no one in the said list, till date, has challenged the seniority of the petitioner or other persons junior to him. As such, his case should have been considered for promotion to the post of the Chief Reporter(English), Assembly Secretariat, Arunachal Pradesh.

6. The petitioner also contends that the Departmental Promotion Committee (DPC) was never held by the Legislative Assembly Secretariat since the year 2016 despite there being a clear vacancy of the post of Chief Reporter(English).

7. The respondent authorities, by way of filing their affidavit-in-opposition, have contended, at the very outset, that the authorities concerned after due consideration of the records made available, have further amended the Recruitment Rules of 2015 vide Notification, dated 05.02.2018. They have contended that apart from the petitioner's representation, dated 29.12.2017, one Sri B. Singh, Reporter(Hindi), had also submitted his representation for consideration of promotion to the post of Chief Reporter as per the Recruitment Rules of 1991. However, as the

amended Recruitment Rules of 2018 does not provide for a single line of promotion either, from Reporter(Hindi) or from Reporter(English), therefore, the claim of the petitioner for promotion to the post of Chief Reporter is found to be inconsistent with the amended Recruitment Rules of 2018.

8. According to the respondent authorities, the claim of the petitioner for promotion to the post of Chief Reporter was denied on the ground that as per the Recruitment Rules of 2018, the post of Chief Reporter shall be filled up on promotion from the reporters having 3(three) years continuous service in the grade of Reporter, on seniority basis only. According to them, prior to amendment of the Recruitment Rules of 1991, the post of Chief Reporter was filled up from amongst the Reporter (English) and Reporter(Hindi) on the basis of the combined seniority list of the Reporters. The post in question fell vacant on 31.12.2015. As per the combined seniority list, dated 29.06.2012, Shri B. Singh, Reporter(Hindi) is expecting his promotion to the post of Chief Reporter, he being the senior-most Reporter amongst the combined seniority list of Reporters(English) and Reporters(Hindi) and eligible under the amended Recruitment Rules of 2018. The State Respondents have categorically contended that the present petitioner is 2(two) years junior in service to Shri Singh, Reporter(Hindi), in the grade of Reporter.

9. The State Respondents have further contended in paragraph No. 10 of the affidavit-in-opposition, that keeping in view of the Notification, dated 2nd February, 2018, the promotion of the Chief Reporter and Chief Editor of Debates shall be from the combined Seniority list as maintained earlier from amongst the Reporter(Hindi) and Reporter(English).

10. I have given due consideration to the arguments advanced by the learned counsel of both sides and the respective pleadings supported by the relevant documents.

11. The short question that falls for consideration in the instant petition is whether the vacancy of the Chief Reporter of the Arunachal Pradesh State Legislative Assembly that arose prior to the Amended Rules, 2018 would be governed by the old Recruitment Rules, 1991 or the amended Recruitment Rules, 2015.

12. A perusal of the provisions of the Chief Reporter (Legislative Assembly Secretariat, Group-A posts) Recruitment Rules, 1991 (for short, 'Rules, 1991') reveals that the method of recruitment to the post of Chief Reporter (Group-A post) in the Arunachal Pradesh Legislative Assembly Secretariat is prescribed as hereinbelow extracted:-

Whether age and educational prescribed for direct recruitments will apply in the case of promotes	Period of probation, if any	Method of recruitment whether by direct recruitment or by deputation/ transfer and percentage of the vacancies to be filled by various methods	In case of recruitment by promotion/ deputation/ transfer, grades from which promotion/ deputation/ transfer to be made	If a DPC exists, what is its composition	Circumstances in which P.S.C. is to be consulted in making recruitment
9	10	11	12	13	14
Not applicable	2 (two) years	100% promotion	From amongst the Reporters of Arunachal Pradesh Legislative Assembly Secretariat having 3 (three) years regular service in the grade on the basis of Merit with due regard to seniority	1. Deputy Speaker, Govt. of Arunachal Pradesh, Legislative Assembly. 2. Secretary, Legislative Assembly-Member. 3. One group 'A' officer of the Govt. of Arunachal Pradesh (to be nominated by the Speaker-Member	Not applicable.

13. The above Rules, 1991 provided for filling up the post of Chief Reporter by 100% promotion from amongst the combined list of Reporters, having 3 (three) years of regular service in the grade, on the basis of merit-cum-seniority, meaning thereby on merit and ability. However, by a notification, dated 07.10.2015, issued by the respondent No. 1/ the Secretary, Arunachal Pradesh, Legislative Assembly Secretariat Recruitment (Amendment) Rules, 2015 (for short, 'Amended Rules, 2015'), which came into effect from 07.10.2015, while retaining the rule of 3 (three) years regular service and continuous service in the grade, replaced the criteria of merit-cum-seniority by seniority only. The amended provisions read as hereinbelow extracted:

"ARUNACHAL PRADESH

LEGISLATIVE ASSEMBLY SECRETARIAT

No. LA/Estt-6/91

Dated Naharlagun, the 7th October, 2015.

NOTIFICATION

In exercise of the powers conferred by clause (3) of the Article 187 of the Constitution of India, the Governor of Arunachal Pradesh after consultation with Speaker of the Legislative Assembly of Arunachal Pradesh is hereby pleased to make the following the rules further to amend the Recruitment Rules for the post of Chief Reporter, Legislative Assembly Secretariat (Group-A) Recruitment Rules, 1991 namely:-

1. *Short title and commencement:-*

(i) These rules may be called "the Chief Reporter (Group-A), Legislative Assembly Secretariat Recruitment (Amendment) Rules, 2015.

(ii) They shall come into force from the date of publication in the Arunachal Pradesh Gazette.

2. *Amendment to the Schedule:-*

In the schedule for the post of Chief Reporter, Legislative Assembly Secretariat (Group-A) Recruitment Rules, 1991 in column 12 of the existing Recruitment Rules, the following entry shall be substituted, namely:-

From amongst the English Reporter, Legislative Assembly Secretariat having 3 (three) years regular and continuous service in the grade on the basis of seniority.

Sd/-
Secretary, Legislative Assembly,
Arunachal Pradesh, Naharlagun".

14. It needs to be reiterated here that there are two different branches of reporters, namely, Reporter (English) and Reporter (Hindi) and the promotion to the grade of Chief Reporter, Legislative Assembly Secretariat and Chief Editor of Debates were made from both the aforesaid branches of reporters. However, after coming into force of the Amended Rules, 2015, promotion to the post of Chief Reporter, Legislative Assembly Secretariat was made only from the post of Reporters (English) and promotion to the post of Chief Editor of Debates was made from amongst the Hindi Reporters, on the basis of seniority as per another Amended Rules, 2015. Which read as extracted below:-

No. LA/Estt-6/91

Dated Naharlagun, the 7th October, 2015.

NOTIFICATION

In exercise of the powers conferred by clause (3) of the Article 187 of the Constitution of India, the Governor of Arunachal Pradesh after consultation with Speaker of the Legislative Assembly of Arunachal Pradesh is hereby pleased to make the following the rules further to amend the Recruitment Rules for the post of Chief Editor of Debates, Legislative Assembly Secretariat (Group-'A') Recruitment Rules, 1995 namely:-

3. Short title and commencement:-

(iii) These rules may be called "the Chief Editor of Debates(Group-A), Legislative Assembly Secretariat Recruitment (Amendment) Rules, 2015.

(iv) They shall come into force from the date of publication in the Arunachal Pradesh Gazette.

4. Amendment to the Schedule:-

In the schedule for the post of Chief Editor of Debates, Legislative Assembly Secretariat (Group-A) Recruitment Rules, 1995 in column 12 of the existing Recruitment Rules, the following entry shall be substituted, namely:-

From amongst the Hindi Reporters of Arunachal Pradesh Legislative Assembly Secretariat having 3 (three) years regular and continuous service in the grade on the basis of seniority.

Sd/- M. Lasa
Secretary, Legislative Assembly,
Arunachal Pradesh, Naharlagun".

15. Thus, it appears that the feeder posts for promotion to the two posts of the Chief Reporter and Chief Editor of Debates were belonged to two distinct branches of

Reporters of Hindi and English with requisite eligibility criteria mentioned above as per the amended Rules, 2015.

16. Nevertheless, the State Respondents, in paragraph No. 8 of their affidavit-in-opposition, have averred that the Legislative Assembly Secretariat will take necessary care to hold the Departmental Promotion Committee(DPC) in time.

17. Mr. D. Panging, learned counsel for the petitioner, apart from the grounds cited in the petition, relied upon the principle enunciated by the Hon'ble Supreme court in A. Manoharan & Ors. Vs-Union of India & Ors., reported in (2008) 3 SC 641, wherein it was held that the amended Rules/ Regulations have a prospective effect and cannot be applied retrospectively and further, that any vacancy which has arisen prior to coming into force of the amendments so made must be filled up in terms of the law as was existing prior thereto. Mr. Panging has drawn attention to two earlier decisions rendered on identical view by the Hon'ble Supreme Court in Dr. K. Ramulu & Anr. Vs- Dr. S. Suryaprakash Rao & Ors., reported in (1997) 3 SCC 59 and P. Ganeswar Rao & Ors. Vs-State of A.P. & Ors., reported in 1998 (Supp) SCC 740 and in State of Rajasthan Vs-V. R. Dayal & Ors., reported in (1997) 10 SCC 419. Mr. Panging further submitted that the post of the Chief Reporter of the Arunachal Pradesh Legislative Assembly fell vacant on 31.12.2015, on retirement on superannuation of Sri. S. Roychoudhury and on that date, the Amended Recruitment Rules, 2015 was in force, the post needs to be filled up in terms of the aforesaid Rules only instead of the Amended Recruitment Rules, 2018, through holding of the DPC.

18. On a careful reading of the various judicial pronouncements of the Hon'ble Supreme Court, some of which were cited by the learned counsel for the petitioner, referred to above, this Court finds that the vacancy which occurred prior to the promulgation of the Amended Rules, 2018, that is, on 31.12.2015, would be governed by the Amended Rules, 2015 in filling up the vacancy. Therefore, this Court has no hesitation to hold that the vacancy of the post of Chief Reporter, Arunachal Pradesh Legislative Assembly, which occurred on 31.12.2015, is to be filled up as per the amended Recruitment Rules, 2015 then existing and not by the Amended Recruitment Rules, 2018, through holding of the DPC.

19. Resultantly, the petition stands allowed.

20. The respondent authorities shall constitute a Departmental Promotion Committee (DPC) to consider the case of the petitioner along with other eligible Reporters for promotion to the next higher post of Chief Reporter, Legislative Assembly Secretariat, Arunachal Pradesh, in terms of the relevant Amended Recruitment Rules, 2015.

21. The entire process of selection for appointment to the said post shall be completed within a period of 2 (two) months from the date of receipt of a certified copy of this order, which shall be delivered by the petitioner to the competent respondent authority (s).

JUDGE

13/08