

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

ITANAGAR PERMANENT BENCH
(NAHARLAGUN)

WP (C) 320 (AP) 2011

Shri Hali Tajo, son of Shri Dadang Tajo,
Presently working as Fishery Officer,
Officer of District Fishery Development Office,
Seppa, East Kameng District,
Arunachal Pradesh.

.....**Petitioner.**

Advocates for the Petitioner:

Mr. P. Taffo.
Ms. N. Danggen.
Mr. T. Gyadi.
Mr. T. Tapu.
Ms. J. Doje.
Mr. S. Lingfa.
Ms. Wanglet

-VERSUS-

1. **The State of Arunachal Pradesh**, represented by the Secretary, represented by the Secretary Fisheries Govt. Of Arunachal Pradesh, Itanagar.
2. **The Director**, Fisheries, Govt. Of Arunachal Pradesh, Itanagar.
3. **Shri Kipa Taja**, District Fishery Development Officer, East Kameng District Seppa, Arunachal Pradesh.
4. **Shri Nabam Tania**, District Fishery Development Officer, Daporijo, Upper Subansiri District, Arunachal Pradesh.

.....**Respondents.**

Advocate for the Respondents:

Mr. S. Tapin, learned Sr. Govt. Advocate for respondent Nos. 1 & 2.

:::BEFORE:::

HON'BLE JUSTICE MR. AJIT BORTHAKUR

Date of hearing : **10.01.2018.**

Date of Judgment & Order : **19.02.2018**

JUDGMENT & ORDER(CAV)

Heard Ms. S. Wanglet, learned counsel appearing for the petitioner and Mr. S. Tapin, learned Sr. Govt. Advocate appearing for the state respondents. None has appeared on behalf of private respondent Nos. 3 & 4.

2. By preferring the instant petition under Article 226 of the Constitution of India, the petitioner, who is a Fishery Officer, (For short 'F.O.') in the office of the District Fishery Development, Seppa, East Kameng District, Arunachal Pradesh, has challenged the legality and validity of the recommendations, dated 31.03.2011, of the Departmental Promotion Committee (For short 'DPC') of the Department of Fisheries, Govt. of Arunachal Pradesh for promotion of Shri R. N. Pradhan and the respondent No. 4, Shri Nabam Tania to the post of District Fishery Development Officer (for short 'DFDO') and promotion orders, dated 19.06.2009 and 21.06.2011 in respect of respondent Nos. 3 and 4 respectively, as DFDO. The petitioner has further prayed for a direction to the respondent authorities to finalise the *inter-se-seniority* list of F.Os/ Extension Officers (Fy) (For short 'E.O.') and to consider the case of the petitioner for promotion to the post of DFDO, by holding a review DPC, being the most deserving candidate.

3. The petitioner's grievance, in a nutshell, is that he is working as F.O. at Seppa and he initially joined the Fishery Department as a Technical Assistant/ Technical Assistant (Computer), on temporary basis, under a Centrally Sponsored Scheme. The said scheme was subsequently withdrawn, and he was appointed as F.O., on officiating basis, by an order, dated 21.03.2002 and he joined the post on 01.04.2002. Thereafter, the petitioner underwent one year course of Post-Graduate Diploma in Inland Fisheries, at the expense of the department and he successfully completed the same in the year, 2006. After due consideration of the petitioner's satisfactory service, a DPC held on 16.07.2009, recommended for regularization of his service as F.O. w.e.f. the date of his joining in service on 01.04.2002. However, the respondent No. 3 namely, Shri

Kipa Taja, who joined on 01.12.2005 was given officiating promotion as DFDO by order, dated 19.06.2009, and temporarily posted at Seppa, East Kameng District. On the other hand, the respondent No. 4 Shri Nabam Tania, who was appointed in service as E.O. on contract basis, on 24.05.2001, was promoted to the post of DFDO, on the recommendation of the DPC, held on 31.03.2011, on regular basis.

4. The petitioner's further grievance is that thereafter, the respondent authorities published a provisional *inter-se-seniority* list of F.Os/E.Os (Fy), dated 18.06.2010, and sought for claims and objections, if any and accordingly, the petitioner filed his objections, pointing out that as his service was regularized with effect from 01.04.2002, his serial No. ought to be in 22 instead of 35 in the aforesaid provisional *inter-se seniority* list. The aforesaid objection of the petitioner was not taken into consideration and instead an alleged DPC was held, on 31.03.2011 and considered the case of the respondent No. 4 namely, Shri Nabam Tania, who joined on 18.11.2003. Based on the recommendation, the said respondent No. 4 was promoted by the impugned order, dated 21.06.2011, despite having not fulfilled the eligibility criteria, whereas the petitioner fulfilled the eligibility criteria on 01.04.2011. Hence, the *inter-se-seniority* list and promotion of the respondent Nos. 3 & 4 as DFDO are under challenge.

5. The State respondents No. 1 & 2, in their affidavit-in-opposition contended that the service of the petitioner was withdrawn from the post of Technical Assistant (Computer) as the post was discontinued by the Government of India vide Letter No. F.No.34-11(2)/2001-F(S), dated 27.2.2002, and thereafter, the petitioner was appointed as F.O., on officiating basis, against deputation vacancy vide order No. FISH/E-350/2001, dated 01.04.2002, with no right to regularization of his appointment. According to the respondents, as the petitioner did not have the requisite technical qualification to be eligible for the post of FO/EO (Fy) as per the Recruitment Rules, he was deputed in the year 2006, to undergo a one year Post-Graduate Diploma course in Inland Fisheries and after completion of the said course, on 02.11.2007, the petitioner became eligible for regularization in the cadre and accordingly, his service was regularized from the date of joining i.e., with effect from 01.04.2002, to ensure his financial benefits (officiating/ deputation), not for seniority benefits. The respondents have further contended that the appointment of respondent No. 3 to the post of DFDO, on officiating basis, was made as he is senior to the petitioner and he was regularly recruited against the vacant post of F.O./ E.O.

(Fy), through a competitive examination as per the criteria set in the relevant Recruitment Rules. It is stated that the provisional *inter-se-seniority* list of FO/EO (Fy)/ Investigator was widely circulated by the Department vide letter No. FISH/E(A)429/2004, dated 20.12.2006, and the petitioner was served with a copy thereof, but the petitioner has not filed any objection. The case of the respondent No. 4 was considered by the DPC, held on 31.03.2011, for promotion to the post of DFDO/ADF and on the recommendation of the DPC, on the basis of final seniority list published, he was appointed by the Department. Hence, it has been prayed to dismiss the writ petition.

6. Ms. S. Wanglet, learned counsel for the petitioner submitted that two basic questions which need to be decided in the instant proceeding are firstly, whether the petitioner, who initially joined as Technical Assistant/Technical Assistant (Computer), on 23.01.2001, on *ad hoc* basis against the Centrally Sponsored Scheme, which was subsequently withdrawn on 27.02.2002, and after acquiring requisite qualification in the year 2006, the service of the petitioner was regularized as F.O. from the initial date of his joining on the aforesaid date and the respondent Nos. 3 and 4, who are junior to him, as they joined in service on a later date, and acquired requisite qualification at a later stage, the petitioner was eligible to be promoted on officiating basis to the post of DFDO being senior to the respondents No. 3 & 4. Secondly, whether the name of the petitioner should have come above the respondents No. 3 and 4 in the provisional *inter-se-seniority/Gradation* list, published vide Memo., dated 20.12.2006. According to Ms. Wanglet, the learned counsel, the petitioner acquired his right to promotion and seniority computed from the date of regularization of his service, i.e., on 01.04.2002 in the cadre of F.O., on the recommendation of the Board, held on 16.07.2009, whereas the respondent No.3, who joined much later on 01.12.2005, was given officiating promotion to the post of DFDO, on 19.06.2009 and accordingly, his name is placed in Sl. No.- 26 of the provisional seniority list and whereas the petitioner's name is illegally placed at serial No. 35.

7. Ms. Wanglet submitted that the seniority of the petitioner as F.O. should be computed on and from 01.04.2002, when he joined the post of F.O., on officiating basis and his service was regularised from the initial date of his joining as such on officiating basis. Ms. Wanglet, the learned counsel for the petitioner further submitted that the RR of 1982 instead of 2005 is applicable to the petitioner inasmuch as the respondent authorities followed the prescribed

RR of 1982 in case of all appointments/recruitments to the post of F.O./E.O. till 2005.

8. Mr. S. Tapin, learned Senior Govt. Advocate for the State respondents submitted that, regular service should be understood as after regular appointment and therefore, does not include the period of service as temporary and ad-hoc, which Rule is settled by the Supreme Court in a catena of cases inclusive in *the Punjab State Electricity Board and Ors. Vs. Jagjiwan Ram and Ors., reported in (2009)3 SCC 661*. Mr. Tapin submitted that officiating officers are to be treated below the regular appointees in the gradation list and once appointed to a post following the prescribed rules, his seniority has to be counted from the date of his so appointment. In this regard, Mr. Tapin, learned Senior Govt. Advocate for the State respondents, has relied upon the ratio of the judgment rendered by the Supreme Court in *Direct Recruitment Class II Engineering Officers' Association Vs. the State of Maharashtra and Ors., reported in(1990)2 SCC 715*. Placing reliance upon the afore-mentioned cases, Mr. Tapin vehemently submitted that the recommendation of the DPC, dated 31.03.2011, and promotional Order, dated 19.07.2009 & 21.06.2011, were absolutely in accordance with the Service Rules following the RR of 2005.

9. Mr. S. Tapin, learned Sr. Govt. Advocate appearing for the state respondents, further submitted that the petitioner was initially appointed against the deputation vacancy of F.O., on officiating basis and the appointment order contained terms and conditions to the effect that he shall have no right to claim for regular appointment or further continuation of service beyond 01.04.2002. According to Mr. Tapin, the post of F.O. and E.O. (FY) is a technical post and the relevant rules provide that the incumbent should have at least 4 years degree course (B.F.Sc) or B.Sc (Zoology) with one year training course in Post-Graduate Diploma in Inland Fisheries from the Govt. of India recognised institute and therefore, having felt necessity of the service of the petitioner, he was deputed to undergo Post-Graduate Diploma in Inland Fisheries course, to fulfil the criteria in the cadre to be regularized, which he completed on 02.11.2007, and thereafter, his service was regularized on 16.07.2009, giving effect of regularization from the date of his joining on 01.04.2002 as F.O., to ensure service benefits, not for seniority benefits. According to Mr. Tapin, as per the standard service jurisprudence, no incumbent holding any officiating post is not entitled for claiming seniority benefits and as such, the petitioner's claim for

seniority over the respondents No. 3 & 4 is not correct in law. Mr. Tapin further submitted that the respondent no. 3 was appointed to the post of F.O./E.O. (FY), through a competitive examination as per rule and accordingly, before finalization of the *inter-se-seniority* list of the F.O/E.O(FY)/Investigator, in the year 2011, the list was given wide circulation by the department, against which the petitioner did not file any objection and as such, the petitioner's claim of seniority over the respondents No. 3 & 4 is not tenable as his regularization in service was recommended by the DPC held on 16.07.2009, as per the Recruitment Rules.

10. Mr. Tapin submitted that the petitioner's service was regularized by DPC, dated 16.07.2009, after the petitioner fulfilled all the requisite eligibility criteria as per the Recruitment Rules of F.O./E.O.(FY)/Investigator and therefore, after attending all the errors/mistakes, the final *inter-se-seniority* list of F.O./E.O.(FY)/Investigator was duly circulated. According to Mr. Tapin, the learned Sr. Govt. Advocate, the case of the respondent No. 4, who is senior to the petitioner, was considered and accordingly promoted and appointed as DFDO as per recommendation of DPC on the basis of final seniority list of FO/EO(FY). Additionally, Mr. Tapin submitted that the respondent Nos. 3 & 4 were about to complete the tenure of eight years of minimum service as FO/EO(FY) at the time of DPC and no other eligible candidate was found from the Feeder List of 2006. The respondent No. 3 has been appointed to the post of DFDO on officiating basis is a temporary working arrangement to run the department in exigency of administrative set up in the district.

11. A scrutiny of the rival pleadings reveals the following facts, in chronological order-

- 23.01.2001** Petitioner joined the Dept. Of Fishery as Technical Assistant/Technical Assistant(Computer) on contractual basis under Central Scheme.
- 24.05.2001** Respondent No. 4 was appointed as E.O. on contract basis for 3 months.
- 27.02.2002** Central Scheme expired.
- 21.03.2002** Petitioner was appointed as F.O. on officiating basis for 6 months.
- 01.04.2002** Petitioner joined the service as F.O. on officiating basis.
- 10.10.2003** DPC was held, whereby Respondent No. 4 was recommended for temporary appointment as E.O.
- 17.11.2003** Order appointing respondent No. 4 on temporary basis as EO.

2005-2006 Petitioner was deputed for undergoing P.G. Diploma course in Inland Fishery and completed the course in 2007 vide the pass certificate.

30.11.2005 Respondent No. 3's order of appointment as E.O. on temporary basis and on probation for 2 years.

01.12.2005 Respondent No. 3 joined the service.

20.12.2006 Draft provisional list of inter-seniority list of FO/EO published.

02.11.2007 Petitioner received his P.G. Diploma certificate.

19.06.2009 Respondent No.3 was appointed on officiating basis as DFDO recommended for and posted at E. Kameng District.

16.07.2009 DPC regularising of Petitioner's appointment as FO retrospectively from 01.04.2002.

29.07.2009 Order regularising the service of the Petitioner as FO with retro-effect from 01.04.2002.

18.06.2010 Dept. published provisional inter-seniority list of FO/EO.

14.07.2010 Petitioner submitted his claim and objection letter to respondents against the above provisional inter-seniority list.

31.03.2011 DPC recommended respondent No. 4 for promotion from EO to DFDO.

21.06.2011 Respondent No.4's order of promotion from EO to DFDO on regular basis.

04.07.2011 The above promotion order of respondent No.4 was signed.

15.07.2011 Petitioner came to know about the DPC recommendation that was held on 31.03.2011.

08.08.2011 Memo by Dept. addressed to the Petitioner.

10.08.2011 Petitioner filed the instant Writ.

25.08.2011 Dept. Finalised the inter-seniority list of FO/EO.

Hali Tajo – Petitioner – B.Sc Zoology with P.G. Diploma in Inland Fishery

23.01.2001 Joined the Dept. as Technical Assistant/Technical Assistant(Computer) on contract basis under a Central Scheme.

21.03.2002 Appointed as F.O. on officiating basis.

01.04.2002 Joined the post of F.O.

02.11.2007 Obtained his P.G. Diploma.

29.07.2009 Petitioner was regularised as F.O. with retrospective effect from 01.04.2002.

Kipa Taja - Respondent No.3 – B.F.Sc

30.11.2005 Respondent No.3 was appointed on temporary basis as E.O.

01.12.2005 respondent No.3 joined the service as E.O.

19.06.2009 respondent No.3 was promoted to the post of DFDO. on officiating basis and posted at E. Kameng District.

Nabam Tani – Respondent No.4 – B.F.Sc

- 24.05.2001** **Respondent No. 4 was appointed as E.O. on contract basis for 3 months.**
- 17.11.2003** **Respondent No.4 was temporarily appointed as E.O.**
- 21.06.2011** **Respondent No.4 was promoted to the post of DFDO.**

12. It is seen that Rule 4 of "*the Recruitment to the posts of Fishery Officer/Extension Officer(Fish)/Investigator Rules, 2005*" provides that the method of recruitment to the said posts, age limits, qualifications and other matters relating thereto, shall be as specified in columns 5 to 14 of the schedule. The rules were notified on 25.07.2005, and the schedule thereof provides that the post of F.O./E.O. (Fy) requires atleast four years degree course (B.F.Sc) or B.Sc (Zoology) with one year training course on Post-Graduate Diploma in Inland Fisheries from a recognised institute. For the purpose of promotion to the post of DFDO, from the feeder cadre of F.O./E.O., one must have put minimum 8(eight) years of regular service in the cadre of F.O/E.O. The Recruitment Rules also provide for filling up the post of DFDO at the ratio, 50% by promotion and 50% by direct recruitment and further, in case of promotion one has to put minimum 8(eight) years of regular service as F.O/E.O (Fy).

13. There is no dispute that the petitioner is a science graduate with Zoology, followed by 1 (one) year Post-Graduate training in Inland Fisheries after he joined as F.O. on officiating basis, which he successfully completed in the year 2007 vide the pass certificate. Be that as it may, he was initially appointed as a Technical Assistant/Technical Assistant(Computer) in Group 'B' service, on purely *Ad hoc* basis for a period of 6(six) months under the Centrally Sponsored Scheme, namely, "Development of Inland Fishery Statistics", which was discontinued with effect from 27.02.2002 and therefore, he was appointed as F.O., on officiating basis, by an order, dated 21.03.2002, issued by the respondent No. 2, the Director, Fisheries, Govt. of Arunachal Pradesh. The petitioner joined the post of F.O. on officiating basis, as per order, dated 21.03.2002, on 01.04.2002. It is noticed that the petitioner was deputed for prosecuting the aforesaid one year course of Post Graduate Diploma in Inland Fisheries in the Academic year 2005-2006, on deputation and completed the course on 02.11.2007, as stated above and thereby fulfilled the criteria for appointment to the post of F.O. departmentally. It is seen that after fulfilment of the requisite qualifications, the DPC, held on 16.07.2009, regularised the service of the petitioner from the date of joining to the post of F.O., covering the last

four years of his service as F.O. on *ad hoc* basis, i.e. with effect from 01.04.2002.

The relevant recommendation of the DPC held on 16.07.2009 reads-

“..... the case of Shri Hali Tajo who have been working as Fishery Officer from last 4(four) years as *ad hoc* basis was placed before the Committee for regularization of his service. The Committee after careful examination of his performance recommended for regularization from the date of joining to the post of F.O.”

14. The said recommendation of the DPC, dated 16.07.2009, which was accepted by the department as it appears from the order, dated 29.07.2009, issued by the respondent No. 1, the Commissioner & Secretary (Fy), Govt. of Arunachal Pradesh, does not show that the petitioner's service was so regularized from the date of his joining as F.O., on 01.04.2002, in order to ensure his financial benefits (officiating/deputation) of the service and not for seniority benefits as contended by the respondents in their affidavit-in-opposition. In case of irregularity in initial appointment may, however, be regularised and security of tenure may be made available to the incumbent concerned. In *B.N. Nagarajan & Ors. Vs. State of Karnataka & Ors.*, reported in (1979) 3 SCR 937, the Supreme Court held that the words “regular” or “regularization” do not connote permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments. The court emphasized that when rules framed under Article 309 of the Constitution of India are in force, no regularization is permissible in exercise of the executive powers of the Government under Article 162 of the Constitution in contravention of the rules.

15. In *Direct Recruit Class II Engineering Case (supra)*, the Supreme Court clarified that if the initial appointment is not made by following the procedure laid down by the rules, but the appointee continues in the post uninterruptly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted. Therefore, in the instant case, the writ petitioner's seniority, in view of the DPC recommendation held on 16.07.2009, *prima-facie* ought to have counted from the date of joining to the post of F.O.,

on officiating basis, on and from 01.04.2002, that is, before the respondents No. 3 and 4 joined their posts.

16. The respondent No. 3, who graduated in Fishery Science in the year 2001, on the recommendation of the Board, was appointed to the post of F.O., on temporary basis, and on probation for two years, vide order, dated 30.11.2005, issued by the respondent No.2, the Director, Fisheries, Govt. of Arunachal Pradesh, i.e. by way of regular recruitment process and joined in the said post on 01.12.2005, and thereafter, he was appointed to the post of DFDO, on officiating basis by an order, dated 19.06.2009, without determining his *inter-se-seniority* in the cadre. So also in case of respondent No. 4, who is a graduate in Fishery Science, was appointed as F.O., on 24.05.2001, and his service was regularised with effect from 17.11.2003, on the recommendation of the DPC, held on 10.10.2003, and further, he was appointed on promotion to the post of DFDO as per recommendation of DPC on the basis of purported seniority list of F.Os. The DPC held on 31.03.2011 recommended the name of the respondent No.4 for promotion to the post of DFDO. It is admitted by the respondents No. 1 & 2 in their affidavit that the respondents No. 3 & 4 did not complete the required tenure of 8 (eight) years of service at the time, when the DPC recommended their promotion to the post of DFDO, on officiating basis, from amongst the cadre of F.O./E.O.(Fy) and based on their non-existence in the provisional seniority list of the year 2006 vide the Office Memorandum No. FISH/E(A)429/2004, dated 20.12.2006. The final *inter-se-seniority* list was published much later on 24.08.2011. There is no evidence to show that the competent authority relaxed the eligibility criteria with respect to promotion of the respondents No. 3 & 4 to the post of DFDO from the feeder cadre.

17. It is pertinent to refer here to the settled rule, quoted in *State of Uttar Pradesh Vs. Singhara Singh & Ors, reported in AIR 1964 SCC 358*, wherein the Supreme Court referred to the case of *Taylor Vs. Taylor, reported in (1875) 1 Ch D 426*. It was observed that the rule adopted therein is well recognised and is founded on sound principle. It's result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the said act in any other manner than that which has been prescribed. In the instant writ proceeding, it is noticed that the DPC, held on 31.03.2011, substantially deviated from the Recruitment Rules, when the respondent authorities finalised the *inter-se-seniority* list in

2011. The case of the petitioner was, not considered for promotion to the post of DFDO as his name was not available in the provisional *inter-se seniority* list, although his officiating service as F.O. was regularised from the date of joining on 01.04.2002. It is the settled law as held in the case of *Punjab State Electricity Board & Ors. (supra)* that regular service does not include service rendered as temporary, *ad hoc* or work charged employee only therefore, applying the principle laid in *Direct Recruitment Class II Engineering Officers' Association case (supra)*, the petitioner can claim benefit for the period he rendered service as F.O. on officiating basis. Additionally, the reason behind it is that, he was initially inducted into the service without following the Recruitment Rules, although the DPC regularised his service from the initial date of his appointment as F.O., on officiating basis, on 01.04.2002. Therefore, the plea of the respondent authorities to the effect that the regularisation of the petitioner's service was regularised from the date of his initial appointment as F.O., on officiating basis, for the purpose of giving him some financial benefits and not for seniority cannot be accepted. The conclusion that follows from this legal principle is that the DPC, held on 31.03.2011, cannot be said to have taken into consideration all the material facts available as on that date while recommending for promotion of the private respondents. It is, however, to be noted here that in the provisional list of *inter-se-seniority*, dated 20.12.2006, the names of the petitioner, respondents No. 3 and 4 were not included.

18. In *S.B. Bhattacharjee's case (supra)*, the Supreme Court held that although a person has no fundamental right of promotion in terms of Article 16 of the Constitution of India, he has a fundamental right to be considered therefor. An effective and meaningful consideration is postulated thereby. The terms and conditions of service of an employee including his right to be considered for promotion indisputably are governed by the rules framed under the proviso appended to Article 309 of the Constitution of India.

19. Needles to reiterate that DPC is bound to follow the prescribed procedure notified by the Government for adjudging the merit and suitability for appointment/promotion of any employee to public service with the affairs of the state.

20. For the reasons, set forth above, it is apparent that the respondent authorities have committed errors while determining the *inter-se-seniority* of the F.Os, which deserves reconsideration, with reference to the writ petitioner's

seniority and while considering his grievances, in accordance with the relevant rules vide the Office Memorandum No. FISH/E350/2001, dated 08.08.2011.

21. This court is, of course, not in favour of directing the respondent authorities to review the DPC recommendations, held on 31.03.2011, after elapse of more than 6(six) years more particularly, when the respondents No. 3 and 4 have been continuing in the post of DFDO during the aforesaid intervening period.

22. Consequently, the writ petition is disposed of, with a direction to the respondent authorities to determine the *inter-se-seniority* of the petitioner as F.O. afresh and to consider his case for promotion to the post of DFDO, if found eligible, strictly adhering to the service rules and also taking into account of the period of his officiating service as F.O., within a period of 3(three) months from the date of receipt of a certified copy of this order, which shall be furnished by the petitioner within 15(fifteen) days.

JUDGE

Lipak Talom