

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

ITANAGAR BENCH

1. WP(C) No. 44 (AP) of 2017

ShriRubuOpo,
S/o Late RubuTana, working as
Superintending Engineer (EM),
Office of the Chief Engineer (HPD),
Western Zone, Department of Hydro Power
Development, Itanagar, Arunachal Pradesh.

..... **Petitioner**

– **VERSUS** –

1. The State of Arunachal Pradesh represented
by its Secretary,
Department of Power,
Govt. of Arunachal Pradesh, Itanagar.
2. The Commissioner,
Power, Government of Arunachal Pradesh,
Itanagar, Arunachal Pradesh.
3. The Secretary, the Department of Administrative
Reforms, Itanagar, Arunachal Pradesh.
4. ShriMilloPugang,
Executive Engineer (EM),
Electro Mechanical Division, Ziro,
Department of Hydro Power,
District Lower Subansiri,
Arunachal Pradesh.

..... **Respondents**

For the Petitioner : Mr. I. Choudhury, Sr. Adv.
Mr. K.Tama,
Mr. S. Biswakarma,
Mr. T.Jini, Advs.

For the State respondents : Mr. D.Soki, Addl. Sr. Govt. Adv.

For the Respondent No.4 : Mr. Tony Pertin,
Mr. K.Saxena,
Mr. R.L. Thungon, Advs.

2. WP(C) No. 86 (AP) of 2017

Shri.MilloPugang,
Executive Engineer (EM),
Electro Mechanical Division, Ziro,
Department of Hydro Power,
District: Lower Subansiri, Arunachal Pradesh.

..... Petitioner

– VERSUS –

1. The State of Arunachal Pradesh represented
by its Secretary,
Department of Power,
Govt. of Arunachal Pradesh, Itanagar (AP), Pin 791111.
2. The Commissioner, Power
Govt. of Arunachal Pradesh,
Itanagar, Arunachal Pradesh
3. The Secretary,
Department of Administrative Reforms
Arunachal Pradesh, Itanagar.
4. ShriRubuOpo,
S/o Late RubuTana, working as
Superintending Engineer (EM),
Office of the Chief Engineer (HPD),
Western Zone, Department of Hydro Power
Development, Itanagar, Arunachal Pradesh.

..... Respondents

For the Petitioner : Mr. P.K.Tiwari, Sr. Adv.
Mr. K. Saxena,
Mr. R.L. Thungon,
Mr. G.Taloh, Advs.

For the State Respondents : Mr. D.Soki, Addl. Sr. Govt. Adv.

For the Respondent No.4 : Mr. I. Choudhury, Sr. Adv.
Mr. K.Tama,
Mr. S. Biswakarma,
Mr. T.Jini, Adv.

1. I.A.(C) No. 130(AP) of 2017

In

W.P.(C) No. 86(AP) of 2017

ShriRubuOpo,
S/o Late RubuTana, working as
Superintending Engineer (EM),
Office of the Chief Engineer (HPD),
Western Zone, Department of Hydro Power
Development, Itanagar, Arunachal Pradesh.

..... Applicant/respondent No.4

– VERSUS –

1. ShriMilloPugang,
Executive Engineer (EM),
Electro Mechanical Division, Ziro,
Department of Hydro Power,
District Lower Subansiri,
Arunachal Pradesh.
2. The State of Arunachal Pradesh represented
by its Secretary, Department of Power,
Govt. of Arunachal Pradesh, Itanagar.
3. The Commissioner, Power
Govt. of Arunachal Pradesh,
Itanagar, Arunachal Pradesh
4. The Secretary,
Department of Administrative Reforms
Arunachal Pradesh, Itanagar.

.....opposite parties/Respondents

For the Applicant : Mr. I. Choudhury, Sr. Adv.
Mr. K.Tama,

Mr. S. Biswakarma,
Mr. T.Jini, Advs.

For the Respondent No.1 : Mr. P.K.Tiwari, Sr. Adv.
Mr. K. Saxena,
Mr. R.L. Thungon,
Mr. G.Taloh, Advs.

For the State Respondents : Mr. D.Soki, Addl. Sr. Govt. Adv.

3. WP(C) No. 573 (AP) of 2017

ShriRubuOpo,
S/o Late RubuTana, working as
Superintending Engineer (EM),
Office of the Chief Engineer (HPD),
Western Zone, Department of Hydro Power
Development, Itanagar, Arunachal Pradesh.

..... **Petitioner**

– **VERSUS** –

1. The State of Arunachal Pradesh represented
by Commissioner Power,
Govt. of Arunachal Pradesh, Itanagar.
2. ShriMilloPugang,
Executive Engineer (EM),
Electro Mechanical Division, Ziro,
Department of Hydro Power,
District Lower Subansiri,
Arunachal Pradesh

..... **Respondents**

- **BEFORE**-
THE HON'BLE MR. JUSTICE S. SERTO

For the Petitioner : Mr. I. Choudhury, Sr. Adv.
Mr. K.Tama,
Mr. S. Biswakarma,
Mr. T.Jini, Advs.

For the State Respondents : Mr. D.Soki, Addl. Govt. Adv.

For the Respondent No. 2 : Mr. P.K. Tiwari, Sr. Adv.

Date of hearing : **22.02.2018**

Date of judgment : **01.06.2018**

J U D G M E N T & O R D E R (C A V)

These 3(three) writ petitions and the I.A emanated from the issue of seniority between 2(two) persons, namely, Shri. RubuOpo, serving at present as Executive Engineer(EM)/SW(EM), in the Office of Chief Engineer Western Zone, in the department of Hydro Power Development, Government of Arunachal Pradesh, Itanagar, and Shri. MilloPugang, who is serving as Superintending Engineer (EM), in the same Department. Therefore, all the 3 (three) writ petitions and the I.A are taken up together and they are being disposed of by this common judgment.

2. Following the advertisement for filling up of 14 posts of Junior Engineer in the Department of Power, Government of Arunachal Pradesh, a written examination was held on 11.04.1992 and thereafter, viva-voice of those who qualified in the written examination was held on 26.06.1992. Soon after the viva-voice was held, the result was declared on 03.07.1992. Shri RubuOpo, the petitioner in the two writ petitions, i.e., W.P.(C) No. 573(AP) of 2017 and W.P.(C) No. 44(AP) of 2017 and respondent No. 4 in W.P.(C) No. 86(AP) of 2017 was declared, passed and placed as Sl.No. 1 in the merit list and Shri.MilloPugang, the petitioner in W.P.(C) No. 86(AP) of 2017 and respondent No. 4 in the two writ petitions was also declared, passed and placed at Sl. No. 9 of the same merit list. Following the declaration of the result on 03.07.1992, they were appointed to the post of Junior

Engineer. Thereafter, vide Office Memorandum dated 18.10.1993, a provisional seniority list of Junior Engineers of the department as on 31.12.1992 was published and in that provisional seniority list, Shri. RubuOpo was placed at Sl. No. 177 and Shri. MilloPugang was placed at Sl. No. 182. After having completed 5 years of service, both of them were promoted on officiating basis to the post of Assistant Engineer vide Order dated 16.07.1997, issued by the Secretary (Power), Government of Arunachal Pradesh. In the year 2001, Shri. RubuOpo was promoted to the post of Assistant Engineer on regular basis vide Order dated 12.03.2001, issued by the Secretary (Power), Government of Arunachal Pradesh, but, Shri. MilloPugang was promoted to the post of Assistant Engineer only in the year 2004 vide order dated 16.08.2004, issued by the Secretary (Power), Government of Arunachal Pradesh. After 3 years, final seniority list of Assistant Engineers was notified vide Memorandum dated 12.10.2007, by the Secretary (Power), Government of Arunachal Pradesh and in the said seniority list, Shri. RubuOpo was placed at Sl. No. 86 while Shri. Milo Pugang was placed at Sl. No. 88.

3. In the year 2005, a separate department, namely, Hydro Power Development was carved out from Power Department. Following the creation of the new department, i.e., Hydro Power Development, Shri. MilloPugang was appointed as Executive Engineer on deputation basis, initially for a period of 2 years, vide order dated 02.02.2009, issued by the Secretary (Power), Government of Arunachal Pradesh. After lapse of about 19 days i.e., on 21.02.2009, the Secretary (Power), Government of Arunachal Pradesh, vide his order issued on the same date also appointed Shri. RubuOpo as Executive Engineer on deputation basis, initially for a period of 2 years. After 3 years from the date of their appointment as Executive Engineers on deputation, the service of Shri. MilloPugang and Shri. RubuOpo were absorbed permanently w.e.f. the date of their initial appointments on deputation vide order dated 16.05.2012, issued by the Secretary (Power),

Government of Arunachal Pradesh. The said order is reproduced below:

*“Government of Arunachal Pradesh
Department of Hydro Power Development
AP Civil Secretariat
Itanagar*

No. PWRS/HPD/E-1357/2005

Dated Itanagar, the May, 2012

ORDER

The Governor of Arunachal Pradesh is pleased to order to absorb permanently the following AE(E), DoP in the posts of EE(EM) with effect from the date of their initial appointment on deputation as given against each in the pay band of Rs. 15600-39100 + Grade Pay Rs. 6600/- pm plus other allowances admissible from time to time under rules in the interest of public service.

| S. No | Name of Officers | Date of appointment as EE (EM) in the DHPD on deputation | Date of absorption in the DHPD as EE (EM) | Remarks |
|-------|------------------|--|---|---------|
| | 2 | 3 | 4 | 5 |
| 1 | ShriMilloPugang | 02.02.2009 | 02.02.2009 | |
| 2 | ShriRubuOpo | 27.02.2009 | 27.02.2009 | |
| 3. | ShriGumtoEte | 27.02.2009 | 27.02.2009 | |

The Appointing Authority reserves the right to revert them to their original post of Assistant Engineer (E), DoP at any time without assigning any reason whatsoever. The pensionary benefit for the period of their services till the date of their absorption in the Department of Hydro Power Development, Arunachal Pradesh will be governed by the CCS Pension Rules, 1972 as amended up to date.

The other terms and conditions which are not specified herein shall be governed by the relevant terms and conditions, rules and government orders as are in force from time to time.

Sd/- TumkeBagra
Secretary (Power)
Govt. Arunachal Pradesh
Itanagar”

4. Not being satisfied with the said order which made the date of their initial appointment on deputation as date of absorption, Shri.

RubuOpo submitted a representation to the Secretary (Power), Government of Arunachal Pradesh through proper channel. Thereafter, vide Memorandum No. PWRS/HPD/E-1480/2007, dated 17.09.2012, the provisional seniority list of Executive Engineers in the Department of Hydro Power Development was published. In the said seniority list, Shri. Milo Pugangwas placed at Sl. No. 7 i.e. just above Shri. RubuOpo, who was placed at Sl. No. 8. Again, being aggrieved by the provisional seniority list, Shri. RubuOpo submitted a representation dated 26.10.2012, to the Secretary (Power), Government of Arunachal Pradesh claiming that he should be placed at Sl. No. 6 and those 2 persons who were placed at Sl. No. 6 and Sl. No. 7 should be placed at Sl. 7 & Sl. No. 8, based on the seniority in the parent department from where they all came on deputation to the department of Hydro Power Development. Since no action was taken on the representations submitted by him, Shri. RubuOpo, submitted another representation dated 02.01.2013, to the Secretary (Power), Government of Arunachal Pradesh. In the year 2015, vide Memorandum No. PWRS/HPD/E-1480/2007, dated 17.08.2015, issued by the Commissioner (Power), Government of Arunachal Pradesh, Shri. RubuOpo was declared senior to Shri. MiloPugang and accordingly, Shri. RubuOpo was placed at Sl. No. 7 and Shri. MiloPugang was placed at Sl. No. 8 in the final seniority list of the Executive Engineers under the Department of Hydro Power Development.

While the issue of seniority between Shri. RubuOpo and Shri. MiloPugang was rested as such, the former was promoted on officiating basis to the post of Superintending Engineer, vide order No. PWRS/HPD/E-1357/2005(Pt)/3625-36, dated 19.12.2016, issued by the Commissioner (Power), Government of Arunachal Pradesh. Hardly after 13 days, while the petitioner was functioning as Superintending Engineer, vide Memorandum dated 02.01.2017, issued by the Commissioner (Power), Government of Arunachal Pradesh,

restored the seniority of Shri. MilloPugang above Shri.RubuOpo. The contents of the memorandum are reproduced here below;

**“Government of Arunachal Pradesh
Department of Hydro Power Development
Itanagar**

No. PWRS/HPD/E-1480/2007 Dated Itanagar, the 2nd January, 2017

MEMORANDUM

Whereas, a representation was received from Shr. MilloPugang for restoration of seniority above Shri.RubuOpo in the rank of EE (E&M) with reference to laid down principle of seniority of a person absorbed after being on deputation. He stated that in the seniority list circulated vide No.PWRS/HPD/E-1480/2007/3915-22, dated 28/09/2012 he was placed above Shri. RubuOpo in the rank of EE (E&M). But in the seniority list circulated vide No. PWRS/HD/E-1480/2007/3254-62, dated 17/08/2015 he was placed below Shri. RubuOpo and copy of the same was not served to him by the authority. The matter was reviewed and the representation of ShriMilloPugang was meticulously and elaborately examined in context of the representation submitted earlier by ShriRubuOpo as per the prevailing rules in force.

Whereas, the case was referred to the Department of Administrative Reforms for examination as to whether the claim of the incumbent is genuine or not. The Department of Administrative Reforms after thorough examination has observed that the seniority of a person absorbed after being on deputation is to be fixed from the date of absorption or date of joining of the incumbent concerned to the post and further advised the department to fix the seniority of Executive Engineer (E&M) as per laid down principles of seniority circulated by Government. of India vide O.M. No. 20020/7/80 Estt. (D) dated 29/05/1986 and OM No.2011/1/2000 Estt.(D) dated 27/03/2001 which reads as under;

*“In the case of a person who is initially taken on deputation and absorbed later (i.e. when the relevant recruitment rules provided for “Deputation/Absorption), his seniority in the grade in which he/she is absorbed will normally be counted from the date of absorption. If he/she has, however, been holding already (on the date of absorption) the same or equivalent grade on regular basis in his/her parent department, such regular service in the grade shall also be taken into account in fixing his seniority, subject to the condition that he/she will be given seniority from **the date he/she has been holding the post on deputation.**”*

Whereas, records revealed that Shri.MilloPugang, AE(E) was appointed as EE(E&M) in the DHPD on deputation on 02/02/2009 vide Order No. PWRS/HPD/E-1357/2005/1052-62, dated 02/02/2009 and Shri. RubuOpo, AE(E)

was appointed as EE(E&M) in the DHPD on deputation on 27/02/2009 vide order No. PWRS/HPD/E-1357/2005/375-89 dated 27/02/2009. Subsequently both the officers were permanently absorbed as EE (E&M) in the Department of Hydro Power Development from the date of their initial appointment on deputation as EE (E&M) vide Govt. Order No. PWRS/HPD/E-1357/2005/2250-60 dated 16/05/2012. Accordingly Shri.MilloPugang is senior to Shri. RubuOpo in the grade of Executive Engineer (E&M) in the Department of Hydro Power Development on deputation as well as on absorption as per the laid down principles on seniority.

And therefore, the representation of Shri. MilloPugang EE(E&M) is hereby disposed off and seniority position is restored as under; the seniority of Shri. MilloPugang, EE (E&M) is placed above Shri. RubuOpo, EE (E&M) in the final seniority of EE(E&M) as per the laid down principles on seniority of persons absorbed after being on deputation circulated by Government of India. This supersedes seniority list of the Executive Engineer (E&M) circulated vide Government of AP Memo No. PWRS/HPD/E-1480/2007/3254-62 dated 17.08.2015. A corrected final seniority list in annexure is appended herewith.

Sd/-(MarnyaEte), IAS,
Commissioner(Power),
Government of Arunachal Pradesh, Itanagar.”

5. Being aggrieved by the above stated memorandum, Shri. RubuOpo filed the writ petition W.P.(C) No. 44(AP) of 2017 praying as follows;

“In the premise aforesaid the petitioner humbly prays that your Lordships may be pleased to call for the records, issue rule, calling upon the respondents to show cause as to why;

- i. A writ of certiorari should not issue to set aside and quash the impugned order dated 02.01.2017 issued by the Commissioner (Power) Government. of Arunachal Pradesh (Annexure No. at page) whereby the final seniority list of the Executive Engineer (EM) dated 17-08-2015 of the Hydro Power Deptt. Was modified and the petitioner was determined to be junior to respondent No.4;*
- ii. a writ of mandamus should not issue directing the State respondentsto make necessary correction in the order of permanent absorption, dated 16.05.2012 so as to ensure that the seniority of the petitioner in the feeder cadre is not disturbed thereby or in the alternative to give effect to such permanent absorption from the date of the order i.e. 16.05.2012 so as not to affect the seniority of the petitioner over respondent No.4;*

- iii. *a writ of mandamus should not issue to declare the action of the State respondents in transferring respondent No. 4 before transferring the petitioner on deputation to Hydro Power Deptt. was illegal, unfair and discriminatory;*

And cause or causes being shown and after hearing the parties make the rule absolute and/or pass such further orders(s) as your lordship may deem fit and proper.

- AND-

In the interim the operation of impugned order dated 02.01.2017 may be stayed and the State respondents may be directed not to disturb the officiating promotion of the petitioner to the post of Superintending Engineer.”

6. When the writ petition was moved, this Court had directed that status quo in the service of the petitioner be maintained. Being aggrieved by the order dated 19.12.2016, of the Commissioner (Power), Government of Arunachal Pradesh, promoting Shri. RubuOpo to the post of Superintending Engineer Shri.MilloPugang filed the writ petition W.P.(C) No. 86(AP) of 2017, challenging the promotion order on the ground that he is senior to Shri. RubuOpo and prayed as follows;

“In the premise aforesaid,it is most respectfully prayed that your lordship’s may most graciously be pleased to;

- iv. *Issue a writ of certiorari quashing the order dated 19.12.2016, issued by the Commissioner (Power), Government of Arunachal Pradesh, promoting the respondent No. 4to the post of Superintending Engineer (EM) in the Department of Hydro Power Department on officiating basis (Annexure-9).*
- v. *Issue a writ of mandamus directing the State respondents to consider the petitioner’s case for promotion to the post of Superintending Engineer either on regular or on officiating basis in accordance with law.*
- vi. *Issue a writ of certiorari quashing the office note of Chief Minister of Arunachal Pradesh, directing constitution of a Board to re-determine seniority, between the petitioner and the respondent No.4 in the cadre of Executive Engineer (EM) in the Department of Hydro Power Department.*
- vii. *Declare the Memo No.PWRS/HPD/E-1480/2007, dated 02.01.2017, issued by the Commissioner (Power), Government of Arunachal Pradesh holding the petitioner senior to the respondent*

No.4 in the cadre of Executive Engineer (EM) in the Department of Hydro Power Development, as legal and valid.

viii. Pass such order/orders as may be deemed fit and proper in the facts and circumstances of the case.

- AND-

Pending disposal of the petition, be further pleased to direct the State respondents to refrain from constituting any Board to re-determine seniority between the petitioner and the respondent No. 4 in the cadre of Executive Engineer (EM) so long as the said seniority dispute is pending adjudication of this Hon'ble Court."

7. Along with W.P.(C) No. 86(AP) of 2017, Shri. MilloPugang also filed an I.A. being I.A (WP) No. 18(AP) of 2017, praying for dismissal of the W.P.(C) No. 44(AP) of 2017 and for vacating the ex-parte interim order passed on 03.02.2017 on the ground of suppression of material facts. While the two writ petitions mentioned above were still pending, the Commissioner (Power), Government of Arunachal Pradesh, issued the Order No. PWRS/HPD/E-1480/2007, dated 14.07.2017, wherein and whereby Shri. RubuOpo who was promoted to the post of Superintending Engineer on officiating basis, vide order No. PWRS/HPD/E-1357/2005(Pt)/3625-36, dated 19.12.2016, was reverted to the post of Executive Engineer with immediate effect. The contents of the order are reproduced here below;

***Government of Arunachal Pradesh
Department of Hydro Power Development
Itanagar***

No. PWRS/HPD/E-1480/2007

Dated Itanagar, the 14th July, 2017

ORDER

Whereas, Shri. RubuOpo was promoted to the post of Superintending Engineer (EM) on officiating vide Order No. PWRS/HD/E-1357/2005(Pt)/3625-36, dated 19/12/2016 based on the prevailing seniority list dated 17/08/2015.

Whereas, based on the advice of Department of Administrative Reforms, GoAP, and the consistent with the laid down rules governing the seniority of persons absorbed after being on deputation vide DOPT OM No. 20011/1/2000 Estt (D) dated 27/03/2001, the seniority of Shri. MilloPugang was restored above

Shri. RubuOpo in the cadre of EE(EM), DHPD vide order No. PWRS/HPD/E-1480/2007/01-10 dated 02/01/2017. And the Hon'ble High Court vide its order dated 28.02.2017 in W.P.(C) No. 86(AP) of 2017 directed to maintain status quo pertaining to seniority list 02.01.2017.

Whereas, *Shri. RubuOpo filed a writ petition W.P.(C) No. 16(AP)/2017 in the High Court seeking relief, wherein relief was denied vide Court order dated 19/01/2017. The same was withdrawn and another writ petition of similar nature was then filed vide W.P.(C) No. 44(AP)/2017 wherein the Hon'ble High Court granted ex-parte relief to maintain status quo in respect of service of Shri. RubuOpo vide Court dated 03/02/2017.*

Whereas, *an I.A(WP) No. 18(AP)/2017 in W.P.(C) No. 44(AP)/2017 was filed by Shri. MilloPugang in the Hon'ble Court for vacating the interim order dated 03.02.2017 passed in W.P.(C) No. 44(AP)/2017 and the interim order protecting the officiating service of Shri. RabuOpo dated 03.02.2017 stands vacated vide order of the Hon'ble High Court dated 10.04.2017 passed in I.A(WP) No. 18(AP)/2017 in W.P.(C) No. 44(AP)/2017.*

Whereas, *a representation was received from Shri.MilloPugang for promoting him to the post of Superintending Engineer (EM) dated 11.04.2017.*

Whereas, *the case was referred to the Department of Law, Government of Arunachal Pradesh for advice. The Department of Law Government of Arunachal Pradesh, in view of the above observations, advised to consider the representation of Shri. MilloPugang.*

Now, therefore, *Shri.RubuOpo, who was promoted to the post of Superintending Engineer (EM), on officiating basis vide order No. PWRS/HPD/E-1357/2005(Pt)/3625-36 dated 19/12/2016 stands reverted to the original post of EE(EM)/SW(EM) and to the original place of posting as SW(EM) in the office of the Chief Engineer, Western Zone, Itanagar with immediate effect.*

Sd/-(AshishKundra), IAS,
Commissioner(Power),
Government of Arunachal Pradesh, Itanagar.”

8. On the same day by another order being No. PWRS/HPD/E-1480/2007/2979-89, dated 14.07.2017, Shri.MilloPugang, Executive Engineer was promoted to the post of Superintending Engineer with immediate effect. The contents of the said order are also reproduced here below;

**“Government of Arunachal Pradesh
Department of Hydro Power Development
Itanagar**

No. PWRS/HPD/E-1480/2007 Dated Itanagar, the 14th July, 2017

ORDER

Whereas, Shri. RubuOpo was promoted to the post of Superintending Engineer (EM) on officiating vide Order No. PWRS/HD/E-1357/2005(Pt)/3625-36, dated 19/12/2016 based on the prevailing seniority list dated 17/08/2015.

Whereas, based on the advice of Department of Administrative Reforms, GoAP, and the consistent with the laid down rules governing the seniority of persons absorbed after being on deputation vide DOPT OM No. 20011/1/2000 Estt (D) dated 27/03/2001, the seniority of Shri. MilloPugang was restored above Shri. RubuOpo in the cadre of EE(EM), DHPD vide order No. PWRS/HPD/E-1480/2007/01-10 dated 02/01/2017. And the Hon'ble High Court vide its order dated 28.02.2017 in W.P.(C) No. 86(AP) of 2017 directed to maintain status quo pertaining to seniority list 02.01.2017.

Whereas, Shri. RubuOpo filed a writ petition W.P.(C) No. 16(AP)/2017 in the High Court seeking relief, wherein relief was denied vide Court order dated 19/01/2017. The same was withdrawn and another writ petition of similar nature was then filed vide W.P.(C) No. 44(AP)/2017 wherein the Hon'ble High Court granted ex-parte relief to maintain status quo in respect of service of Shri. RubuOpo vide Court dated 03/02/2017.

Whereas, an I.A(WP) No. 18(AP)/2017 in W.P.(C) No. 44(AP)/2017 was filed by Shri. MilloPugang in the Hon'ble Court for vacating the interim order dated 03.02.2017 passed in W.P.(C) No. 44(AP)/2017 and the interim order protecting the officiating service of Shri. RubuOpo dated 03.02.2017 stands vacated vide order of the Hon'ble High Court dated 10.04.2017 passed in I.A(WP) No. 18(AP)/2017 in W.P.(C) No. 44(AP)/2017.

Whereas, a representation was received from Shri. MilloPugang for promoting him to the post of Superintending Engineer (EM) dated 11.04.2017.

Whereas, the case was referred to the Department of Law, Government of Arunachal Pradesh for advice. The Department of Law Government of Arunachal Pradesh, in view of the above observations, advised to consider the representation of Shri. MilloPugang.

Now, therefore, the Governor of Arunachal Pradesh is pleased to order promotion of Shri. MilloPugang, EE (E&M) to the post of Superintending Engineer (EM), Department of Hydro Power Development, in the scale of pay PB- Rs. 37400-67000 plus Grade pay Rs. 8700/- p.m. (pre-revised), plus other allowances, as admissible under rules from time to time, in the interest of public service against the existing vacancy with immediate effect. On being promoted

as Superintending Engineer (EM), Shri.MilloPugang is posted in the office of the Chief Engineer (Western Zone) as SSW(EM) in the interest of public service. The other terms and conditions which are not specified herein shall be governed by the terms and conditions and other relevant rules and orders of the Government as are in force.

Sd/-(AshishKundra), IAS,
Commissioner(Power),
Government of Arunachal Pradesh, Itanagar.”

9. Aggrieved by the said two orders by which he was reverted to the post of Executive Engineer and Shri. MilloPugang was promoted to the post of Superintending Engineer. Shri. RubuOpo filed W.P.(C) No. 573(AP) of 2017 praying as follows;

“In the premise aforesaid your petitioner humbly prays that your lordships may be pleased to call for the records, issue rule calling upon the respondents to show cause as to why;

- i. A writ of certiorari should not issue to set aside and quash the impugned orders dated 14-07-2017 issued by the Commissioner (Power) Government. of Arunachal Pradesh (Annexure No. IX and X) whereby the petitioner has been reverted to Executive Engineer and the respondent No. 2 has been promoted in place of petitioner as Superintending Engineer in most illegal and arbitrary manner.*
- ii. a writ of mandamus should not be issued directing the respondent No. 1 to rescind or forbear from acting that tends to interfere with administration of justice by this Hon'ble Court.*

And after such cause or causes that may be shown and after hearing the same, perusing the records make the rule absolute and or pass such further orders(s) as your lordship may deem fit and proper.

- AND-

In the interim pending disposal of the writ petition the operation of impugned order dated 14-07-2017 may be stayed and the State respondent may be directed not to disturb the service condition of the petitioner to the post of Superintending Engineer.”

10. From the submission of both the learned counsels what one can made out is that the dispute between the two persons i.e. Shri. RubuOpo and Shri.MilloPugang is on seniority. Once this issue is settled all the other issues raised in the three writ petitions and the

I.A. would naturally be resolved. Therefore, the issue that needs to be decided is whether Shri. RubuOpo who was senior to Shri.MilloPugang as per their first entry into Government service i.e. Junior Engineer should be senior or Shri. MilloPugang who was first appointed as Executive Engineer in the Department of Hydro Power Development which is a new Department should be senior to Shri. RubuOpo who was appointed to the same post of Executive Engineer 19 days after the appointment of Shri.MilloPugang.

11. The case of Mr. RubuOpo as submitted by Mr. I. Choudhury, learned Sr. counsel is summarized as follows;

(i). That in spite of the fact that final seniority list in the cadre of Executive Engineer was published as far back as on 17.08.2015, the Government, in the name of examining the representation of Sri. MilloPugang, reversed the seniority position and placed Sri. MilloPugang above Sr. RubuOpo. Although such an exercise of re-examination had a clear potential of adversely affecting Sri. RubuOpo, neither was he put to any notice nor was he given any opportunity of being heard before undertaking such impugned action. And strangely, two Government of India O.Ms.dated 29.05.1986 and 27.03.2001, which have never been adopted or circulated or published in the official gazette were relied upon to confer the benefit to Sri. MilloPugang.

(ii). That the respondent authorities could not have relied on the aforesaid two memorandums to confer seniority upon Sri. MilloPugang without adopting the same. This aspect of the matter gains further significance from the fact that when the Government deemed it appropriate to adopt the Arunachal Pradesh Power Engineering Service Rules, 1993, which is the Government of Arunachal Pradesh's own Rules, an executive instruction to such effect was issued on 04.04.2005 expressly notifying adoption of the said Rules of 1993. Such being the circumstances, Central Government O.Ms which are totally alien to the State of Arunachal Pradesh could not have been

applied/relied on without the same being expressly adopted and such adoption being notified. Fairness demanded that the contents of the memorandum ought to have been made known to the petitioner before absorbing his services so that he could have had the option of either accepting or rejecting the deputation. That by having relied on the said memorandums and to deny seniority to the petitioner is not permissible. In the case of **Sub-InspectorRoopal-versus- Lt. Governor** reported in **(2000) 1SCC 644**, para-19, the Hon'ble Supreme Court expressed a similar view.

(iii). That the respondent authorities granted seniority to Sri. MilloPugang on the basis that he had been appointed on deputation prior to i.e. Sri.RubuOpo. However, the authorities failed to take note of the fact that such appointment on deputation was not based on any selection process and was, admittedly, by way of pick and choose method, hence, rendering the same fortuitous. It is a settled principle that the determination of seniority must be based on some principles which are just and fair. The same cannot be based on a fortuitous circumstance. Moreover, both the incumbents being brought on deputation in admittedly fortuitous circumstances, the general principle of determination of seniority on the basis of length of service will have no application in the instant case. As such, in the present case the only objective principles that can be adopted for just and fair determination of seniority are; (i) seniority in the parent department – RubuOpo has been all along senior in the parent department, (ii) Age—admittedly, RubuOpo is senior in age than MilloPugang; (i) **(2011) 8 SCC 115**, para- 18 to 25, (ii) **2015 (2) GLT 971**, para-12.

(iv). That Rule-10 of the Arunachal Pradesh Power Engineering Service Rules, 1993 relates to recruitment to the post of Executive Engineer. The said rule provided that only those Assistant Engineers who have completed at least 8 years of regular service in the grade are eligible to be promoted as Executive Engineers.

Sub-rule(ii) of Rule-10 provides that if no eligible person is available, the post of Executive Engineer may be filled up by transfer on deputation from amongst the officers holding the post of Assistant Engineer on regular basis. Sub-rule (ii) of Rule 10 being a proviso to the main rule must be limited to the subject matter of the enacting clause. It cannot run counter to the enacting clause of which categorically provides for 8 years of regular service in the grade of Assistant Engineer to be eligible for promotion as Executive Engineers. It is a settled rule of construction that a proviso must prima-facie be read and considered in relation to the principal matter to which it is a proviso; (i) **AIR 1991 SC 1538**, para-6, (ii) **AIR 1959 SC 713**, para-9, 10.

That in the instant case Sri.MilloPugang was regularly promoted to the post of Assistant Engineer on 15.07.2004, as such, on the date of his appointment on deputation as Executive Engineer i.e. on 02.02.2009, he had not even attained the qualifying service of 6 years in the grade of Assistant Engineer. In other words, since Sri.MilloPugang had not completed 6 years of regular service in the cadre of Assistant Engineer, he was not eligible to be appointed on deputation in the Department of Hydro Power Development. Hence, his appointment on deputation de hors the recruitment rules, and therefore, illegal. On the other hand, Sri.RubuOpo had completed more than 6 years of regular service in the grade of Assistant Engineer when he was appointed on deputation in the post of Executive Engineer. It is a settled principle of service jurisprudence that illegal appointees belong to a different stream and they cannot claim seniority over validity appointed persons; (i) **1987 Supp SCC 481**, para-19, (ii) **2008(4) GLT 7**, para-78.

(v). That while the issue of seniority between the two individuals was pending for adjudication before this High Court, the respondent authorities in a most illegal and arbitrary manner passed the orders dated 14.07.2017, reverting Sri. RubuOpo from the post of

Superintending Engineer to the post of Executive Engineer and promoting Sri.MilloPugang to the post of Superintending Engineer in officiating capacity. When the Court is examining the issue of inter-se seniority, the order dated 14.07.2017, which have been challenged by Sri. RubuOpo in W.P.(C) No. 573(AP) of 2017, ought not to have been passed since the same amounts to a decision on the seniority dispute. It has been held by a Division Bench of this High Court in a matter that when the Court is in seisin of a matter, an administrative authority cannot start a parallel proceeding on the very same subject matter at its own ipse dixit and record a finding on the issues. If such an action is taken, the same will amount to directly interfering with the dispensation of justice by the Courts of law; (i) **(2014) 4 GLT 3**, para-15.

(vi). That the concept of equivalence of post was examined in the Roopalcase in the context of the challenge before the Supreme Court. In Roopal(supra) the context of the examination was the rights of the originally recruited Sub-Inspectors in Delhi Police vis-à-vis subsequently transferred and absorbed employees. Therefore, the determination with regard to equivalence of post cannot operate as ratio decidendi in the instant case, since both the two individuals were serving as Assistant Engineer in the parent Department and subsequently transferred on deputation and absorbed in a higher cadre of Executive Engineer in the Department of Hydro Power Development. A judgment has to be understood in the context in which it is rendered; (i) **(2006) 1 SCC 368**, para- 9 to 11.

12. In contra, the case of Shri. MilloPugang as submitted by his learned Sr. counsel, Mr. P.K. Tiwari are as follows;

(i). That the petitioner has not made any prayer challenging the eligibility of Sri. MilloPugang to be sent on deputation to the higher post of Executive Engineer (E&M) in the Hydro Power Development Department. The prayer of Sri. Rub Opo is limited to seeking a

declaration that action of State to transfer Sri. MilloPugang on deputation prior to the petitioner, is illegal.

(ii). That Sri. RubuOpo has no legal right to be transferred on deputation; (i) **InduShekhar Singh** –versus- **State of U.P.**, reported in **(2006) 8 SCC 129**, para-19, (ii) **Union of India** –versus- **Ramakrishnan**, reported in **(2005) 8 SCC 394**, para-32. Hence, he also had no legal right to make any claim in respect of deputation of his colleague. Such issues are exclusively within the discretion of parent and borrowing department and cannot be subjected to judicial scrutiny.

(iii). That non-existence of any legal right to be transferred on deputation, necessarily follows that one also has no legal right to choose the day of one's transfer on deputation. As such, Sri.RubuOpo cannot demand that he ought to have been sent on deputation prior to Sri. MilloPugang. That the seniority of Sri. RubuOpo over Sri.MilloPugangin a lower cadre of Junior Engineer in the parent Department of Power, does not confer upon him any legal or fundamental right to demand that he should be transferred on deputation prior to the later.

(iv). That if Sri. RubuOpo was aggrieved by transfer of Sri. MilloPugang on deputation to the higher post of Executive Engineer (E&M) in the Department of Hydro Power Development before his transfer on deputation, he had the option of refusing to go on deputation after the later and to remain in his parent Department of Power as Assistant Engineer (E). On the contrary, he had chosen to accept his appointment to a new post by way of transfer on deputation after the appointment of Sri. MilloPugang.

(v). That Sri. RubuOpo has no legal right to seek change of date of absorption of Sri. MilloPugang in the post of Executive Engineer (E&M) in Hydro Power Development Department primarily for achieving the objective of maintaining his seniority over the later in the parent department of power. When he cannot choose the date of

his transfer on deputation or the date of his absorption in the deputation post, it logically follows that he has no corresponding right to demand any change in the date absorption of Sri. MilloPugang as the same is the exclusive preserve of the State.

(vi). That Sri. RubuOpo has prayed for a writ of certiorari for quashing the order dated 02.01.2017, holding Sri. MilloPugang senior to him in the cadre of Executive Engineer (E&M) in the Department of Hydro Power Development which resulted in the modification of seniority list of Executive Engineer (E&M), dated 17.08.2015, in the Hydro Power Department. When rules are silent on fixation of inter-se seniority of those who were brought on deputation from a lower cadre of parent department to a higher cadre of borrowing department and were later absorbed in the higher cadre, the guiding principles for fixation of inter-se seniority in such cases would be the judges made law, i.e. the judicial precedence, and the practice of following the Office Memorandums of the Government of India as prevalent in the State of Arunachal Pradesh.

(vii). That the right to get one's seniority determined in a cadre in a particular manner flows from a rule governing the issue of seniority in such a cadre. On rule being silent, the right to get one's seniority determined in a particular manner is not a legal right but merely a civil right; (i) **Bimlesh Tanwar**—versus— **State of Haryana**, reported in **(2003) 5 SCC 604**, para-49, (ii) **Prafulla Kr. Das** – versus— **State of Orissa**, reported in **(2003) 11 SCC 614**, para-33. In the present case, rules are silent about fixation of seniority of a deputationist on absorption. Hence, the petitioner has no legal right to get his seniority determined in a particular manner.

(viii). That Sri. RubuOpo at no point of time challenged the eligibility of Sri. MilloPugang to be sent on deputation to a higher post of Executive Engineer in the Department of Hydro Power Development. Even in the present writ petition there is no specific challenge to the eligibility of Sri. MilloPugang for appointment by way of absorption in

the higher post of Executive Engineer in the Department of Hydro Power Development. Averments of such nature have been made only in the rejoinder affidavit of the petitioner without any supporting prayer in the writ petition. Even otherwise such a challenge is barred by time as more than seven years have passed since 02.02.2009 when Sri. MilloPugang was sent on deputation to the post of Executive Engineer in the Department of Hydro Power Development.

That from the plain reading of the statutory provisions especially Rule 10(ii) of the Arunachal Pradesh Power Engineering Service Rules, 1993, it is evident that Sri. MilloPugang was eligible for deputation to the higher post of Executive Engineer in the Department of Hydro Power Development.

(ix). That Sri. RubuOpo has not prayed for any direction to count his past services as Assistant Engineer or Junior Engineer in his parent Department of Power towards his seniority in the cadre of Executive Engineer in the Department of Hydro Power Development. This is because his past services in the parent department were not in the grades/cadres equivalent to the cadre of Executive Engineer but in the lower grade/cadre. Hence, in terms of the principles of law laid down in the cases of **K. Madhavan** (supra), **Roopal**(supra), **InduShekhar** (supra), **D.P.Singh** (supra) and **Tamil Nadu Rural Development Engineers Association** (supra), the petitioner is not entitled to get the benefit of the past services rendered by him in his parent department. It, therefore, logically follows that the seniority of Sri. RubuOpo in the cadre of Executive Engineer in the Department of Hydro Power Development has to be counted independently of the past services rendered by him in his parent Department of Power. In such a situation, length of service rendered in the cadre of Executive Engineer or the effective date of absorption in the cadre of Executive Engineer can only be the sole basis for determining the seniority of Sri. RubuOpo and Sri.MilloPugang in the cadre of Executive Engineer.

In view of the settled law, since Sri.RubuOpo has no legally enforceable right to get his past service in the lower cadre of Junior engineers/Assistant Engineer in the Department of Power, counted towards his seniority in the higher cadre of Executive Engineer in the Department of Hydro Power Development, it logically follows that his seniority over Sri. MilloPugang in the Department of Power in the lower cadre cannot be a factor to make him senior to the later in the higher cadre of a different department. Hence, the reliefs sought for by Sri. RubuOpo are devoid of legal foundation and liable to be rejected.

13. After having heard the learned counsel and having considered their submissions, this Court has come to the following conclusions;

There is no dispute that Sri. RubuOpo and Sri.MilloPugang were appointed initially as Junior Engineer in the department of Power, Government of Arunachal Pradesh and Sri. RubuOpo was placed higher in seniority in view of the merit list in which he was higher than Sri. MilloPugang. However when they had joined the new department of Hydro Power Development which was carved out from department of Power, Sri.MilloPugang was appointed earlier in time as Executive engineer than Sri. RubuOpo. There is no doubt that if they had continued in the same department i.e. Department of power, Sri. RubuOpo would have continued to be senior to Sri. MilloPugang. However, when they had joined a different department they are borne afresh in a new cadre of a new department, therefore, it would defy every logic if Sri. RubuOpo is placed higher in seniority than to Sri. MilloPugang just because he was senior to him in their parent department. If there is a recruitment rules or Government memorandum or notification which provides for such arrangement or placement in seniority it could have been otherwise. However, in this case, admittedly there is no recruitment rules or memorandum or Government policy which provides as such. Therefore, as stated

above, it is natural that the person who was borne first in the new cadre has to be senior to the one borne later.

It is settled principle of service jurisprudence that one's seniority cannot be counted earlier than the date on which he or she is borne in the cadre. In other words, one's seniority in service can be counted only from the date on which he or she is borne in the cadre. Had it been that the Engineers in the department of Power and the Engineers in the Hydro Power Development are joint cadre or the same cadre the situation would have been otherwise. But the two cadres are distinct from each other and they are of two different departments. Therefore, there cannot be continuity in the seniority from the department of Power to the department of Hydro Power Development. None of the parties had placed any document showing that the two departments are one and the same and the Engineers in the two departments belong to a joint cadre or same cadre.

In the case of **State of Maharashtra -versus- Purshottam& Others**, reported in **(1996) 9 SCC 266**, the Hon'ble Supreme Court had stated at para-5 of the same judgment that it is too well settled that services rendered by an employee in one cadre cannot be taken into account for determining the seniority in another cadre unless by any rules of seniority this privilege is conferred. The Court went on further and stated that normal rule of seniority is the date of entry into the cadre. From this it can safely be concluded that, since in this case the two cadres are distinctly different from each other and belong to distinctly different departments, the services rendered by the two individuals in their earlier service in the department of Power cannot be brought into the new cadre i.e. in the department of Hydro Power Development.

In view of the above, it is concluded that Sri. RubuOpo cannot be senior to Sri. MilloPugangin the cadre of Executive Engineer in the department of Hydro Power Development. Therefore, the memorandum No.PWRS/HPD/E-1480/2007, dated 02.01.2017, issued by the

Government of Arunachal Pradesh, department of Hydro Power Development by which seniority of Sri.MilloPugang above Sri.RubuOpoin the post of Executive Engineer was restored and the order No. PWRS/HPD/E-1480/2007, dated 14.07.2017, issued by the Government of Arunachal Pradesh, department of Hydro Power Development in which promotion of Sri.RubuOpo to the Superintending Engineer (E&M) on officiating basis vide order No. PWRS/HPD/E-1357/2005(Pt)/3625-36, dated 19.12.2016, was reverted to the post of Executive Engineer (E&M)/SW(EM),and the order No. PWRS/HPD/E-1480/2007, dated 14.07.2017 issued by the Government of Arunachal Pradesh, department of Hydro Power Development by which Sri. MilloPugang, Executive Engineer (E&M) was promoted to the post of Superintending Engineer (E&M) in the department of Hydro Power Development arenot interfered with.

The three writ petitions and the connected I.A are accordingly disposed of.

The interim order or order(s) passed earlier stands vacated.

JUDGE

Kevi