

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

**ITANAGAR PERMANENT BENCH**  
**(NAHARLAGUN)**

**WP(C)640(AP)2016**

**Shri Tangir Tamut,**

S/o Late Talut Tamut, working as Senior Economic Investigator(SEI) (Officiating), Office of Director, Rural Development, Govt. of Arunachal Pradesh Itanagar and permanent resident of Balek(Sibo) Village, P.O/P.S Pasighat, District East Siang Arunachal Pradesh.

.....*Petitioner*

**- Versus -**

- 1.** The State of Arunachal Pradesh represented by the Chief Secretary, Government of Arunachal Pradesh, Itanagar.
- 2.** The Commissioner, Rural Development, Govt. of Arunachal Pradesh.
- 3.** The Director Rural Development, Government of Arunachal Pradesh, Itanagar.
- 4.** Smti. Yaluk Ringu, D/o Lt. Tangu Ringu, presently serving as Joint BDO at Ruksin CD-Block, P.O Pasighat, District East Siang, Arunachal Pradesh.

.....*Respondents*

**Advocates for the petitioner:**

**Ms. N. Danggen**  
**Ms. O. Duggong**

**Advocates for the respondents:**

**Ms. R. Basar (Govt. Advocate)**  
**Shri. T. Bayor(SC, RD)**

**B E F O R E**  
**HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI**

**Date of hearing : 24.05.2019**

**Date of Judgment & order : 24.05.2019**

**JUDGMENT AND ORDER(Oral)**

Heard Ms. N. Danggen, learned counsel for the petitioner. I have also heard Ms. R. Basar, learned Jr. Govt. Advocate for the respondent No. 1 and Shri T. Bayor, learned Standing counsel, Rural Development Department who appears for respondents No. 2, 3 & 4.

2. The facts involve a chequered history. The petitioner was substantively appointed in the establishment of the Deputy Commissioner and was holding the post of Upper Division Clerk (UDC). Vide an order dated 08.09.1989 on the recommendation of the Departmental Promotional Committee (DPC), the petitioner was deputed to the present Department of Rural Development as a Progress Assistant. Subsequently, vide an order dated 04.03.1999, the services of the petitioner along with others were regularised/absorbed in the borrowing Department i.e. Rural Development Department.

3. In the common seniority list of Progress Assistant and posts of the same cadre, the petitioner was shown against the Serial No. 42 which according to the petitioner was erroneous. Accordingly, the petitioner had approached this Court by filing WP(C) No.265(AP)2010. This Court vide order dated 06.06.2012 had disposed of the writ petition by directing consideration of the case of the petitioner as it was the admitted position that the seniority list was yet to be finalised. Pursuant to such direction, the seniority list was finalised and the petitioner was placed against the Serial No. 1. The post of Progress Assistant is the feeder post to the post of Joint Block Development Officer(Jt. BDO). Though persons below the petitioner were promoted

to the post of Jt. BDO and even to the next higher cadre of BDO, the petitioner was left out, constraining her to file a second writ petition before this Court being WP(C)299(AP)2014. During the pendency of the said writ petition, vide order dated 31.07.2015, the petitioner was however, promoted to the post of Senior Economic Investigator(SEI) which is an equivalent cadre to the post of Jt. BDO. However, the said promotion was on officiating basis.

**4.** In the meantime, WP(C)299(AP)2014 was heard and this Court vide order dated 17.12.2015 had directed for consideration or promotion to the post of joint BDO(SIC). Since there was a factual error in the said judgment, the petitioner filed an application for review being Review Petition No. 01(AP)/2016 which was disposed of vide order dated 22.04.2016 by directing consideration of the case of the petitioner to give retrospective effect to the promotion impugned as Jt. BDO. Pursuant to such directions, the petitioner filed representation before appropriate authorities. However, vide the impugned order dated 23.09.2016 the representation has been rejected. It appears that the DPC, in the meantime had a meeting on 26.08.2016 whereby, the petitioner's claim was rejected. Being aggrieved, the present writ petition has been filed.

**5.** Ms. N. Danggen, learned counsel for the petitioner submits that the impugned orders would reflect clear non-application of mind, not only to the facts and circumstance but also to the directions of this Court given from time to time. The fact that the petitioner has been regularised in her service as a Progress Assistant vide the order dated 04.03.1999 coupled with the direction of this Court to give retrospective effect to such date of absorption from the date of initial entry i.e. in the year 1989 had been overlooked by the DPC, causing immense prejudice to the petitioner. It is submitted that the petitioner being declared as the senior most in the Progress Assistant in the list dated 22.04.2014, there cannot be any reason for depriving her from her legal entitlement as such list had attained finality.

**6.** Shri T. Bayor, learned Standing counsel for the Department submits that the rejection appears to be justified because of the fact that the present posting of the petitioner as Jt. BDO is Officiating in nature and unless such posting is given permanence/regularised, the case of the petitioner cannot be considered. It is submitted that in view of such factual position, no fault can be attributed either to the Department or the DPC. Learned counsel however fairly submits that if a direction is given to treat the promotion of the petitioner to the post of joint BDO as regular, the petitioner would be entitled to further benefits in accordance with law.

**7.** Rejoining the submission, Ms. Danggen, learned counsel contends that when persons admittedly junior to her in the feeder cadre are in the cadre of BDO, at least here client while being promoted to such post should be given retrospective benefits from such date when her juniors were promoted.

**8.** Rival contentions of the learned counsels had been duly considered and the materials placed before this Court have been carefully examined.

**9.** What is crucial in the determination of the issue involved in this case is that not only the deputation of the petitioner to the Rural Development Department had been regularised/ permanently absorbed, such absorption was also directed to be given retrospective effect by this Court from the year 1989. If the seniority is assigned to the petitioner which also appears to be done while preparing the seniority list dated 22.04.2014, the petitioner being deprived from the benefits of promotion in service would amount to injustice. A Government Servant has a cherished dream to be promoted after being eligible and if such expectations are not fulfilled, the impetus to perform their duties is also adversely affected.

**10.** The directions of this Court coupled with the earlier order of permanent absorption does not seem to be consistent with the present

arrangement of designating the petitioner as Senior Economic Investigator on 'Officiating' basis. And it is for this Officiating arrangement, it appears that the petitioner has been deprived of further promotional benefits.

**11.** Since the seniority of the petitioner is not in dispute, this Court is of the opinion that the rejection order dated 23.09.2016 and the recommendation of the DPC dated 26.08.2016 are liable to be interfered with which is accordingly done. Consequently, it is directed that the Department will initiate a review DPC to consider the case of the petitioner for promotion in accordance with law. Such DPC is directed to be constituted within a month from the date of receipt of a certified copy of this order.

**12.** In absence of any objectionable materials placed before this Court and no issue being raised as regards her legality, as and when the petitioner is given the benefit of promotion after being recommended by the DPC, she will be entitled to notional benefits from the date when her juniors were appointed to the post of BDO. Though the prayer was made to give retrospective effect in all respect, this Court being conscious of the fact that no services have been rendered on the higher post, the financial benefits, as such, cannot be given and it is only the benefit which are notional which the petitioner will be entitled to. It is however made clear that such notional benefit would include fitment in the proper scale and other consequential benefits.

**13.** The writ petition is **disposed of**.

**JUDGE**

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