

IN THE GAUHATI HIGH COURT  
THE HIGH COURT OF ASSAM NAGALAND MEGHALAYA MANIPUR  
TRIPURA MIZORAM AND ARUNACHAL PRADESH.

**PRESENT**  
**THE HON'BLE MR. JUSTICE I.A.ANSARI**  
**THE HON'BLE MR. JUSTICE B.D.AGARWAL**

**WRIT APPEAL NO. 35 (AP) OF 2008**

Shri Tayi Jeram,  
S/O Late Taru Jeram,  
permanent resident of  
Pissa Village, PO-Japorijo,  
Upper Subsansiri District,  
Arunachal Pradesh,  
Present residing at 'E'Sector,  
Naharlagun, District-Papum Pare,  
Arunachal Pradesh.

...Appellant

-Vs-

1. The State of Arunachal Pradesh  
Represented through the Chief Secretary,  
Government of Arunachal Pradesh,  
Itanagar.
2. The Secretary(Legal Metrology and  
Consumer Affairs),  
Government of Arunachal Pradesh,  
Itanagar.
3. The Controller,  
Department of Legal Metrology and  
Consumer Affairs,  
Government of Arunachal Pradesh,  
Itanagar.
4. Shri Gorik Dirchi,  
Deputy Controller of Legal Metrology,  
Government of Arunachal Pradesh,  
Naharlagun.
5. Shri C.C. Singpho,  
Hon'ble Minister, Civil Supply and  
Consumer Affairs, Govt. of Arunachal  
Pradesh, Itanagar.

6. Shri Gojen Gadi, Hon'ble MLA,  
Residing at 'C'Sector' Itanagar,  
Near Marina Gas Agency, P.O.  
Itanagar, District Papum Pare,  
Arunachal Pradesh.

...Opposite parties.

For the Appellant : Mr.T.Son, Advocate

For the State Respondents. : Mr. R.H.Nabam, Sr.Govt.Advocate.

For the private Respondent. : Mr. K Jini,Advocate.

Date of hearing and judgment : **28.08.2009**

### **JUDGMENT AND ORDER(oral)**

Ansari,J/

Heard Shri T.Son, learned counsel for the appellant, and Mr. R.H.Nabam, learned State counsel. Heard also Mr.K.Jini, learned counsel for the respondent No.4.

2. With the help of this Writ Petition made under Article 226 of the Constitution of India, the appellant has put to challenge the order, dated 3.9.2007, issued by the Government of Arunachal Pradesh, on the recommendation of the Departmental Promotion Committee (DPC), whereby private respondent No.4,namely, Shri Gorik Dirchi, the then Deputy Controller of Legal Metrology, has been promoted to the post of Controller, Department of Legal Metrology & Consumer Affairs, though the present appellant was senior to the private respondent No.4.

3. The appellant's grievance, in the writ petition, was that by according promotion, as stated hereinbefore, to the respondent no.4, the appellant had been illegally and unjustifiably debarred from promotion. It was also the grievance of the appellant, in his

writ petition, that the State Government had already issued an order, dated 4.8.2000, regulating and channelising the reporting, reviewing and acceptance of the ACRs of the officers in the Department of Civil Supplies and Consumer Affairs, Government of Arunachal Pradesh. Under the order, dated 4.8.2000, aforementioned, the Reporting Authority in respect of Deputy Controller is the Controller of the said Department; the Reviewing Authority is the Commissioner/ Secretary of the Department concerned and the Accepting Authority is the Chief Secretary to the Government of Arunachal Pradesh. By, yet another order, dated 20.6.2006, the hierarchy of Officers for writing ACRs of Dy. Controller of C.S & C.A. Department, as prescribed by order, dated 4.8.2000, was reiterated. It was the further grievance of the appellant, in the writ petition, that the ACRs of the private respondent had been accepted by the Minister concerned instead of the Chief Secretary and, hence, on the basis of such ACRs, no promotion could have been accorded to the respondent No.4 and, therefore, the order, dated 3.9.2007, which is passed on the recommendation of the 'DPC', be set aside and quashed.

4. By the judgment and order, dated 22.7.2008, a learned Single Judge of this Court has dismissed the writ petition. Aggrieved by dismissal of his writ petition, the writ petitioner is now before us.

5. While considering the present appeal, it may be noted that according to the Office Memorandum, dated 24.01.1995, the Reporting Officer of the Deputy Controller was the Commissioner/Secretary of the Department concerned, the Reviewing Authority was the Chief Secretary of the State and the Accepting Authority was the Minister of the State. Thereafter, the order, dated 4.8.2000, was published, as already indicated above, on 4.8.2000, prescribing a new channel of reporting, reviewing and accepting authorities of the ACRs. The policy, as prescribed by

order, dated 4.8.2000, aforementioned, was reiterated in the order, dated 20.6.2006, aforementioned.

6. Though, we notice that the learned Single Judge has proceeded on the basis that the policy guidelines, with regard to writing of the ACRs, as covered by Office Memorandum, dated 24.1.1995, was notified by publishing the same in the Official Gazette, it, now, transpires that the said Office Memorandum was, in fact, not notified in the official gazette. Be that as it may, the Government had the authority to change the guidelines or policy as regards writing of the ACRs. This apart, the fact that the Government did have the power to prescribe a new channel of reporting, reviewing, and accepting authorities of ACRs was never in dispute in the writ petition and is, in fact, not under challenge in this appeal.

7. What, therefore, emerges from the above discussion is that in terms of the order, dated 4.8.2000, as reiterated on 20.6.2006, the reporting authority, in respect of a Deputy Controller, is the Controller, the Reviewing Authority, in respect of the Deputy Controller, is the Secretary / Commissioner of the Department concerned and the Accepting Authority is the Chief Secretary of the State.

8. The ACRs, with which, we are concerned, are for the period from 2003 to 2007. Clearly, therefore, the ACRs of both the appellants as well as the private respondent could not have been accepted by the Minister concerned inasmuch as the Accepting Authority, in terms of the guidelines, issued by orders, dated 4.8.2000 and 20.6.2006, was the Chief Secretary of the State. Without acceptance of the remarks/gradings of an officer by a competent authority, any decision taken, for promotion on the basis of such acceptance of remarks or grading, would be wholly without jurisdiction. Considered thus, it becomes clear in the

present case, no competent authority has yet accepted the ACRs of the appellant and the respondent No.4 and, in the absence of valid acceptance of remarks given by the Reporting and the Reviewing Authority, no ACR could be said to have been legally finalised. The DPC, thus, failed to take into account all the factors, which are relevant for the purpose of taking a decision in the matter of promotion of a person. In fact, the DPC excluded from its consideration the factors, which were relevant. In the present case, there can be no doubt that the illegalities inherent in ACRs, in question, were not only relevant, but also unavoidable factors, which ought to have been taken into consideration by the DPC. In the case at hand, the DPC has not been able to consider validly prepared ACRs inasmuch as the ACRs, in question, had not been accepted by a competent and appropriate authority. In the absence of valid ACRs, consideration and recommendation of respondent No.4 for promotion by the DPC cannot be maintained.

9. Mr. K Jini, learned counsel, appearing on behalf of the private respondent No.4, has referred to the case of Union of India -Vs- S.K.Goyal, reported in AIR 2007 SC 1199. We find that the reference to the case of S.K.Goyal (supra) is wholly misplaced inasmuch as in S.K.Gooyal (supra), all material factors were considered by the DPC; whereas, in the present case, we are faced with a situation, wherein a decision has been arrived at by the DPC by taking into account, amongst others, the ACRs of the officers concerned, though the ACRs were incomplete as indicated hereinabove. Situated thus, we do not find any justification for maintaining the recommendations made by the DPC in favour of the private respondent and the consequential order, dated 3.9.2007, whereby promotion has been granted to the respondent No.4.

10. Considering the matter in its entirety and in the interest of justice, the appeal is allowed. The dismissal of the writ petition, by

the impugned judgment and order under appeal, is hereby set aside. We also set aside and quash the order, dated 3.9.2007, whereby the respondent No.4 has been promoted.

11. We direct that the State-Respondents shall get the ACRs of the officers concerned including the present appellant and the respondent No.4 herein completed by obtaining afresh remarks from the competent Accepting Authority within a period of 2(two) months from today and steps shall, thereafter, be taken to place the cases of the officers concerned for re-consideration by the DPC. It is further directed that the DPC shall complete its exercise, as regards promotion to the post of 'Controller', within a period of six weeks from the date of placing of all relevant materials before it for consideration.

**JUDGE**

**JUDGE**

Nandi