

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

**ITANAGAR BENCH**

**W.P (C) No. 273(AP) 2008**

**Shri. Aumkar Nath Rai**

S/o. Shri. Kanala Rai,  
Resident of Tawang,  
District-Tawang, Arunachal Pradesh.

..... **Petitioner**

***-Versus-***

1. The State of Arunachal Pradesh  
Represented by the Secretary  
Government of Arunachal Pradesh, Itanagar
2. The Director (Urban Development),  
Government of Arunachal Pradesh, Itanagar
3. Shri. Parmanand,  
Urban Programme Officer, Roing,  
District Lower Dibang Valley, Arunachal Pradesh.

..... **Respondents**

**BEFORE**

***HON'BLE MR. JUSTICE P.K. SAIKIA***

For the petitioner	: Mr. T. Michi, : Mr. D. Laji : Mr. R.Sonar, : Mr. H. Tangu, : Ms. L. Tapan, : Ms. L. Hage, : Ms. P. Droma, : Mr. N. Bakhang, Advocates
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For the State respondent : Ms. G. Deka, Addl. Sr. GA  
No. 1 & 2

For the respondent : None  
No.3

Dates of hearing : **26.07.2013**

Date of Judgment : **04.11.2013**

### *JUDGMENT AND ORDER*

1. In this proceeding the Office Order No. DUD/Estt./006/1995-2000 dated 16.07.2008 issued by Secretary, Urban Development, Govt. of Arunachal Pradesh, Itanagar, placing the respondent No. 3 above the writ-petitioner in the seniority list as well as minutes of the meeting dated 11.07.2008 adopted by committee under the Chairmanship of Secretary (Urban Development), Govt. of Arunachal Pradesh, Itanagar, have been called into question.

2. Heard Mr. D. Lazi, learned counsel, appearing for petitioner and also Ms. G. Deka, learned Addl. Sr. Govt. Advocate, appearing for the State of Arunachal Pradesh for respondent No. 1 & 2.

3. The facts as they emerge from writ petition in this proceeding and which are necessary for disposal of the present proceeding are that petitioner and private respondents were initially working as Junior Engineers (in short, J.E.) in the Department of Arunachal Pradesh Public Works Department (in short, APPWD) under the Govt. of Arunachal Pradesh. The petitioner and respondent No. 3 were appointed on deputation to the post of Urban Programme Officer (in short, UPO) for a period of 2 years vide office order dated UD-3/96 dated 10.12.97 and Office Order No. UD-3/96 dated 27.11.97 respectively.

4. The Department of Urban Development (in short, UD department) sought option from UPOs on deputation for permanent absorption including the petitioner and respondent No. 3. Accordingly, they along with other UPOs on deputation submitted their opinion/willingness for permanent absorption in UD department.

5. On getting their willingness/option, the authority concerned scrutinized their ACRs/CR/vigilance clearance and other relevant records as well as performance of all those officers and thereafter prepared a list of officers for permanent absorption in the department aforesaid and forwarded the same to the screening committee constituted for the purpose of recommending the UPOs on deputation for permanent absorption.

6. The Screening Committee, so constituted, duly considered cases for permanent absorption of as many as 6 officers including the petitioner and respondent No. 3 and recommended 5 officers for permanent absorption as UPOs in Urban Development Department. The said list was prepared on the basis of merit where-under the petitioner was placed at Serial No. 1 whereas respondent No. 3 was placed at Serial No. 2 vide resolution dated 23.02.2001.

7. The recommendation, so made by the Screening Committee on 23.02.2001 which, as stated above, was made on the basis of merit was accepted by the Government and it accordingly, issued the order dated 28.2.2001 absorbing the petitioner, respondent No.3 and aforesaid 3(three) other UPOs on deputation on permanent basis w.e.f. 23.2.2001.

8. In the order dated 28.2.2001, it has been stated that the inter-se -seniority of the officers named therein shall be effective from the date of their absorption in the department and their relative merit position would be such as shown in the aforesaid order. The relevant column in the aforesaid order is reproduced below:-

Sl. No	Name of Officer	Date of birth	Edu. Qualification	Date of joining on deputation as UPO	Date of absorption as UPO
1	Shri A.N. Rai		BE (Civil)	15/12/97	23/2/2001
2	Shri Parmanand		DCE(Civil)	28/11/97(A/N)	23/2/2001
3	Shri T. Darang		BE (Civil)	30/12/98	23/2/2001
4	Shri M. Potom		BE (Civil)	16/06/98	23/2/2001
5	Shri V.P. Singh		DCE(Civil)	22/07/98	23/2/2001

*“The Inter-se-seniority of the officers shall be effective from the date of their absorption in the department and accordingly maintained as per position given above in order to merit basis. However, their service experience as UPO may be reckoned from the date of joining on deputation as UPO”.*

9. Since then the department has viewed the petitioner as the senior most amongst the Urban UPOs, so absorbed, vide order dated 22.2.2001 and as such, in due course the petitioner was given promotion to the post of Deputy Director, (Civil Engineering) in the Department of Urban Development vide order dated 25.6.04 which was attached with the writ petition as Annexure V-A and ever since the petitioner has been serving as Deputy Director, (Civil Engineering) with sincerity, devotion, loyalty and to the full satisfaction of the authority.

10. In 2007, a provisional seniority list of UPOs was circulated amongst the concerned officers vide Office Memorandum No. DOH/ESTT.006-99-00/3052-69(30-6-2007) in which the petitioner was placed at Serial No. 1 whereas in the aforesaid draft seniority list, respondent No. 3 was placed at Serial No. 2 and all the Urban Programme Officers, named therein, were requested to submit representation, if any, within a period of 30(thirty) days from the date of issue of such notification.

11. In response thereto, 3 UPOs, viz. Sri. H. Ete, Sri T. Tabing and Sri R.D. Lewi submitted their representations seeking correction of their positions in the aforesaid draft seniority list. However, respondent No. 3 never objected to his positioning after the petitioner in the Draft Seniority List. Thereafter, the final seniority list of the UPOs w.e.f. 30-11-97 upto 1.11.2007 had been published vide Office Memorandum No.

DUD/Estt.-006/1999-00 (Vol-1) dated 2.10.07. Such a final seniority list was attached to the writ petition as Annexure-VI. In the final seniority list too, the position assigned to the petitioner in the Draft Seniority List was maintained.

12. Vide Office Order No. DUD/Estt-006/1999-00 dated 16.7.08 the Secretary, (Urban Development) Govt. of Arunachal Pradesh, Itanagar, issued another final Inter-se-seniority List of UPOs on the basis of minutes of the meeting dated 11.7.08 whereby and where-under respondent No. 3 is placed above the petitioner. In assigning the respondent No. 3, a position above the petitioner, the date of his joining in the borrowing department had been taken into account vide resolution 11.07.2008. However, such resolution was founded on wrong conception of Service Jurisprudence and as such, same, being illegal, is liable to be quashed and set aside.

13. Being aggrieved by aforesaid illegal conduct on the part of the State-respondents, the petitioner had submitted a representation to the Secretary (Urban Development) Govt. of Arunachal Pradesh, Itanagar, highlighting his grievance, and also seeking redress thereto. However, his representation had never been considered and disposed off.

14. In support of his contention that the relative seniority of persons, absorbed, is to be determined not in accordance with the date of joining in the borrowing department but in accordance with order of selection for such absorption, the petitioner has referred me to the Clause 7 of General Principle for determination of seniority communicated vide Office Memorandum No. 19-11/55 dated 22.12.1959. For ready reference same is reproduced below:-

*“7. Absorbees –(i) The relative seniority of person appointed by absorption to the Central service from the subordinate offices of the Central Government or other departments of the Central or State Governments shall be determined in accordance with the order of their selection for such absorption.”* Same view has been reiterated

in Swami's Complete Manual on Establishment and Administration at Sl. No. 3.1 at page 563.

15. In that connection, it has also been pointed out that when a person who holds an equivalent or analogous post both in parent and borrowing department, under certain circumstances, his seniority may be counted from the date on which he was regularly appointed in the parent department. In that connection, my attention has been drawn to sub-para 4 of para 7 of OM No. 9-11-53 dated 22.12.1959 which are as follows :-

*“(iv) In the case of a person who is initially taken on deputation and absorbed latter (i.e., where the relevant recruitment rules provide for the deputation/transfer), his seniority in the grade in which he is absorbed will normally be counted from the date of absorption. If he has, however, been holding already (on the date of absorption) the same or equivalent grade on regular basis in his parent department such regular service in the grade shall be taken into account in fixation of his seniority, subject to the condition that he will be given seniority from*

*-- the date he has been holding the post of deputation*

Or

*- the date from which he has been appointed on a regular basis to the same or equivalent grade in his parent department whichever is later.*

16. Same view has been reiterated vide Swamy's Complete Manual on Establishment and Administration on the Chapter of Seniority of Absorbees at Serial No. 3.1 at page 563. Since the petitioner was holding the administrative post of Junior Engineer which is equivalent to Assistant Urban Programme Officer, his past service in the parent department cannot be counted towards fixation of seniority in the rank of UPO in the Urban Development Department which is in the rank of Assistant Engineer in the parent department.

17. As stated above, in the present case, the seniority position of the petitioner and other absorbees will be guided by the position as shown in the order dated 28.02.2001 whereby the petitioner, respondent No. 3 and other three UPOs on deputation were permanently absorbed in UD department with effect from 23.02.2001. This is more so, since the recommendation for absorption was made on the basis of merit and in

such list of absorption, prepared on merit, the petitioner was placed above the respondent No.3.

18. In support of its contention, the petitioner has also relied on the decision of Hon'ble Supreme Court in the Case of Director, Central Bureau of Investigation and Another –VS-D. Singh, reported in (2010) 1 SCC 647. The relevant part is reproduced below:-

*“20. It is true that the respondent was appointed as DSP on officiating basis by CBI in 1997 and he continued as such until his absorption in 1987, the question is, should the said period be taken into account for considering his seniority. The answer in our opinion, has to be in the negative. It is so because sub-para (iv) of Office memorandum as quoted above plainly provides that date of absorption, ordinarily, would be the date from which seniority in the grade is to be reckoned. In the present case, no departure from the aforesaid position is possible as the respondent was not holding the post of DSP or equivalent post in his parent department any time prior to his absorption.”*

19. Since the minutes of the meeting dated 10.7.08 at Annexure VII to the writ petition as well as order dated 16.7.08 at Annexure VII (a) to the writ petition are not based on fundamental principles guiding the seniority positions of the absorbees in the borrowing department, they became illegal and as such, the petitioner has prayed for quashing of aforesaid resolution as well as order thereby restoring the petitioner's position as shown in the final seniority list dated 02.11.07.

20. Notice of this proceeding was served on the respondents. While State-respondents contested the proceeding having filed common counter affidavit, the respondent No. 3 did not file any counter affidavit and allowed the same to proceed ex-parte against him. In their common counter affidavit, the State-respondents have stated that respondent No.3 joined the Urban Development Department on deputation on 28.11.1997 whereas petitioner joined the same department on deputation only on 16.12.1997.

21. Since the petitioner had joined the department after the joining of respondent No. 3 in such a department, State-respondents

considered the petitioner to be junior to the respondent No. 3 and as such, on the basis of recommendation made by the Screening Committee vide resolution dated 11.7.08, the State-respondents has corrected the past mistake vide order dated 16.7.08 and placed the respondent No.3 above the petitioner in the seniority list in question. As such, the State-respondents had done no wrong in issuing the notification in question or in adopting the minutes of the meeting under challenge in this proceeding. They, therefore, urge this court to dismiss this proceeding.

22. I have considered the arguments advanced by the learned counsel having regard to the pleaded case of the parties. A perusal of the pleadings reveals that there is no dispute over the fact that petitioner and respondent No. 3 along with three others were absorbed by department after considering their ACRs/CR/Vigilance clearance and Performance report and other related documents and such list of absorption was made on the basis of merit.

23. It is also not in dispute that the Screening Committee by its resolution dated 23.3.2001 had recommended the five officers for permanent absorption in the Department of Urban Development wherein the petitioner was placed at Serial No. 1 whereas the respondent No. 3 was placed at Serial No. 2. There is no quarrel over the fact that State-respondents vide its order dated 28.2.2001 accepted the recommendation of the Screening Committee and absorbed the UPOs named therein permanently in the Department of Urban Development in order of merit so suggested by Screening Committee, which as disclosed above, reveals that petitioner was placed at the top followed by respondent No. 3.

24. I have already found that normally the inter-se-seniority of the absorbees is to be decided on the basis of order absorbing the absorbees. This is more so, in the present case since the petitioner and the respondent No. 3 worked in the parent department as J.E in the rank of AUPO and since they have joined the borrowing department in

the rank of UPO which is in the rank of Assistant Engineer which is a promotional post for a person working as J.E. Being so, in the terms of order dated 23.08.2008 which was prepared on the basis of merit, the petitioner is senior to the respondent No.3 in the grade of UPO in UD department.

25. Therefore, vide the final seniority list dated 02.11.2007, the State-respondents had rightly placed the petitioner above the respondent No.3 and had rightly given him promotion to the rank of Deputy Director, (Civil Engineering) before giving such promotion to the respondent No.3. However, such position has been illogically, irrationally and unreasonably reversed by State-respondents by its order dated 16.7.08 on the basis of minutes of the meeting dated 11.7.08 and as such, in my considered opinion, the aforesaid minutes of the meeting as well as the order are liable to be quashed same being not in consonance with principles laid down in Service Jurisprudence.

26. The minutes of the meeting and order in question are not sustainable for other reasons as well. I have already found that the minutes of the meeting dated 23.2.08 as well as the order dated 28.2.2001 were made in terms of Rules and Procedures holding the field vis-à-vis fixation of inter-se seniority of absorbees. More importantly, on the basis of resolution dated 23.02.2001 and order dated 28.02.2001, the final seniority list dated 2.11.2007 was prepared.

27. There is absolutely nothing on record to show that the aforesaid resolution, order and seniority list had ever been recalled at any point of time. Without recalling those minutes of meeting, order and the final seniority list, the State-respondents cannot issue another order superseding the field already occupied by aforesaid resolution, order and seniority list. On this count also, minutes of the meeting the order dated 11.07.2008 and order dated 16.07.2008 which are questioned in this proceeding are liable to be quashed in so far it relates to positioning between the petitioner and respondent No.3.

28. For the above reasons, I am of the opinion that minutes of the meeting dated 11.7.08 and order dated 16.7.08 in so far they relate to the petitioner and respondent No. 3 are unsustainable and as such, to that extent those order(s) stand quashed.

29. Consequently, the petitioner's position as shown in the seniority list dated 02.11.2007 stands restored. The State respondents are directed to issue consequential notification at an early date but in no case, 2(two) months from the date of received of certified copy of this judgment.

30. The petition stands allowed. No cost.

**JUDGE**

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