

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR,
TRIPURA, MIZORAM AND ARUNACHAL PRADESH)

WP(C) 156 (AP) OF 2011

Sri Gegong Jijong,
S/O Late T. Jijong,
Resident of Gette Village
PO/PS. Yingkiong,
Upper Siang District,
Arunachal Pradesh.

.....**Petitioner**

By Advocate:

Ms. N. Danggen, Advocate

- **Vs** -

The State of Arunachal Pradesh & three others.

..... **Respondents**

By Advocate:

Mr. K. Ete, Additional A.G. Arunachal Pradesh.

B E F O R E
THE HON'BLE MR.JUSTICE I.A. ANSARI

Date of hearing : 09.08.2012

Date of delivery of
Judgment & order : 29.08.2012

JUDGMENT & ORDER

While working in the substantial post of Assistant Sub-Inspector (in short, 'ASI') of Police, Arunachal Pradesh, the petitioner, on recommendation of the Departmental Promotion Committee (in short, 'DPC'), was given promotion, on *ad hoc* basis, to the next higher post of Sub-Inspector (in short, 'SI') of Police. On 28.01.2011, a DPC was held in order to consider regularization of *ad hoc* promotion of the petitioner and others. The DPC, which was held on 28.01.2011, did not, however, recommend the petitioner's case for regular promotion to the post of Sub-Inspector on the ground that the Annual Confidential Reports (in short,

'ACRs') of the petitioner, for the periods 01.04.2006 to 31.03.2007, 01.04.2007 to 31.03.2008, 01.04.2008 to 31.03.2009 and 01.04.2009 to 31.04.2010, had been graded 'D' (average). On the basis of the recommendations of the DPC, which was held on 28.01.2011, as indicated hereinbefore, since the petitioner was not recommended for regular promotion to the post of SI, he was, consequently, reverted to the post of ASI.

2. Aggrieved by the denial of regularization of his *ad hoc* promotion to the post of SI of Police and his reversion to the post of ASI, the petitioner has filed this writ petition, under Article 226 of the Constitution of India, seeking issuance of appropriate writ(s) setting aside and quashing the decision of the DPC, as mentioned hereinbefore, and also commanding the respondents to consider the petitioner's case for regular promotion to the post of SI by holding a review DPC, the case of the petitioner being, in brief, thus:

(i) By the Standing Order No. 82, issued, on 26.11.2007, by the Department of Police, Government of Arunachal Pradesh, guidelines/instructions, with regard to consideration of cases for promotion by DPC, were issued. The relevant portion of the Standing Order No. 82 aforementioned read as under:

- "a. 1. DPC is to be held annually in the month of January.*
- b. 6(i) the suitability of employees for promotion should be assessed on the basis of their service records and ACRs with particular reference to the qualifying service prescribed in the Recruitment Rules.*
- c. 7(ii) Minimum bench mark is 'good' for promotion under 'SELECTION METHOD' and 'NON SELECTION METHOD'.*

(ii) The officers having at least three good or above reports and without any below average or adverse report during the last five years should be considered for promotion.”

(ii) According to the petitioner, the combined effect of clause No. 6(i) and clause No. 7(ii) is that both these clauses, namely, clause 6(i) and 7(ii) ought to be read in conjunction and ought to be interpreted to mean that the reference to the last five years of ACRs is in respect of the ACRs of the qualifying period of service. In other words, what the petitioner contends is that the last five years of ACRs of the feeder cadre ought to be considered for promotion in terms of the Standing Order No. 82 aforementioned. Consequently, according to the petitioner, the consideration of the ACRs of the petitioner by the DPC for the periods 01.04.2006 to 31.03.2007, 01.04.2007 to 31.03.2008, 01.04.2008 to 31.03.2009 and 01.04.2009 to 31.03.2010, was wholly illegal and what ought to have been considered were the petitioner's last five years of ACRs before the petitioner had been granted *ad hoc* promotion by the DPC to the post of S.I. of police. Had the ACRs of the petitioner for a period of five years, in his feeder cadre, that is, when the petitioner had been serving as ASI, been considered, the petitioner would have been found qualified for promotion to the post of S.I. of police inasmuch as the petitioner's ACRs before his *ad hoc* promotion to the post of SI, qualified him for consideration for promotion to the post of SI.

3. Resisting the writ petition, the respondents contend that the *ad hoc* promotion, which the petitioner had been granted, did not confer on the petitioner any claim for regular promotion. The respondents' further contention is that when the petitioner had already been serving, though on the basis of *ad hoc* promotion, as

SI, his performance, in the post of SI, could not have been ignored, while considering the question as to whether the petitioner was fit for being regularly promoted to the post of SI. According to the respondents, as the petitioner did not have, during the periods, when he had served, on the basis of his *ad hoc* promotion, as SI, any worthwhile ACR, he could not have been, despite his poor performance in the post of SI, still promoted, on regular basis, to the post of SI, particularly, when it had already become known, on the basis of his performance in the post of SI, that he was not fit to hold the post of SI.

4. I have heard Ms. N. Danggen, learned counsel for the writ petitioner, and Mr. R. H. Nabam, learned Senior Government counsel, appearing for the State respondents.

5. While considering the present writ petition, what needs to be noted, at the very outset, is that the petitioner has not expressed any grievance, nor has he sought for any relief, against the adverse remarks, which had been made in his ACRs with regard to his performance for the periods 01.04.2006 to 31.03.2007, 01.04.2007 to 31.03.2008, 01.04.2008 to 31.03.2009, and 01.04.2009 to 31.03.2010. Supposing there was a departmental proceeding against the petitioner in respect of some misconduct, while the petitioner had been working in the post of SI, and he had been found guilty and, consequently, punished; could such punishment have been ignored merely because the Standing Order No. 82 aforementioned states that the suitability of an employee, for promotion, should be assessed on the basis of their service records and ACRs with particular reference to the qualifying service prescribed in the recruitment rules ?

6. The answer to the question, posed above, has to be an emphatic 'No', for, doing so would mean that the State respondents could have regularized the *ad hoc* promotion of the petitioner despite the departmental proceeding and the consequential punishment imposed on him for his misconduct, particularly, when one cannot ignore the fact that the mere *ad hoc* promotion, given to the petitioner, did not, as rightly contended by the respondents, vest in him any right to demand regularization of his *ad hoc* promotion.

7. The Standing Order No. 82 aforementioned has to be, therefore, read and treated as directory and commensurate with the facts of a given case. When the petitioner had been granted *ad hoc* promotion to the post of SI, it was entirely for the petitioner to accept or not to accept the said *ad hoc* promotion. Having chosen to accept the *ad hoc* promotion with the consequences, which might have followed, the petitioner cannot, now, be allowed to turn back and claim that though his performance, in the post to which he was to be regularly promoted, had been found to be wholly unsatisfactory, he must still be promoted, on regular basis, to the post (i.e., the post of SI) ignoring entirely his performance in the promotional post at the time when he was functioning in the promotional post on *ad hoc* basis. Doing so, in the considered view of this Court, would have not only been incongruent, but would have also demoralized the entire force and it would have made a mockery of the promotional system if a person, whose performance had been found to be unsatisfactory, while he had been working in the promotional post on the basis of his *ad hoc* promotion, was granted regular promotion by ignoring his performance in the post

to which he was seeking, or still seeks, regular promotion, when he was, otherwise, found to be unfit to be retained in the promotional post on the basis of his performance in the promotional post.

8. There can be no doubt that, ordinarily, it is the five years of ACRs, in the feeder cadre, which ought to be considered, in the light of the Standing Order No. 82 aforementioned, for a person's promotion, on regular basis, to the next higher post. At the same time, one cannot ignore the expression, "*the last five years of ACRs*". Since the petitioner's case for his regular promotion to the post of SI was considered in the year 2011, the consequence was that his last five years of ACRs, i.e., his ACRs for the years 2010, 2009, 2008, 2007 and 2006, were to be taken into consideration and, if these ACRs were considered, as have, indeed, been considered, the petitioner would have been, and has been rightly found, by the DPC ineligible for regular promotion to the post of SI and, in such circumstances, the petitioner could not have been regularly promoted to the post of SI.

9. When, on the basis of the petitioner's performance, during the period of his *ad hoc* promotion, in the post of SI, the petitioner had been found to be unfit to hold the post of SI, how could the respondents ignore this aspect and rely mechanically on the ACRs of the petitioner, in the feeder cadre, (i.e., the cadre of ASI), and regularize the petitioner's *ad hoc* promotion and/or regularly promote the petitioner to the post of SI and the petitioner had already proved that he was unfit to be retained or regularly promoted to the said promotional post of S.I.?

10. When the petitioner had accepted his *ad hoc* promotion, he had taken the risk of accepting all the consequences, good or bad,

which were to follow his *ad hoc* promotion. Had his performance, during the last five years, which includes his performance in the post of SI, been good, there would have been no difficulty, on the part of the respondents, on granting him regular promotion; but, when the petitioner had been found, on the basis of his performance in the promotional post, during the period of his *ad hoc* promotion, to be unfit for the post of SI, this fact could not have been excluded from the consideration for the purpose of granting regular promotion to the petitioner, for, doing so would have made the entire exercise mechanical and *otios*.

11. Every administrative decision whether in regard to promotion or otherwise has to take into account all relevant factors and must keep excluded from consideration all irrelevant factors. The factors, which have been considered in the present case, cannot be said to be irrelevant and that its administrative decision cannot be consequently described as faulty or not sustainable in law. The respondent were, therefore, bound to consider the last five years of ACRs and the remarks, which had been recorded in the last five years ACRs of the petitioner, while he had been working in the post of SI during the period of his *ad hoc* promotion, could not have been ignored and were rightly not ignored, while considering the petitioner's case for regular promotion /regularization of his *ad hoc* promotion to the post of SI. To this extent, the Standing Order No. 82 has to be read, if I may reiterate, as directory and not mandatory; or else, the whole exercise would have been, if I may repeat, mechanical suffering from non-application of mind and, consequently, meaningless and *otios*.

12. Because of what have been discussed and pointed out above, this Court does not find that the DPC's action, in not recommending the petitioner's case for regular promotion to the post of SI and the petitioner's consequential reversal to the post of ASI, suffer from any infirmity, factual or legal, and the State Government committed no illegality, in any manner, in acting upon the recommendations of the DPC and in reverting the petitioner to his original post of ASI.

13. In view of the above, this writ petition, in the considered view of this Court, is wholly without merit and, therefore, needs to be dismissed.

14. In the result and for the reasons discussed above, this writ petition fails and the same shall accordingly stand dismissed.

15. No order as to costs.

JUDGE

Rk-dutt