

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

**ITANAGAR BENCH**

**W.P.(C) No. 287 (AP) of 2008**

**Shri. Gyammar Tachang**

S/o. Shri. Gyammar Bongi,  
Permanent resident of Gohpur Tiniali, Itanagar,  
P.O/P.S Itanagar, Arunachal Pradesh and working as  
Urban Programme Officer (UPO), Department of UD and Housing, Basar,  
Arunachal Pradesh.

..... **Petitioner**

**-Versus-**

1. The State of Arunachal Pradesh  
represented by the Chief Secretary  
Government of Arunachal Pradesh, Itanagar.
2. The Secretary, Department of Urban Development  
and Housing Government of Arunachal Pradesh,  
Itanagar
3. The Director, Department of Urban Development  
and Housing, Government of Arunachal Pradesh,  
Itanagar
4. Shri. R.D Lewi,  
Urban Programme Development Officer (UPO),  
Department of Urban Development and Housing, Head Quarter (HQ)  
Arunachal Pradesh.
5. Shri K.I. Singh,  
Urban Programme Officer (UPO),  
Department of Urban Development and Housing, Head Quarter (HQ)  
Arunachal Pradesh.
6. Shri. Takar Tachang,  
Urban Programme Officer (UPO),  
Department of Urban Development and Housing, Yupia, Arunachal Pradesh.
7. Shri. Hali Welly,  
Urban Programme Officer (UPO),

Department of Urban Development and Housing, Aalo, Arunachal Pradesh.

8. Shri. Taban Tabing,  
Urban Development Officer (UPO),  
Department of Urban Development and Housing, Ziro, Arunachal Pradesh.
9. Shri. R. Welly,  
Urban Programme Officer (UPO),  
Department of Urban Development and Housing, Daporijo, Arunachal Pradesh.
10. Shri. George Joseph,  
Urban Programme Officer (UPO),  
Department of Urban Development and Housing, Anjaw, Arunachal Pradesh.
11. Shri. Kame Bengia,  
Urban Programme Officer (UPO),  
Department of Urban Development and Housing, Itanagar, Arunachal Pradesh.
12. Shri. Tayer Tache,  
Urban Programme Officer (UPO),  
Department of Urban Development and Housing, Naharlagun, Arunachal Pradesh.
13. Shri. H.R Singh,  
Urban Programme Officer (UPO),  
Department of Urban Development and Housing, Pasighat, Arunachal Pradesh.
14. Shri. Vijoy Azad Tajo,  
Urban Programme Officer (UPO),  
Department of Urban Development and Housing, Seppa, Arunachal Pradesh.
15. Shri. Himmar Ete,  
Urban Programme Officer (UPO),  
Department of Urban Development and Housing, Yingkiong, Arunachal Pradesh.

..... **Respondents**

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

For the petitioner : Ms. N. Danggen,  
: Ms. S. Sarkar, Advocates

For the State respondents : Ms G. Deka, Addl. Sr. GA

For the private respondent : Mr. N. Ratan,  
: Mr. M. Kato,  
: Mr. K. Tasso,  
: Mr. D. Tadn,  
: Mr. B. Nonuk,  
: Mr. G. Kato,  
: Mr. T. Gamlin, Advocates

Dates of hearing : **25.07.2013**

Date of Judgment : **04.11.2013**

**JUDGMENT AND ORDER**

1. These writ petition have been initiated seeking the following reliefs:-

*"In the premises aforesaid it is humbly prayed that your Lordships would be pleased to admit this petition and issue Rule upon the respondents to show cause as to why*

1. *A Writ of Certiorari should not be issued to quash and set aside the impugned final seniority list of Urban Programme Officer issued vide Order No.DUD/ESTT/006/99-2000 dated 16-07-2008 in so far it assigns position of seniority to the respondent No.3 above the petitioner at serial No.6.*

2. *A writ of mandamus directing the respondent authorities to place the position of the seniority of the petitioner above the respondent No.3 in the impugned final seniority list dated 16-07-2008 issued vide Order No. DUD/ESTT/006/99-2000.*

3. *Any other order/orders as may be deemed fit and proper in the facts and circumstances of the case."*

2. Heard Ms. N. Dangeen, learned counsel for the petitioner. Also heard Ms. G. Deka, learned Addl. Sr. Government Advocate for the State respondents, Mr.D.Panging learned counsel appearing for the private respondent No.4 and 7 and Mr. N. Ratan, learned counsel appearing for the private respondent No 15.

3. The facts as they emerge from the writ petition under consideration and which are necessary for disposal of the present proceedings in brief are that the petitioner along with two other persons were initially

appointed as Assistant Urban Programme Officers, in short, AUPO in the Department of Urban Development & Housing, (in short, Housing Department), vide order dated 15-12-2000, They were so appointed on being selected through competitive examination, conducted by the Arunachal Pradesh Public Service Commission, (in short, APPSC). It is also stated that they were the 1<sup>st</sup> batch of direct recruit AUPO in the Housing Department.

4. At the time of their appointment, six persons were working as Urban Programme Officers (in short, UPO) in the Housing Department who were brought on deputation to the Housing Department from various other departments since the Housing Department did not have any UPO of its own. In due course, out of those six officers, who were working as UPO on deputation basis, five officers were permanently absorbed as UPO w.e.f. 23.2.2001 on the basis of recommendation made by a duly constituted Departmental Screening Committee.
5. Such absorption was made on the basis of their ACRs/CR/vigilance report/performance reports and also on taking into consideration other related matters. The officers, so cleared by the Departmental Screening Committee are (i) Shri A.N. Rai, (ii) Shri Parmanand, (iii) Shri T. Darang, (iv) Shri M. Potom and (v) Shri V.P. Singh, vide DPC resolution dated 23.02.2001 and order dated 28.02.2001 at Annexure-2(A) and Annexure-2 of the writ petition respectively.
6. While the petitioner was so working as AUPO in Housing Department, the department had again brought the private respondent No. 4 to 14 to serve it on deputation basis and they were so brought to serve the Housing Department on deputation basis during the period between 27.01.2001 and 06.07.2004. The relevant part of the writ petition containing aforesaid information is reproduced below:-

*“That while the petitioner was serving as AUPO in the department, the private respondents Nos. 4 to 14 were transferred on deputation on various different dates as follows:-*

*1. Shri. Taban Tabing (respondent No.8), Shri. Hali Welly (respondent No.7), and Shri. Takar Gongo on 15-07-2002 for a period of 2(two) years.*

*2. Shri. Ramu Welly (respondent No.9) on 30-12-2002 for a period of 2(two) years.*

3. *Shri. Tayer Tache (respondent No.12), Shri. Kame Bengia (respondent No.11) and Shri. V.A Tajo (respondent No. 14), on 06-07-2004 for a period of 3(three) years.*

4. *Shri. H.R Singh (respondent No.13) on 07-07-2001, for a period of 1(one) year.*

5. *Shri. K.I Singh (respondent No.5), Shri. R.D. Lewi, (respondent No. 4), Shri. B. Das Gupta, Shri. Takar Tachang (respondent No. 6) and Shri. D. Tamuk for a period of 1(one) year or till fresh recruitment, whichever is earlier on 27.01.2001.*

6. *Shri. George Joseph (respondent No. 10) on 19-02-2004 for a period of 2(two) years”.*

7. Thereafter, on as many as three other occasions, the department had extended the period of deputation of private respondent No. 4, 5 and 6, last one being on 20-10-2003 for a period of one year. It has been stated that in matter of absorption of officers on deputation, there are some guidelines which are to be followed by the borrowing department before absorbing any officer on deputation.
8. In that connection, it has been stated that before absorbing any officer on deputation by the borrowing department, the latter needs to follow some minimum formalities which includes (i) consultation of the Public Service Commission (b) constituting a Screening Committee to examine the dossiers of officers on deputation sought to be absorbed. However, all these formalities were thrown to the wind in case of absorption of aforesaid officers.
9. To support of the contention that there was huge violation of Rules and procedures which govern the absorption, learned counsel for the petitioner has referred me to the Swami's Compilation on Recruitment by Absorption, Clause 4 and 10 in particular. For ready reference, Clause 4 and 10 from Swami's Compilation aforesaid are reproduced below:-

*“4. Procedure to be followed for appointment by deputation/absorption:*

*4.1. An accurate assessment of the vacancies to be filled by the above methods should be made sufficiently in advance so that the Ministries/Departments will be able to follow the prescribed properly.*

*4.2. Whenever the Recruitment Rules prescribed different sources of recruitment and where various categories of officers are eligible for being considered, the circulation of vacancies will be considered proper only where the Ministry concerned ensures that all such categories are tapped simultaneously. In other words, the Departments should not*

confine circulation of the vacancies to only one or two sources mentioned in the Recruitment Rules.

4.3. As a corollary to Para. 4.2. above, where employees of the Public Sector Undertakings/Autonomous Bodies and non-sectt. officers are also eligible under the Recruitment Rules, the Administrative Ministry concerned should specifically request the Departments to circulate the vacancy to all such organizations with whom they are concerned so that the requirements of the Recruitment Rules are duly met.

4.4 The vacancy circular should invariably be published in the "Employment News".

4.5 The minimum time allowed for receipt of nomination should be two months. If in a few cases where there are compelling reasons to fill up the vacancy on urgent basis, a shorter time-limit which should not be less than six weeks, may be prescribed with the approval of the Joint Secretary concerned.

4.6. All the salient features of the vacancy circular, e.g. qualifications and experience, officers eligible, last date for receipt on nominations as prescribed by the originating Department should invariably be published in the "Employment News".

4.7. The circular should be addressed to all the agencies or sources of selection specified in the Recruitment Rules. As a proof of having complied with this instruction, the Departments should, while making a reference to the UPSC for selection, render a certificate to the Commission that the vacancy circular has been dispatched to all the agencies prescribed in the rules.

4.8 While calling for applications for appointment on deputation/absorption basis, the Ministries/Departments may call for the bio-data of the candidates in the pro forma given at Annexure-A.

4.9. After circulation of the post, the proposal should be sent to the UPSC as early as possible and in any case within three months from the closing date for receipt of applications. While forwarding the proposal to the UPSC the requisite details in the pro forma given at Annexure-B should be sent to the Commission. Further, the details of the applicants, both eligible and ineligible, along with the Department's comments on their eligibility or otherwise should also be furnished in the pro forma given at Annexure-C.

4.10. In the vacancy circular, it should be specially mentioned that the candidates who apply for the post will not be allowed to withdraw their candidatures subsequently.

#### 10. Absorption of an officer

10.1 Recruitment Rule for some posts prescribe inter alia "absorption" as a mode of recruitment. Constitution with the UPSC is necessary in all cases of appointment by "absorption" to Group 'A' and Group "B" posts. With a view to having a uniform approach and to enable the UPSC to consider proposals for absorption expeditiously, the following guidelines are laid down.

10.2. Cases of absorption fall into two categories, viz---

(a) Where Recruitment Rules provide for appointment by Deputation/absorption and the proposal is only to absorb an officer already selected on deputation.

*(b) Where Recruitment rules provide for Deputation only at the time of initial selection of the officer concerned, but have been amended subsequently to include absorption.*

*So far as the first category is concerned, the commission will consider the proposals for absorption where the following conditions are fulfilled:--*

*(i) The initial selection on deputation basis should have been made in consultation with the Commission.*

*(ii) The Administrative Ministry should certify that there is no other deputationist in position appointed earlier to the officer now proposed for absorption, and in the case there is any such person, he is not willing to be considered for appointment on absorption basis.*

*(iii) The person concerned and the lending authority have given their willingness for such permanent absorption.*

*(iv) The original circular letter calling for nomination for deputation should have clearly mentioned the possibility of permanent absorption.”*

*In the second category of cases, i.e., where “Absorption” has been provided in the Rules subsequent to the selection of a person on Deputation, the Ministries/Department should re-circulate the post, clearly indicating “Absorption” as a mode of recruitment and then only make a reference to the Commission. Such circulation will also be necessary in the other category of cases if the original circular letter calling for nomination for deputation did not clearly mention the possibility of permanent absorption vide (iv) above”.*

10. However, as stated above, in matter of absorption of private respondents 4 to 14 all those formalities were overlooked and ignored.

11. As if these were not sufficient, vide the absorption order dated 23.8.2004, some other private respondents, viz. the private respondent No. 4 to 7 were absorbed even when the Model Code of Conduct was in force which, amongst other things, prohibited all kinds of appointments while such Model Code of Conduct was in operation.

12. It is also the case of the petitioner that absorption of private respondents were done in order to deprive the petitioner and some other similarly situated departmental candidates of their rightful dues and also to favour the private respondents with something which were not due to them. The fact that there was absolutely no urgency, whatsoever, to absorb those UPOs doing duty in the Housing Department on deputation basis fortifies more and more such a contention.

13. The first batch of AUPOs which includes the petitioner herein had joined the Housing department in early part of 2001 and as such, they became eligible

for being considered for promotion to the post of UPO in 2006 since the Draft Service Rules prevalent then stipulated that a degree holder engineer who worked as AUPO for a period of five years and a diploma engineer who worked, as above, for a period of ten years were eligible for consideration for promotion to the post of UPO.

14. Worse still, some of the private respondents, more particularly, respondent No. 10, 11, 12 & 14, were absorbed as UPO in the Housing department even before their periods of deputation were over. This is one more testimony to the fact that private respondents were absorbed as UPO just to deprive the departmental candidates who, as stated above, w.e.f. 2006, earned qualification for being considered for promotion to the post of UPO.

15. Since the absorption of the aforesaid private respondents was made in profound violation of relevant rules and procedures, the petitioner and other officers, affected by such absorption, preferred a representation dated 21-05-2004 to the Secretary (UD), Government of Arunachal Pradesh requesting him not to absorb the officers on deputation against the promotional quota and to fill up such posts by promotion from AUPO in accordance with the Codal formalities. Copy of such representation is annexed at Annexure-9 to the writ petition.

16. Since the petitioner and his colleague did not receive any reply to their representation, they have submitted another representation on 03-08-2004 reiterating their earlier claim. Copy of such representation is attached at Annexure-9A to the writ petition. However, such representation too remained unattended. But the misdeeds committed by the State respondents did not end there.

17. In the meantime, to be precise in the month July, 2007, the department issued draft inter-se seniority list of UPOs and on the basis of such draft seniority list of the UPOs, the department prepared a final seniority list. What is, however, enormously surprising, and intriguing as well, is that at no point of time, the department circulated the draft seniority list amongst the UPOs, more particularly, the officers affected by such list.

18. What is equally illegal is that without circulating such draft seniority list, the State respondents had finalized the seniority list of UPOs which is attached to the writ petition as Annexure-10. A final seniority list which was so brought into existence surreptitiously and that too through the back door, being profoundly illegal, is, therefore, liable to be quashed and set aside.

19. It has been pointed out that as per the Recruitment Rules prevailing at the time under consideration, 50% of the post of UPOs are to be filled up by direct recruitment and the remaining 50% by promotion, failing which by deputation/transfer/ absorption. The recruitment by way of deputation was, therefore, a stop gap arrangement designed to overcome difficulties in getting required officers urgently but not to block the avenue of promotion for departmental candidates for all time to come.

20. On all those counts, the petitioner has, therefore, prayed for the reliefs, as stated above.

21. The State respondents as well as private respondents have filed their counter-affidavit. In their counter-affidavit, the State respondents have stated that the allegation made in the writ petition is based more on fiction than on facts. In regard to allegation that absorptions of the private respondents were made with some ulterior motive and also to block the future career of the petitioner and other similarly situated departmental officers, it has been contended that when the department was brought into existence, there was a huge scarcity of officers at all levels, more particularly, at the level of AUPOs/UPOs.

22. Therefore, the department was forced to bring some officers on deputation to work as UPOs in order to carry out the function assigned to a nascent department, which was brought into existence in late nineties. Thereafter, some of those officers, who were brought on deputation, were permanently absorbed on considering their performance/vigilance report and other related matters. More importantly, those officers were absorbed in accordance with relevant rule and procedures.

23. The further contention of the State respondents was that it is the prerogative of the department to absorb or not to absorb some officers who were brought on deputation to serve it on considering the various aspects, such as, performance of the borrowing officers, their necessity in the borrowing department and a spectrum of other related matters. Therefore, the allegation that the department has no authority to absorb the officers on deputation is devoid of any substance, whatsoever.

24. In regard to allegation that the interest of the petitioner was ignored while absorbing the private respondents, it has been contended that the petitioner was not born in cadre of UPO when the absorptions, which are said to be illegal were made. This is because of the fact that the petitioner and others, who joined as AUPO in 2001, became eligible for consideration for promotion to

the post of UPO from 2006 onwards whereas absorptions in question occurred during the period between 2004-2005.

25. Regarding the contention that absorption order was made when the Model Code of Conduct was in operation, it has been stated by the State respondents that notification in question was issued one day ahead of coming into operation of the Model Code of Conduct. Being so, such an allegation too is without any basis whatsoever.

26. In regard to allegation that draft seniority list was finalized without circulating amongst the affected officers, it has been stated that the draft seniority list was duly circulated amongst all the officers and it is quite tragic that in spite of working in the same place, the petitioner claimed to be unaware about the circulation of such a Draft Seniority list. But then, the facts remain that it was circulated and affected officers submitted their representation seeking redress of their grievances. Being so, State respondents cannot be held responsible for petitioner being ignorant about the circulation of aforesaid draft seniority list.

27. State respondents have relied on the following decisions :-

1. *(B.S. Bawa Vs the State of Punjab)*, reported in 1999 SC 1510,
2. *(P.S Sadasivaswamy Vs State of Tamil Nadu)*, reported in (1975) 1 SCC 152,
3. *(Bhupen Hazarika Vs. State of Assam)*, reported in AIR 2013 SC 434,
4. *( Nawab Amanuk & Ors. Vs. State of Assam)*, reported in 1996 (2) GLT 654,
5. *( Ramwar Prasad Vs. MD, UP Rajkiya Nirman Nigam)*, reported in 1999 (8) SCC 381,

28. The private respondent No. 4 and 7 and private respondent No. 9 to 14 have filed separate written statements confuting the claims, made by the petitioner. The counter affidavits, submitted by the answering private respondents mostly echoed the claims, made by the State respondents and as such, I do not find it necessary to repeat those claims of private respondents which are already being taken care of by the State respondents.

29. However, the claims which are further elaborated by the private respondents as well as the claims which are not advanced by State respondents are reproduced briefly whenever such reproduction is found necessary. The private respondents, now, claim that at no point of time, the petitioner challenged the resolution of the DPC dated 06.07.2004 which was annexed as Annexure-A and Annexure-B to the counter affidavit of respondent No. 1 to 3 and respondent No. 4 & 7 respectively.

30. Since the DPC resolution dated 06.07.2004 is the basic document on the basis of which the respondent 4 to 7 were absorbed as UPO in Housing department w.e.f. 20.08.2004 vide order dated 23.08.2004, and since such a vital document was not put to challenge, the petitioner cannot, now, question the consequential order absorbing the private respondent No. 4 to 7 permanently as UPO in Housing Department. On this count alone, the petitioner case is liable to be dismissed—contend the private respondents.

31. It is also the case of the private respondents that the absorption order(s) in question were made in 2004---2005 whereas the present proceeding had been filed in 2008 --- after a lapse for more than four years. It is also a settled law that delay defeat justice and this is exactly what happened to the case in hand as well. Since the petitioner approached the court with enormous delay, his petition is liable to be dismissed on this score too.

32. On yet another count ----- according to private respondents----- the proceeding in hand is liable to be dismissed. In that connection, it has been pointed out that it has been held again and again that the matter already settled cannot be allowed to be unsettled. In our instant case, the petitioner approached this court with years of delay thereby allowing the status/claim/position of many officers to settle firmly for all time to come. Being so, on this count also, the proceeding in question is required to be dismissed.

33. To support their various contentions, the respondent No. 4 & 7 have placed reliance on the decision of Hon'ble Supreme Court in the case State of Bihar Versus Akhoury Sachandra Nath reported in 1991 (suppl.) 1 SCC 334 as well as U.P. Jal Nigam Versus Jaswant Singh reported in (2006) 11 SCC 464.

34. In regard to alleged illegality in the absorption of private respondents, more particularly, the absorption of private respondent No. 9, 10, 11, 12, 13 and 14, it has been stated that when private respondents were absorbed, the Recruitment Rules of 2006 was yet to come into being and, therefore absorption of those respondents were made on the basis of the executive orders, passed from time to time.

35. For ready reference, the claim so made by aforesaid respondents is reproduced below: -

*13. "That the statement made in para-12 is denied. When the respondents herein were absorbed the said recruitment Rule of UPOs 2006 was not in force and the same governed by executive orders passed from time to time. The respondents herein were made far experienced in the field and the department wanted such service and hence the respondents herein were brought on deputation and absorbed for the benefit of the department. Hence, the question of illegality does not arise. The petitioner not at all eligible during 2005 and hence the claims made are flimsy and not tenable under the law".*

36. It has been stated that the petitioner was given officiating promotion to the post of UPO even when he was not eligible for promotion to such post. But he had to be promoted on officiating basis despite his not having required qualification due to acute shortage of required number of officers in the rank of UPO and in exigency of service. Similar reason compelled the borrowing department to absorb the private respondents permanently even when their deputation periods were yet to over.

37. In that context, it has been stated by the respondents that since the petitioner who himself took some advantage despite the fact that he was not entitled to such benefits, now, he cannot claim that private respondents could not have been absorbed. Law of estoppels would now come in the way of raising such a claim by the petitioner. The State respondents went a step forward to request this court to review even the promotion of the petitioner to the grade of UPO.

38. In their counter affidavit, the private respondent 4 and 7 further contended that DPC held on 6.7.2004 had recommended their absorption on taking into account their performance/vigilance report and other related factors and having found the private respondent 4 to 7 qualified for permanent absorption in Housing Department as UPO recommending their absorptions which they did in accordance with relevant rules and procedures.

39. In regard to the claim that they were absorbed when Model Code of Conduct was in operation, it has been stated by the private respondents that Model Code of Conduct prohibits appointments/transfer/promotion etc. but it did not prohibit the Government from conducting its regular business. Since absorption order was made on the basis of recommendation dated 6.7.2004, since such absorption is part of the regular business of the State respondents, such an order in no way offends the Model Code of Conduct.

40. The petitioners having filed additional-affidavit had brought on record another resolution dated 06-07-2004. Such resolution was brought on record to show that the resolution dated 06-07-2004 which was relied on by the private respondent No. 4 to 7 to show that they were duly recommended for absorption as UPO is a forged one. In that connection, it has been stated that the petitioner got the copy of such a resolution on making an application under RTI Act seeking a copy of resolution dated 06.07.2004 which reportedly recommended the absorption of respondent No. 4 to 7 as UPO in the Housing department.

41. However, information, so obtained, shows that resolution of the DPC which was reportedly adopted on 06.07.2004 recommending absorption of respondent No.4 to 7 as UPOs is totally baseless since minutes of the DPC, so obtained by the petitioner, reveals that the DPC held on 06-07-2004 could not recommend the absorption of any of the UPOs on deputation including the respondent No. 4 to 7 due to non-availability of required documents.

42. Thus, two DPCs held on the same day over the same subject matter depict results which are diametrically opposite and such state of affairs--- according to the petitioner---only serve to show that no reliance can be placed on the DPC resolution dated 06-07-2004 on the basis of which the private respondent Nos. 4 to 9 claimed to have been absorbed permanently as UPO in the Housing Department with effect from the dates shown therein.

43. In its affidavit-in-reply to the respondent No. 4 & 7, the petitioner contended that one Mr. P. K. Thungon and others approached this court by the way of W.P.(C) No. 296 (AP) Of 2005 urging the court not to absorb the UPOs on deputation since such absorption blocked the departmental candidates. The filing of the aforesaid petition unmistakably shows that the respondents were never absorbed as UPOs, otherwise, aforesaid petition would have been filed seeking blocking of absorption UPOs on deputation in the Housing Department. This further fortifies that the resolution dated 06.07.2004 which is heavily banked upon by the respondent No. 4 to 7 is bogus out and out.

44. Above being the claims and counter claims of the parties, let us see whose claims stand to reason in view of materials on record. But before one can address above, he needs to find answer to another query. This is because of the fact that the petitioner strenuously claims that the resolution dated 06.07.2004 which is said to be the basis of absorption of private respondents, particularly, respondent No. 4-7 and consequently to their placing above the petitioner is a bogus and fabricated document.

45. In order to confirm that aforesaid resolution was bogus, it has been contended that on preferring an application under the RTI Act, the petitioner obtained the resolution at Annexure-1 to the additional affidavit of the petitioner and such resolution clearly shows that as many as eight officers working as UPOs in Housing department on deputation were considered for absorption. But none of them could be considered for permanent absorption due to want of vigilance clearance report for which such matter was deferred to the next DPC.

46. Thus, the resolution of DPC at Annexure-1 to the Additional affidavit of the petitioner unquestionably demonstrates that ----not only the resolution dated 06-07-2004 at Annexure-B to the affidavit of respondent No. 4 and 5 ---is false---- but----- the order dated 23-08-2004 which was founded on resolution of the DPC on 06-07-2004 is equally false and frivolous document-----argues learned counsel for the petitioner. But a very dispassionate scrutiny of the resolution of DPC at Annexure-1 to the additional-affidavit, however, projects to the fore some outstanding contradictions therein.

47. Thus, I have found that the caption of the minutes of the meeting, relied on by the petitioner, (which is at Annexure -1 to the additional affidavit to the petitioner), reveals that the meeting was held on 05-07-2004 in the chamber of Secretary, Urban Department, Arunachal Pradesh, Itanagar. However, the very first paragraph aforesaid resolution also shows that meeting was held, ---- not on 05-07-2004 -----but-----on 06-07-2003 instead.

48. Further, the members of the aforesaid committee signed the resolution ---- not on 05-07-2004---- not on 06-07-2004----- but on 07-07-2004 instead. These serious contradictions on matter as vital as dates of meeting raise a serious doubt about the very veracity of the document, so relied on by the petitioner questioning the meeting of DPC held on 06-07-2004 (which is at Annexure -B to the counter affidavit to the respondent No. 4&7).

49. However, the contradictions, which emerge from the resolution aforementioned, did not end there --since-- on my further perusal of the resolution, (which is at Annexure -1 to the additional affidavit of the petitioner), I have also found that the names of officers who were considered for permanent absorption were arranged in a list and their seriality was arranged from a to h.

50. However, while refusing to recommend them for permanent absorption, their seriality were maintained--- not under the alphabet a to h ----but in numeral from 1-8. Worse still, though the DPC chose to number the paragraphs of the minutes of the resolution in numerals but as soon as committee reached

the second page, it started paragraphing the same in cardinals. These abrupt changes make an already doubtful resolution more and more doubtful.

51. Here, one may note that the petitioner contends that the file under which DPC in question was constituted (vide file NO DUD/ESTT-233/04-05/1575-83 dated 20-06-2004) could not be traced out since it was said to have been lost long back. The petitioner came to know about the same from the response which the department furnished to him in response to petition filed under the RTI Act. Such a contention, so advanced by the petitioner, however, raises more question than the answers it serves to furnish.

52. This is because of the fact that if the file pertaining to resolution in question is lost long back, how could the department furnish the aforesaid resolution to the petitioner to be placed before the Court in support of his contention that the resolution aforesaid is bogus and fabricated ? This makes the claim of petitioner that the DPC resolution at Annexure-B to the counter-affidavit of the respondent No. 4 & 7 is bogus truly unreliable.

53. Coming to the allegation that Mr. P.K.Thungon and others would not have filed the proceeding bearing W.P.(C) No. 296 (AP) of 2005 seeking blocking the absorption of UPOs on deputation, had there been an order absorbing the respondents as UPOs, I have found that such a contention cannot be adjudicated without examining the relevant file or copy thereof since taking a decision on the basis of averments, made in the writ petitions, would be tantamount to taking decision on assumption and presumption only.

54. So situated, let me consider the most crucial dispute around which proceeding in hand revolves. Such a dispute centres around the question if the private respondents were ever absorbed in accordance with Rules and Procedures holding the field, and if not, what are the consequences of the failure to follow such Rules and procedures?

55. Coming back to our case, I have found that the department in question was admittedly brought into existence only in late nineties. It is, thus, apparent that the department in question had experienced huge dearth of officers, particularly at those levels who were supposed to carry forward the duties and responsibilities assigned to a new department.

56. It is also an admitted position that till 2006, the department did not have regular Service Rules in place to govern the appointment etc. for which a Draft Service Rules was brought into existence to address the teething problems, faced by a nascent department. The said Draft Recruitment Rules permitted the department to fill up 50% post of UPOs by direct recruitment and

rest 50% by promotion and in absence of departmental candidates by deputation/transfer etc.

57. Admittedly, during the time under consideration, there was no UPO in the department having five years/10 years of experience inasmuch as the case may be since the first batch of AUPOs were admittedly recruited only on 2001. That being the position, 50% of the posts in the grade of UPO which were to be filled up by promotion could not be filled by departmental candidates which left the department with no other choice but to fill up by deputation/transfer.

58. On my further perusal of the records, it is found that the Housing department circulated notification to the various departments seeking option from the various officers having requisite qualifications to serve a nascent department. All the private respondents responded to such notification issued by Housing Department and joined the Housing Department on deputation.

59. On considering the materials on record in the light of Swamy's compilation aforesaid, I have found that in matter of recruitment to the post of UPOs by the way of absorption, the department did not meticulously follow the procedures, prescribed in the Swamy's compilation aforesaid. But then, one must take note of the fact that the Swamy's compilation is collection of circulars issued Government from time to time and therefore, they do not have the force of statutory Rules. In that view of the matter, only for the inability of the department to follow meticulously the Rules and procedures prescribed in the aforesaid circulars qua recruitment by absorption would not make the absorption under consideration illegal on that count alone.

60. Even otherwise , the violation of the procedures prescribed in the circulars in the Swamy's compilation will not cause any harm to the recruitment of the private respondents by the way of absorption .This is because of the reason that when one considers the problems, faced by a nascent department, entrusted with the responsibility as serious as Urban Development and Housing, he would find that it is not possible for the department to execute the work assigned to it unless it is assisted by groups of experienced, efficient and capable officers at different levels.

61. But to get that brand of officers/staff, more particularly, in the level of UPOs/AUPOs, was a formidable and frightening task, more so, in a State as backward as State of Arunachal Pradesh. When such difficulties are considered in the light of the fact that it is the prerogative of the State respondents as to whom to absorb and when to absorb, one cannot find fault with the State respondents in not strictly following the Rules and procedures qua absorption of

officers on deputation. Thus, the order(s) of absorption in question cannot be set aside on this as sought for by the petitioner even if there are some minor deviations in absorption of private respondent No. 4 to 14.

62. One may note here that first batch of UPOs----according to the petitioner-----was absorbed strictly in accordance with the Rules and Procedures which hold the field in question. On scrutinizing the order whereby and where-under the private respondents were absorbed in the light of materials on record, I have found that exactly similar procedures were followed in matter of absorption of private respondent as well.

63. Since the petitioner claims that the first batch of UPOs were absorbed in Housing department in accordance with procedures holding the field and since the private respondents herein are found to have been absorbed in a way similar to the absorption of first batch of UPOs in the Housing department, one would be justified in holding that the private respondents herein were also absorbed in accordance with relevant Rules and Procedures.

64. Situation being such, I am constrained to hold that the allegation that the private respondents were absorbed in total violation of Rules and Procedures qua absorption of officers on deputation does not have any truth therein, more so, when one finds that the private respondents were absorbed in a way quite similar to the procedures followed in case of absorption of the first batch of UPOs who were said to have been absorbed in accordance with the procedures, prescribed.

65. In so far the allegation that some respondents, namely respondents No. 4 to 7 were absorbed even when model code of conduct was in force, I have found that the State-respondents have categorically stated that such a Code of Conduct came into operation a day after the issuance of order absorbing aforesaid respondents. This contention from the side of State-respondents remains totally unchallenged.

66. On the other hand, the other private respondents have contended that though the Model Code of Conduct prohibits the appointment/transfer/promotion etc. it has nothing to do with absorption which comes within the purview of regular day-to-day administration which was never prohibited by Code of Conduct. That being the position, Model Code of Conduct could no way make the order in question illegal.

67. I have considered the submissions advanced by the learned counsel for the parties keeping an eye on the materials placed before this court. On considering the matter in its entirety, I have found that since there is material

on record to conclude that the order dated 23.08.2004 was issued a day ahead of coming into operation of Model Code of Conduct, the allegation, mounted on this count, is found to be baseless.

**68.** Even if one assumes for the sake of argument for a moment that there was violation of Model Code of Conduct, it cannot make the order in question illegal if it is otherwise found sustainable in law. It is a different matter altogether that for such violation, officers/officers responsible for the same can be taken to task under the relevant provision of law.

**69.** Coming to the allegations that the final seniority list was published without ever circulating draft seniority list of UPOs amongst the officers, more particularly the affected ones, it has been submitted by the respondents that same was duly circulated amongst the officers and it is a great tragedy that despite being posted in Itanagar, the petitioner herein remained ignorant of the same. On the materials on record, I have found sufficient force in the contention, so put forward by the respondents on this count.

**70.** This is because of the fact that the Annexure-B to the counter-affidavit of the State respondents (Office Memorandum dated 06.07.2005) as well as Annexure-F to the counter-affidavit of respondent Nos. 4 & 7 (Office Memorandum dated 02.11.2007), show that provisional seniority list of UPOs as well as final seniority list of UPOs with effect from 13-11-1997 to 01-11-2007 were duly circulated amongst the UPOs in the Housing department.

**71.** One may note here that this proceeding has been heard along with WP(C) No. 272(AP)/2008, WP(C) No. 273(AP)/2008, WP(C) No. 283(AP)/2008, WP(C) No. 287(AP)/2008, WP(C) No. 298(AP)/2008 & WP(C) No. 318(AP)/2008 since the matter in dispute in all those proceedings are connected in some way or other with the proceeding in hand. It is also found evident from those proceedings that the seniority lists in question were very much involved in those proceedings as well.

**72.** More importantly, many of the parties in those proceedings, questioned---- not only the final seniority list---- but ----the draft seniority list as well. The averments made in those proceedings again reveal that the draft seniority list was circulated amongst the UPOs and many of them, who felt aggrieved, voiced their grievances having filed necessary representation. This, in turn, shows that seniority list, under challenge, was finalized after circulating draft one amongst the concerned officers.

**73.** One may note here that the private respondent No.4 & 7 claim that though the petitioner questioned the absorption order dated 23.08.2004 yet he

did not question the resolution dated 20.08.2004 which recommended the absorption of respondent No.4 to 7. Since said resolution was not questioned in this proceeding, the petitioner cannot question the order dated 20.08.2004 same being a consequential order to the resolution dated 20.08.2004.

74. On the perusal on record, I have found that the petitioner did not question the resolution dated 20.08.2004 which recommended the absorption of respondent No.4 to 7. More importantly, the petitioner though questioned the absorption order dated 14.06.2005, 07.10.2005 as well as 22.10.2005, yet, he did not challenge the resolutions on the basis of which aforesaid orders were made.

75. Since the aforesaid basic orders are not questioned in this proceeding, I feel inclined to concur with the learned counsel for the respondent No.4 & 7 that this proceeding is liable to be dismissed for not questioning the resolutions on the basis of which orders dated 20.04.2004; 14.06.2005, 07.10.2005 as well as 22.10.2005 were passed.

76. This brings us to the question whether the delay in coming to the court makes this proceeding unsustainable in law. On perusal of materials on record, it is found that the private respondents, viz, respondent No. 4 to 14 had joined the Housing department on deputation during the period between 2001 and 2004. The materials on record also show that and that they were absorbed during the period 2004-2005.

77. In spite of all those incidents having taken place so early, the petitioner did not come before the Court in time. Rather, he chose to wait till 2008 to file the present proceeding. In my considered opinion, by not coming to the Court in time, he had waived his right, if any, to have his grievance(s) adjudicated by the Court. As he did not approach this court in time, he cannot be allowed to rake up the matter quite late in the day.

78. In *Bhupen Hazarika (supra)* and in many other cases, Hon'ble Supreme Court of India has held that delay in preferring the legal proceedings close the doors of the court for the parties who are late in coming to the Court seeking justice. On this count also, in my opinion, the present proceeding is liable to be dismissed as prayed for by the respondents.

79. Since the petitioner did not approach this court seeking his relief in time, he allowed the claims/positions/status of other officers in the Housing department to be settled once. It has also been held that the settled position cannot be allowed to be unsettled. In this connection, we may peruse the decision of Hon'ble Supreme Court of India in the case of *P.S Sadasivaswamy*

versus State of Tamil Nadu, reported in (1975)1 SCC 152. The relevant part is reproduced below:--

*“A person aggrieved by an order of promoting a junior over his head should approach the court at least within six months or at the most a year of such promotion: it is not that there is any period of limitation for the court to exercise their power under Article 226 nor is it that there can never be a case where the court cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the court to refuse to exercise their extraordinary power under Article 226 in the case of person who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach”.*

80. This, in my opinion, is another reason why the petitioners' case is required to be rejected.

81. From our foregoing discussion, I have found that the department had absorbed the private respondents, more particularly, respondent No. 4 to 14 in the rank of UPOs in accordance with law and they were so absorbed well before the petitioner got promotion to the post of UPO. Above being the position, he cannot claim seniority over the private respondents.

82. Though the petitioner questions the seniority of respondent No. 15 as well, he did not place any material on record to show how the respondent No. 15 is Junior to him. Rather, all the materials available on record show that respondent No.15 is also senior to the petitioner.

83. In view of my forgoing discussion, I am of the opinion that the present proceeding is devoid of merit and the same is liable to be dismissed.

84. In the result, the proceeding is dismissed.

85. No costs.

**JUDGE**