

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

**ITANAGAR BENCH**

**W.P.(C) No. 272(AP) of 2008**

1. **Shri. Takar Tachang,**  
S/o. Shri. Late H. Tachang,  
Urban Programme Officer, Yupia  
Papumpare District, Arunachal Pradesh
  
2. **Shri. Rockpo Dabu Lewi,**  
S/o. Shri. Torak Dabu,  
Urban Programme Officer,  
Office of the Chief Engineer-cum-Director,  
Urban Development & Housing Department, Itanagar.

..... **Petitioners**

***-Versus-***

1. The State of Arunachal Pradesh  
to be represented by the Secretary  
Urban Development & Housing,  
Government of Arunachal Pradesh, Itanagar.
  
2. The Director,  
Urban Development & Housing Department,  
Government of Arunachal Pradesh, Itanagar.
  
3. Shri. Himar Ete,  
Urban Programme Officer (UPO), Yingkiong Upper Siang  
District, Arunachal Pradesh.

..... **Respondents**

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

For the petitioner : Mr. N.Tagia,  
: Mr. D. Panging,  
: Mr. K. Padu,  
; Mr. H. Lamphing,  
: Mr. T. Lagi,  
: Mr. P. Chownag,  
: Mr. K. Bogo, Advocates

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

For the respondent No.3 : Mr. I. Basar,  
: Mr. N. Ratan,  
: Mr. M. Kato,  
: Ms. M. Tang  
: Ms. D. Tadu  
: Ms. K. Tasso,  
: Ms. J. Niri,  
: Ms. G. Kato, Advocates

Date of Judgment : **04.11.2013**

**JUDGMENT AND ORDER**

1. In this proceeding, the seniority list dated 16/7/2008 at Annexure-11 to the writ petition as far as positioning of the respondent No.3 above the petitioners has been called into question. By the said seniority list, the petitioner No.1 & 2 had been placed at Sl. No. 9 & 7 respectively whereas the respondent No.3 was placed at Sl. No. 6.

2. Heard Mr. N. Tagia, learned counsel for the petitioner. Also heard Ms. G. Deka, learned Addl. Sr. Govt. Advocate for the State respondent and Mr. I. Basar, learned counsel appearing for private respondent No.3.

3. The brief facts as they emerge from the writ petition under consideration and which are necessary for disposal of the present proceeding are that the petitioner No. 1 and 2 were initially appointed as Junior Engineer in PWD Department on 21/6/1990 and 12.01.1993 respectively. While the petitioner No.1, a diploma Engineer, had worked as J.E in PWD for about 8 years, the petitioner No.2, a degree holder in Civil Engineering, had worked as J.E in PWD for about 5 years.

4. On 27.01.2001 the petitioners were appointed as Urban Programme Officer (in short, UPO) in the department of Urban Development & Housing (in short, Housing department). On being so appointed, the petitioner No.1 joined the Housing department as UPO on deputation basis on 17.04.2001 whereas petitioner No.2 joined the same department in the same capacity on deputation basis on 12.04.2001. Thereafter, the petitioners were permanently absorbed as UPOs in Housing department with effect from the date on which they joined in Housing department on deputation via order dated 23.08.2004.

5. On the other hand, the respondent No.3, who joined PWD as Junior Engineer in 1994, joined the Housing department as Assistant Urban Programme Officer, (in short, AUPO) on 29/12/1997 on deputation basis. Subsequently, vide order dated 5/2/2001, he was absorbed permanently in the Housing Department w.e.f. from 29/12/1997 i.e. the day when he initially joined the department as AUPO on deputation basis.

6. In the meantime, private responding No. 3, who was then working as AUPO, had been transferred and posted to District Urban Development Agency, West Siang district to function as UPO without any financial benefit vide order dated 22/10/2001. Thereafter, vide DPC resolution dated 7/2/2005, the respondent No.3 was recommended for promotion to the post of UPO on regular basis and in that connection, the order dated 24/2/2005 was issued regularizing the promotion of the respondent No. 3 w.e.f. 22/10/2001.

7. In the meantime, vide office memorandum dated 10.06.2005, a provisional seniority list with effect from 30.11.1997 to 16.06.2005 was circulated

with a request to all concerned to submit representation, if any, against any omission or discrepancy in such provisional seniority list. While the petitioner No.1 was placed at Sl. 8, the petitioner No.2 was placed at Sl. No.7. On the other hand, respondent No.3 was shown at Sl. 18 of the aforesaid provisional seniority list.

**8.** Against such provisional seniority list, the respondent No.3 submitted a representation dated 27.08.2005 stating inter alia that since his services as UPO had been regularized with effect from 22.10.2001 and was no longer officiating as UPO, his seniority in the grade of UPO should be counted from the dated on which he was so regularized. On the receipt of such representation, the respondent authorities published another provisional seniority list dated 02.11.2007 whereby and where-under, the respondent No.3 was assigned Sl. No.6 whereas the petitioner No.1 and 2 were placed at Sl. No. 9 & 8 respectively.

**9.** Being aggrieved by such conduct on the part of the State respondents, the petitioners submitted a representation to the respondent No.1 on 05.11.2007 expressing their grievances for allocating the respondent No.3 a place above the petitioners in the provisional seniority list dated 02.11.2007. However, the State respondents did not act upon such representation submitted on 05.11.2007 for which the petitioners submitted more and more representations to the respondent No.1 on 21.01.2008 and also on 11.03.2008.

**10.** Meanwhile, a Committee was constituted for finalization of inter-se-seniority of UPOs in Housing department. Accordingly, the Committee met on 11.07.2008 and prepared minutes of meeting whereby and where-under, the Committee placed the petitioner No.1 at Sl. No. 9 whereas it placed the petitioner No.2 at Sl. No.7. Once again the Committee so constituted placed the respondent No. 3 at Sl. No.6. In placing the petitioner at Sl. No.6 above the petitioners, the Committee took into account his past service rendered in the parent department as well as the fact that the respondent No.3 served both the parent and borrowing department in the equivalent posts.

**11.** According to the petitioners, placing the respondent No.3 above the petitioners taking into account his past service in parent department is illegal since the petitioners joined the PWD, Arunachal Pradesh as J.E well before the respondent No.3 joined such department in the same capacity. Since the petitioners were senior to respondent No.3 in parent department as well, the Committee aforementioned could not have placed respondent No.3 above the petitioners.

**12.** Even otherwise, the petitioners could not have been placed below the respondent No.3. In that connection, it has been stated that when they absorbed as UPO in Housing department w.e.f. the date of their joining such department on deputation vide order dated 23.08.2004 when the respondent No.3 was not even born in the grade of UPO in Housing department since he was promoted to the rank of UPO with effect from 22.10 2001 by the order dated 24.02.2005. Therefore, by giving retrospective promotion to the respondent No.3 to the grade of UPO, the State respondents cannot make the petitioners junior to the respondent No.3.

**13.** Thereafter, the State respondents notified the final seniority list of UPOs under notification dated 16.07.2008 where the petitioner No.1 and 2 were placed at Sl. No. 9 & 7 whereas the respondent No.3 was placed at Sl. 6 on showing that the respondent No.3 was absorbed as UPOs in Housing department on 22.10.2001 which is utterly without any substance whatsoever.

**14.** The petitioners therefore, claimed that the positioning the respondent No.3 above the petitioners in the seniority list dated 16.07.2008 is arbitrary , illegal and without any jurisdiction and as such, they approached this court having filed the present proceeding urging this court to quash and set aside the seniority list aforesaid as far as positioning of petitioners and respondent No.3 is concerned and also to correct the said list by placing the respondent No.3 below the petitioners therein. In support of their claims, the petitioners relied on the decision of Hon'ble Supreme Court in the case of State of Bihar Vs Akhourri Sachandra Nath, reported in 1991 supplementary(1) SCC 334. The relevant part is reproduced below:-

*12. In the instant case, the promotee respondent 6 to 23 were not born in the cadre of Assistant Engineer in the Bihar Engineering Service, Class II at the time when respondents 1 to 5 were directly recruited to the post of Assistant Engineer and as such they cannot be given seniority in the service of Assistant Engineers over respondent 1 to 5. It is well settled that no person can be promoted with retrospective effect from a date when he was not born in the cadre so as to adversely affect others. It is well settled by several decision of this court that amongst members of the same grade seniority is reckoned from the date of their initial entry into the service. In other words, seniority inter se amongst the Assistant Engineers in Bihar Engineering Service, Class II will be considered from the date of the length of service rendered as Assistant Engineers. This being the position in law respondents 6 to 23 cannot be made senior to the respondents 1 to 5 by the impugned government orders as they entered into the said service by promotion after respondents 1 to 5 were directly recruited in the quota of direct recruits. The judgment of the High Court quashing the impugned government order made in annexures 8,9 and 10 is unexceptionable,”*

**15.** Notice on the proceeding was served on the respondents. The respondent Nos. 1 to 2 have filed common counter affidavit whereas the respondent No.3 had filed separate counter affidavit refuting the claims of the petitioners. In their counter affidavit, State respondents had contended that as per the recruitment rule prevalent during the time under consideration, the respondent No.3 had earned qualification to be considered for promotion to the post of UPO with effect from 1999.

**16.** However, he was denied such promotion. When the wrong, so perpetuated on the respondent No.3 was detected, same was corrected and the respondent No.3 was given promotion to the post of UPO on regular basis with effect from 22.10.2001 which is the date that when he was given functional promotion to the post of UPO in the Housing department. The relevant part of the affidavit of the State respondents is reproduced below:-

*“That with regard to the statements made in para-9 of the writ petition, are denied the respondent No.3 was appointed as JE in his parent department in the year 1994. Thereafter, he was appointed as Assistant Urban Programme officer in the year 1997 under the UD & Housing Department. Subsequently was absorbed permanently in the year 2001. And as per the provision laid down in the Book “Establishment and Administration” with heading Recruitment by Absorption/Deputation clause-11 “seniority of persons absorbed after being on deputation sub-clause state that-*

*“In the case of a person who is initially taken on deputation and absorbed later (i.e where the relevant RRs provide for deputation/transfer), his seniority in the grade is 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 also 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 some or equivalent grade in the parent department whichever is earlier.*

*Thus, as per prescribed RRs the respondent No.3 was sought to be promoted in the year 1999 as per his qualification & service tenure. Whereas, he was time deprived off his promotion quota by appointing persons from other works department on deputation by depriving the promotional quota of the respondent No.3 .*

*Therefore, claim of the petitioner who was appointed on deputation against promotional quota do not bear any reality rather the petitioner should be grateful to the department for considering him for appointment of deputation and absorbed later. This is clear cut example of “Accusation of an accused”*

**17.** It is also the case of the State respondents that the petitioners were appointed as UPO against the quota meant for promotion from the departmental candidate. Since on the date on which the petitioners were appointed as UPO on deputation basis in Housing department, and since on the date the respondent No.3 was duly qualified to be considered for promotion to the post of UPO, the appointment of the petitioners against the quota meant for departmental candidate was fundamentally illegal.

**18.** This is because of the fact that the appointment on deputation against promotional quota is permissible only when there is no departmental candidate for promotion. Since that was not the position in the case in hand, as stated above, the very entry of the petitioners in the Housing department as UPO on deputation basis is illegal.

**19.** Since by issuing the order dated 24.02.2005, the State respondents had corrected a mistake in order to give the respondent No.3 what is due to him, there is nothing wrong on the part of the State respondents either in the issuance of order dated 24.02.2005 or in issuance of notification dated 16.07.2008. Therefore, the Committee constituted to finalize the seniority of

the UPOs in Housing department also did not commit any wrong when it recommended the placing of the respondent No.3 above the petitioners.

**20.** In his counter affidavit, the respondent No.3 too echoed the claim made by the State respondents in their counter affidavit. However, elaborating the same, he claims that since he being a degree holder in Civil Engineering joined the PWD in 10.03.1994 and since he joined the Housing department in the equivalent capacity on 29.12.1997, in the terms of service jurisprudence and also under the relevant Recruitment Rules, he became eligible for promotion to the post of UPO with effect from 10.03.1999. However, department did not give him promotion to the post of UPO on and from the date on which he became eligible for promotion to the post of UPO but with effect from 22.10.2001.

**21.** The respondent No.3 has further contended that the petitioners were absorbed as UPO not on the date of their joining the Housing department on deputation but with effect from 20.08.2004. Since he was given regular promotion to the post of UPO with effect from 22.10.2001 and since the petitioners were absorbed as UPO in the department aforesaid with effect from 20.08.2004, the respondent No.3 is obviously senior to the petitioners in the grade of UPO.

**22.** The further case of the respondent No.3 was that having been denied promotion with effect from 10.03.1999, he approached this court by the way of W.P.C No. 325(AP) 2009 seeking a direction to the State respondents requiring them to promote respondent No.3 to the post of UPO with effect from 10.03.1999. This court after hearing the parties therein granted the relief, sought for by the respondent No.3 in such proceeding. He, therefore, submits that the state respondents committed no wrong in promoting him to the rank of the post of UPO w.e.f 22.10.2001 and urges this Court to dismiss this proceeding with cost.

**23.** In support of his contention, the learned counsel for respondent No.3 refers me to the decision of Hon'ble Supreme Court in the case of Sub-Inspector Rooplal Versus Lt. Governor reported in (2000) 1 SCC 644 as well as in the case of Direct Recruitment Class-II Engineering Officers Association versus State of



Maharashtra & Ors., reported in (1990) 2 SCC 715. He also relies on the decisions of this Court in H.M. Rawther & Ors. Versus State of Nagaland, reported in 2005 (Suppl.) GLT 843 and Meyom Karga -Versus- State of Arunachal Pradesh reported in 2004 (suppl.) GLT 623. The petitioners having filed affidavit in reply reiterated what they had stated in their petition.

24. I have heard the arguments advanced by the learned counsel for the parties. Before I proceed further, I need to know when a person can claim his seniority in the borrowing department. We also need to know the point of time from which he can claim seniority in the borrowing department. The law on this point has been well settled. It has again and again been held that normally, such a person can claim seniority in borrowing department only from the date when he is regularly absorbed in borrowing department although his services, in the parent department, may be counted for pensionary and other pension related matters.

25. In this connection we may profitably peruse the judgment of the Hon'ble Supreme court in the case of Director Central Bureau of Investigation & Anrs., versus D. Singh reported in (2010) 1 SCC 647. For ready reference the relevant part is reproduced below:-

*...20. "It is true that the respondent was appointed as DSP on officiating basis by CBI in 1977 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".*

26. Coming back to our case, I have found that though the petitioners admittedly worked in lending department in the grade of JE which is equivalent to AUPO in the housing department. However, the petitioners claim that they were absorbed in the borrowing department, that is, the department of Housing, with retrospective effect from the date of their joining the Housing department on deputation. But the claim, so advanced by the petitioners runs counter to Service jurisprudence qua recruitment by the way of absorption --since ---the petitioners served the lending department in the grade lower than

the grade which they were deputed to and which they were subsequently absorbed in.

27. However, such a claim is too far from the truth--since -, the order dated 23.08.2004, in no uncertain term, reveals that the petitioners were absorbed in borrowing department----not from the date of their joining the same on deputation-----but on and from 20.08.2004 instead. Thus, I have found no substance in the claim of the petitioners that they were absorbed in the housing department with effect from date on which they joined the housing department on deputation. Quite contrary to such claim, they were absorbed as UPO in housing department with effect from 20.08.2004.

28. On the other hand, the respondent No.3 was regularized as UPO in Urban Development Department w.e.f. 22/10/01, that is, the date, on which he was given functional promotion to the post of UPO, vide order dated 24/02/05. Therefore, the respondent No.3 was born in the grade of UPO with effect from 22.10.2001.Thus, apparently, in the grade of UPO, the respondent No. 3 is senior to the petitioners. Now, we are to know if promotion on officiating basis confers any advantage on the person so favored with such officiating promotion.

29. The implication of officiating appointment/ promotion has clearly been defined by Hon'ble Apex Court of the country in the case of L. Chandra Kishore Singh -Versus State of Manipur & Ors., reported in (1989) 8 SCC 287. In L. Chandra Kishore Singh (supra), Hon'ble Supreme Court held as follows:-

*..”It is now well settled that even in the case of probation or officiating appointments which are followed by a confirmation unless a contrary rule is shown, the service rendered as officiating appointment or on probation cannot be ignored for reckoning the length of continuous officiating service for determining the place in the seniority list. Where the first appointment is made by not following the prescribed procedure and such appointee is approved later on, the approval would mean his confirmation by the authority and shall relate back to the date on which his appointment was made and the entire service will have to be computed in reckoning the seniority according to the length of continuous officiation. In this regard we fortify our view by the judgment of this court in G.P. Doval Chief Secy., Govt. of U.P.”*

**30.** Similar view has been rendered in the case of direct recruitment (supra) wherein it was held as follows:-

*"If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularization of his service in accordance with the rules, the period of officiating service will be counted."*

**31.** Coming back to our case, we have found that the draft Service Rules, under which the petitioners and respondent No.3 were absorbed in housing department, off course, in different grades, are silent qua the seniority of the officers who had served the both lending department and the borrowing department in a posts which are equivalent. We have also found that vide order dated 24.02.2005, the respondent No.3 was given officiating promotion to the post of UPO with effect from 22.10.2001. More importantly, such officiating promotion was regularized by the State respondents too.

**32.** In view of the law laid down in the L. Chandra Kishore Singh (supra) as well as in the case of direct recruitment (supra) and also in view of silence of the draft service Rules, on the matter under consideration, and so also for other reasons, which I have already catalogued here in before, I am of the opinion that the State respondents committed no wrong in either in giving officiating promotion to the respondent No.3 to the post of UPO with effect from 22.10.2001 or regularizing such officiating promotion with effect from 22.10.2001. Thus, I have no hesitation in holding that the promoting of the respondent No.3 to the post of UPO w.e.f 22.10.2001 is legal and as such, sustainable in law.

**33.** On some other counts too the present proceeding is liable to be dismissed. It is a settled law that unless one questions the basic order, he cannot question the consequential order or orders. In our instant case, the consequential order is the seniority list dated 16.07.2008 whereas the order dated 24.02.2005 giving the respondent No.3 promotion to the post of UPO with effect from 22.10.2001 is the basic order.

**34.** Equally importantly, the minutes of the meeting dated 11.07.2008 which affirmed the promotion of the respondent No.3 to the rank of UPO with effect from 22.10.2001 is another basic order since the seniority list dated 16.07.2008 is founded on aforesaid order/resolution. There is nothing on record to show that order dated 24.02.2005 or resolution dated 11.07.2008 had ever been challenged by the petitioners at any point of time, whatsoever.

**35.** Even in the present proceeding too, the petitioners did not question the legality or otherwise of the aforesaid order/resolution. Since the petitioner did not question those two basic orders/resolutions, he cannot question the seniority list dated 16.07.2008 which is nothing but consequential order of aforesaid resolution and order. On this count also, the proceeding in hand is liable to be dismissed.

**36.** In view of our forgoing discussion, I have found that the petitioners were absorbed as UPO in housing department with effect from 20.08.2004 whereas the respondent No.3 was promoted to such post with effect from 22.10.2001. That being so, in the grade of UPO in the housing department, the respondent No.3 is pretty senior to the petitioners herein. Thus, one cannot find fault with the State respondents in placing the respondent No.3 above the petitioners in the seniority list dated 16.07.2008.

**37.** Consequently, it is held that the present proceeding lacks merit and as such same is dismissed, of course, without any cost.

**JUDGE**

*Kev*