

GAHC040011452021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : WA 11/2021

1:Yimi Angu
AE, Deptt. of Hydro Power Development Bomdila, P.O and P.S Bomdila, District
West Kameng, Arunachal Pradesh

VERSUS

1:Obi Dai and 14 Ors.
ASW Civil Office of Chief Engineer, Department of Hydro Power Development,
Itanagar, District Papum Pare, Arunachal Pradesh

2:Ojing Nobeng
AE
Department of Hydro Power Development Daporijo
P.O and P.S Daporijo
District Upper Subansiri
Arunachal Pradesh

3:Lod Nakku
AE
Department of Hydro Power Development
Palin P.O and P.S Palin
District Kurung Kumey
Arunachal Pradesh

4:Kento Nyodu
Department of Hydro Power Development Yingkiong
P.O and P.S Yingkiong
District Upper Siang
Arunachal Pradesh

5:Anthony Boko
AE
Department of Hydro Power Development Geku

P.O and P.S Geku
District Upper Siang
Arunachal Pradesh

6:Oling Padung
AE
Deptt. of Hydro Power Development Ziro Division
PO and PS Ziro
Dist. Lower Subansiri
A.P

7:Tanung Jamoh
Deptt. of Hydro Power Development Pasighat
PO/PS Pasighat
Dist. East Siang A.P

8:Hage Chatung
AP
Deptt. of Hydro Power Development Pasighat
PO/PS Pasighat
Dist. East Siang
AP.

9:Tarak Hari
E.E. InCharge Deptt. of Hydro Power Development Ziro Division
PO and PS Ziro
Dist. Lower Subansiri AP

10:Hage Gambo
ASW
Civil Circle Deptt. of Hydro Power Development Ziro Division
PO and PS Ziro
Dist. Lower Subansiri
A.P

11:THE STATE OF AP
Represented through the Chief Secretary
Govt. of Arunachal Pradesh
Itanagar.

12:The Secretary
Department of Hydro Power Govt. of Arunachal Pradesh

13:Thje Chief Secretary
The Chairman of the DPC
Govt. of Arunachal Pradesh
Itanagar.

14:The Secretary UD
The Member of the DPC
Govt. of Arunachal Pradesh

15:The Secretary Power
The Member of the DPC
Govt. of Arunachal Pradesh
Itanaga

Advocate for the Petitioner : P J Saikia

Advocate for the Respondent : GA (AP)

BEFORE

HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

HON'BLE MR. JUSTICE ROBIN PHUKAN

O R D E R

29.11.2021

(A.M. Bujor Barua, J)

Heard Mr. PJ Saikia, learned counsel for the appellant and Ms. G Ete, learned Additional Senior Government Advocate for the respondents No. 11, 12, 13 and 15.

2. The appeal is admitted for hearing.

3. Issue notice returnable in six weeks to the respondents No. 1 to 10 by registered post with A/D cards within three days. Notice be served on the respondent No. 14 by serving a copy of the memo of appeal on the learned Standing Counsel for the Urban Development Department.

4. The appellant was promoted to the cadre of Assistant Engineer Civil (AEC) on the recommendation of the DPC dated 24.07.2012 and accordingly, he is serving in the promoted cadre. The respondents No. 1 to 10 herein who were direct recruits of the year 2006, in WP(C) No.66(AP)/2013 have assailed the

recommendation of the DPC dated 24.07.2012 by which the appellant was promoted.

5. Before the learned Single Judge, the respondents No. 1 to 10 had relied upon the pronouncement of the Supreme Court in *Keshav Chandra Joshi and others –vs- Union of India and others*, reported in 1992 Supp (1) SCC 272 to raise the contention that the promotion meted to the appellant by the DPC dated 24.07.2012 was made in excess of the quota for promotion without adhering to the ratio of 50:50. A stand was also taken that although the appellant was promoted to the cadre of AEC on an ad-hoc basis in the year 2005, but following the law laid down in *Direct Recruit Class II Engineering Officers' Association –vs- State of Maharashtra and others*, reported in (1990) 2 SCC 715, they are not entitled to the said period.

6. In paragraph 47 Clause (B) of the pronouncement in *Direct Recruit Class II Engineering Officers' Association (supra)*, it had been provided that ad-hoc period in service would be not entitled if the person concerned was given the benefit without following the due procedure of law.

7. By the judgment impugned, the promotion given to the appellant by the DPC dated 24.07.2012 had been set aside.

8. We have noticed that the aforesaid aspect as to whether the ad-hoc promotion in the year 2005 was made by following the due procedure of law had not been gone into in the judgment impugned. Secondly, even if there was a breakdown of the quota rule of 50:50 for giving the benefit of promotion, prima-facie it would not be a case for setting aside such promotion. The law in this respect has been laid down by the Supreme Court to the extent that if any promotion was made without adhering to the quota rule, the other group can be

given the seniority benefit in view of such quota rule being not adhered to.

9. Considering the prima-facie case being made out, the balance of convenience as well as the irreparable loss that the appellant may suffer, in the interim, it is provided that the judgment impugned dated 26.10.2021 in WP(C) No.66(AP)/2013 shall remain stayed until further orders.

10. However, the implication of staying the judgment would not render any undue benefit to the appellant for the purpose of promotion to the next higher cadre in respect of the seniority aspect in the cadre in near future by taking his date of promotion to be as per the DPC dated 24.07.2012. For such purpose, the Department may work out inter-se seniority between the appellant promotee and the respondents direct recruits for making any further promotion by strictly following the provisions of law in the matter.

List the matter after six weeks.

JUDGE

JUDGE

Comparing Assistant