

IN THE HIGH COURT OF SIKKIM

Writ Petition (C) No.1 of 2002.

Shri Kharga Bahadur Gurung,
Son of Late Ganja Bahadur Gurung,
resident of Government Food Preservation Factory
at Singtam, PO & PS Singtam, East Sikkim.

... Petitioner.

-versus-

1. The State of Sikkim through the Secretary,
Department of Personnel, Administrative
Reforms and Training, Govt. of Sikkim,
Tashiling, East Sikkim.
2. The Secretary, Sikkim Public Service Commission,
Gangtok, East Sikkim.
3. Shri Sukraj Subba,
Additional Chief Engineer, Roads and Bridges,
Govt. of Sikkim, Gangtok, East Sikkim.
4. Shri P.B. Gurung,
Superintending Engineer (Mechanical),
Power Department, Govt. of Sikkim,
Gangtok, East Sikkim.
5. Shri Karma Pintso Bhutia,
Joint General Manager(Mechanical),
S.N.T. Department, Govt. of Sikkim,
Gangtok, East Sikkim.
6. Shri Laxuman Pradhan,
Superintending Engineer(Mechanical),
Roads and Bridges, Govt. of Sikkim,
Gangtok, East Sikkim.

... Respondents.

Coram:

The Hon'ble Shri Justice Ripusudan Dayal, Chief Justice.

Present: Mr. A.K. Upadhyaya, Advocate for the petitioner.

Mr. N.B. Khatiwada, Addl. Advocate General with Mr.
Karma Thinley, Asstt. Govt. Advocate for respondent
No.1.

N. Khatiwada

Mr. K.V. Joseph, Dy. Controller(Exam.), Sikkim Public Service Commission for respondent No.2.

Mr. B.K. Rai, Advocate for respondent No.3.

Respondent Nos.4, 5 and 6 in person.

Date of Decision: 23-9-2002.

JUDGMENT

Dayal, C.J.

The petitioner and respondent Nos.3 to 6 were working as Mechanical Engineers under the Government of Sikkim in the year 1981. In the seniority list published vide Notification No.154/(GEN)/EST. dated 9-9-1981, the petitioner was shown at Sl. No.9 whereas respondent Nos.3 to 6 were shown at Sl. Nos.5 to 8. Thus, respondent Nos.3 to 6 were senior to the petitioner. Vide Office Order No.139/(G) EST. dated 23-4-1984 issued by the Establishment Department, Government of Sikkim, a copy of which was sent for information to the various officials vide Memo No.11(9)83/915/G/Est. dated 27-4-1984, the petitioner was promoted as Deputy General Manager(Stores) in the scale of Rs.900-40-1180-Eb-45-1450-Eb-50-1800 vice Shri Sonam Lama. It was further stated in the order that the petitioner's position in the inter-se-seniority list as notified vide Notification No.154/GEN/EST. dated 9-9-1981 would, however, remain unchanged. Thus, despite the earlier promotion of the petitioner to the higher grade, the inter-se-seniority between the petitioner and respondent Nos.3 to 6 was to remain unchanged. The reason for doing this was given by the State Government in the counter-affidavit filed by the Secretary, Department of Personnel, Administrative Reforms and Training on 23-8-2002 and it was stated that in the year 1984, the petitioner was working as Assistant Engineer(Mechanical), Sikkim Nationalised Transport and while promoting him, the other Assistant Engineers serving in the other departments who were senior to

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separate cadre for Sikkim Nationalised Transport Department, the Mechanical Engineers serving under the other departments were also to be considered under the rules for promotion to the post of Deputy General Manager. As such, there was full justification for specifying in Office Order No.139/(G) EST. dated 23-4-1984 that despite the promotion of the petitioner as Deputy General Manager, his inter-se-seniority as notified vide Notification No.154/(GEN)/EST. dated 9-9-1981 would remain unchanged. Thus, there is no merit in the prayer made by the petitioner that in view of his earlier promotion notified vide Office Order dated 23-4-1984, he should be treated senior to respondent Nos.3 to 6.

5. As regards the promotion of respondent No.3 Shri S.R. Subba, to Selection Grade-I, it is common ground that it is not Rule 17 but Rule 25 of the Sikkim State Engineering (Civil, Electrical & Mechanical) Services Rules, 1989, that is applicable to the facts of the present case. That rule reads as under:-

“25. Promotion from the one grade to another in the service.-

(1) The Committee constituted under rule 17 shall also be the Committee for the purpose of promotion of the members of the service to higher grades of the Service.

(2) The Chairman or where the Chairman is unable to attend, the Member of the Commission shall preside over the meeting of the Committee. The absence of a member, other than the Chairman or the Member of the Commission, shall not invalidate the proceedings of the Committee if more than half the members of the Committee has attended its meetings.

(3) The Government shall, from time to time, for the purpose of sub-rule 1, prepare a list of names of the members of the Service in order of seniority who have completed the prescribed length of service for promotion to the next higher grade on the first day of that year.

(4) The Government shall forward to the Commission the list prepared under sub-rule 3 along with the Character Rolls and service records of the periods the member of the Service has to complete to become eligible for promotion, indicating the anticipated number of vacancies to be filled by promotion in course of period of 12 months commencing from the date of preparation of the list.

(5) The Commission after satisfying themselves that the records and the informations complete in all respects have been received, shall convene a

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him in service were not considered at all. The allegation that at the time of promotion of the petitioner the other senior officers were not considered was denied by the petitioner in the rejoinder filed by him.

2. Subsequently, Sikkim State Engineering (Civil, Electrical & Mechanical) Service Rules, 1989 were framed by the State Government. Thereafter, one post of Additional Chief Engineer(Mechanical) in Selection Grade-I fell vacant in the State Engineering Mechanical Service. Respondent No.3, Shri S.R. Subba, was promoted in Selection Grade-I as Additional Chief Engineer(Mechanical) in the scale of Rs.12500-67000 vide Office Order No.O.O.05/G/DOP dated 7-4-2001. By this writ petition, the petitioner has claimed an order directing the State Government to rectify the seniority list published on 9-3-1998 wherein respondent Nos.3 to 6 were shown senior to him and also for quashing the promotion of respondent No.3 to Selection Grade-I with a further direction to respondent Nos.1 and 2 to consider the case of the petitioner to Selection Grade-I.

3. I have heard Shri A.K. Upadhyaya Advocate for the petitioner, Shri N.B. Khatiwada Additional Advocate General for respondent No.1, Shri K.V. Joseph Dy. Controller(Exam.) Sikkim Public Service Commission for respondent No.2 and Shri B.K. Rai Advocate for respondent No.3.

4. During arguments, the learned Additional Advocate General produced the relevant records which show that the petitioner had been working as officiating Deputy General Manager(M) traffic since 1981 in the Sikkim Nationalised Transport Department. Records further show that he was qualified and had sufficient experience in the Department to be posted as Deputy General Manager(Mechanical). The records further show that as respondent Nos.3 to 6 were senior to the petitioner and as they were working in other departments and as they were not being considered for the post of Deputy General Manager, the petitioner was being promoted only in an officiating capacity on the condition that the inter-se-seniority already notified vide Notification No.154/(GEN)/EST. dated 9-9-1981 would remain unchanged. Since there was no

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meeting of the Committee. The Committee shall prepare a final list of the officers who are found suitable for promotion.

(6) The number of persons to be included in the list shall not exceed twice the number of vacancies to be filled by promotion.

(7) The Commission shall forward the final list prepared under sub-rule 5 to the Government along with character rolls and service records received from the Government.

(8) The list shall ordinarily be in force for a period of 12 months from the date of the recommendation of the Commission.

(9) Promotion of the persons included in the list to the relevant higher grade shall be made by the Government against the existing vacancies in the order in which their names appear in the list.


(10) It shall not ordinarily be necessary to consult the Commission before such promotion is unless during the period of 12 months from the date of recommendation of the Commission there occurs a deterioration in the work of the member of the Service which in the opinion of the Government is such as to render him unsuitable for promotion.”

6. Sub-rule (5) of rule 25 clearly provides that when promotion is to be made from one grade to the another in the service, a final list is to be prepared of the officers who are found suitable for promotion. Sub-rule (6) provides that the number of persons to be included in the list shall not exceed twice the numbers of the vacancies to be filled by promotion. It means that if there is one vacancy in the higher grade either one person in the lower grade can be selected or two but in no case more than two by the Committee. There is no doubt that the selection is to be made on the basis of seniority and the senior person is to be excluded from the selection list only if he is found unsuitable. It is not the case of anyone that respondent No.3 was found not suitable to be promoted to Selection Grade-I. Learned counsel for the petitioner submits that the rule is arbitrary inasmuch as it does not prescribe the method of assessing the suitability of the person concerned. There is no merit in the submission because it is evident that the suitability is to be considered on the basis of the character rolls and the service records of the persons eligible for promotion. When selection is to be made on the basis of seniority subject to fitness, the argument about the arbitrariness is wholly devoid of merit. Therefore, Office

M. S. Singh

Order dated 7-4-2001, Annexure P/13 promoting respondent No.3, Shri S.R. Subba, to Selection Grade-I of the Sikkim Engineering (Mech.) Service cannot be faulted with.

7. In the result, the writ petition is dismissed. However, in the circumstances, there shall be no order as to costs.


23.9.2002
(Ripusudan Dayal)
Chief Justice
23-9-2002.