

IN THE HIGH COURT OF SIKKIM

Writ Petition No.11 of 2002

1. The Comptroller & Auditor General of India,
10, Bahadur Shah Zafar Marg,
New Delhi – 110 002.
2. The Accountant General,
Sikkim, Lower Secretariat Building,
Gangtok, Sikkim.
3. The Deputy Accountant General,
Office of the Senior Deputy
Accountant General,
Gangtok, Sikkim. Petitioners.

Versus

1. Shri Tapash Bhowmik,
Accounts Officer,
Office of the Senior Deputy
Accountant General,
Gangtok, Sikkim.
2. Shri Pemba Lama,
Accounts Officer,
Office of the Senior Deputy Accountant
General,
Gangtok, Sikkim. Respondents.

Coram:

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

The Hon'ble Mr. Justice N. Surjamani Singh, Judge.

Present : Mr. S. P. Wangdi, Senior Central Government Standing
Counsel with Mr. Karma Thinlay, Advocate for the
petitioners.

Petitioner No.3, Mr. Deepak Kapoor, Deputy Accountant
General, Office of the Senior Deputy Accountant General
(A&E), Gangtok, Sikkim in person.

None for the respondent No.1.

Respondent No.2, Shri Pemba Lama in person.

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Date of Decision : 12th May, 2003.

J U D G M E N T

Dayal, CJ.

This writ petition challenges the order of the Central Administrative Tribunal, Calcutta Bench, Circuit at Gangtok, in O.A.No.887/SKM/97 dated 24.2.1999 allowing the petition brought by respondent No.1, Shri Tapash Bhowmik, Accounts Officer, directing the petitioners to give promotion to him to the post of Accounts Officer with effect from 30.8.1994 since when his junior, namely, Shri Pemba Lama impleaded as respondent No.2 in the petition was promoted to the post of Accounts Officer with all consequential benefits including restoration of seniority.

2. Respondent No.1, Tapash Bhowmik, and respondent No.2, Pemba Lama, were working as Assistant Accounts Officer which is the feeder cadre for promotion to the post of Accounts Officer. Respondent No.2, Pemba Lama was junior to respondent No.1. Case of respondent No.1 is that the petitioners had unjustifiably promoted respondent No.2 to the post of Accounts Officer ignoring his claim. His submission is that respondent No.2 was given promotion as Accounts Officer with effect from 30.8.1994, whereas, he himself was promoted to that post with effect from 5.5.1995. Therefore, it was contended on behalf of respondent No.1 that there was hostile discrimination against him, as there was no reason to deprive him of the said promotion before respondent No.2 was promoted.

3. The matter of promotion had been considered by the D.P.C. After seeing the confidential reports, the D.P.C. graded respondent No.1 as "Good"

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and respondent No.2 as "Very Good". Respondent No.1 was given promotion on the basis of a circular issued by the Department of Personnel & Training OM No.22011/7/88-Estt.(D) dated 19th August, 1988 circulated under the letter of Comptroller & Auditor General bearing No.883-N2/135-88 dated 30th September, 1988, according to which a person getting the higher grading than the bench mark would be considered for promotion in exclusion of others. However, a plea was taken on behalf of respondent No.1 before the learned Tribunal that the aforesaid Notification dated 19th August, 1988 had been superseded by the Government of India, Department of Personnel & Training OM. No.22011/1/90-Estt.(D) dated 12th October, 1990 and 22nd April, 1992 which is available at pages 690-695 of Swamy's Complete Manual on Establishment & Administration, 1994 Edition. The attention of the learned Tribunal was drawn to paragraph 6.3.1 of the said OM under the heading "Principles to be observed and preparation of Panel" which runs as follows :-

"The list of candidates considered by the DPC and the overall grading assigned to each candidate, would form the basis for preparation of the panel for promotion by the DPC. The following principles should be observed in the preparation of the panel:-


- (i) Having regard to the levels of the posts to which the promotions are to be made, the nature and importance of duties attached to the posts a bench-mark grade would be determined for each category of posts for which promotions are to be made by selection method. For all Group C, Group B and Group A posts upto (and excluding) the level of Rs.3700-5000/- excepting promotions for induction to group A posts or Services from lower groups, the bench mark would be "Good". All officers whose overall grading is equal to or better than the bench mark should be included in the panel for promotion to the extent of number of vacancies. They will be arranged in the order of their inter se seniority in the lower category without reference to the overall grading obtained by each of them provided that each of them has an overall grading equal to or better than the bench mark of "Good".

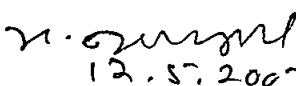
M. S. Srinivasan

As per the circular dated 12th October, 1990 and 22nd April, 1992, the Officers who obtained grading "Good" and who obtained grading "Very Good" were to be treated equally. So, learned Tribunal allowed the petition brought by respondent No.1.

4. Shri S. P. Wangdi, learned Senior Central Government Standing Counsel appearing on behalf of the petitioners, submits that whereas the circular dated 19th August, 1988 had been issued in exercise of the powers conferred by Clause (5) of Article 148 of the Constitution, circular dated 12th October, 1990 and 22nd April, 1992 was not issued in exercise of that power, and, as such, for the employees under the Comptroller and Auditor General, the circular dated 12th October, 1990 and 22nd April, 1992 was not applicable. We find merit in this submission. We also may note that on the previous date of hearing, that is on 17th April, 2003, respondent No.1 had appeared in person and had made a request for adjournment. The adjournment was granted and the case was listed for today. But he has chosen not to be present today. We are of the view that there is no infirmity in the selection process and respondent No.2, Pemba Lama was selected in accordance with the procedure which was applicable at the time of selection.

5. In the result, we allow the petition, set aside the judgment of the learned Tribunal, dated 24.2.1999 and dismiss OA No.887/SKM/97. In the circumstances of the case, there shall be no order as to costs.


(N. Surjamani Singh)
Judge
12.5.2003


12.5.2003
(Ripusudan Dayal)
Chief Justice
12.5.2003