

GAHC040009852023

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

Case No. : WP(C)/341/2023

1. Shri Nakap Hina Nabam,
S/o - Tarum Hina Nabam,
Address: - Village - Borum,
P.O. & P.S.:- Naharlagun,
District:- Papum Pare,
State:- 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 Land Management,
Government of Arunachal Pradesh,
Itanagar
3. The Director,
Department of Land Management,
Government of Arunachal Pradesh,
Itanagar

4. Shri Tama Dakpe
Supervisor Kanungo,
Department of Land Management,
Government of Arunachal Pradesh,

5. Shri Mipang Nangkar
Supervisor Kanungo,
Department of Land Management,
Government of Arunachal Pradesh,

... RESPONDENTS.

BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO

Advocates for the petitioner: Mr. T. Tagum, Adv.
Advocates for the respondents: Mr. N. Ratan, Addl. A.G., AP,
Mr. T. T. Tara, Adv.,
Mr. L. Perme, Adv.

Date of hearing : 09.03.2026 & 11.03.2026

Date on which judgment is reserved : 11.03.2026

Date of pronouncement of judgment : 31.03.2026

Whether the pronouncement is of
the operative part of the judgment? : No

Whether the full judgment has been
pronounced? :Yes

JUDGMENT AND ORDER (CAV)

Heard Mr. T. Tagum, learned counsel for the petitioner. Also heard Mr. N. Ratan, learned Additional Advocate General, Arunachal Pradesh, for the State respondents; Mr. T. T. Tara, learned counsel for the respondent No. 4 and Mr. L.

Perme, learned counsel for the respondent No. 5.

[2.] By filing this writ petition, the petitioner has sought for setting aside and quashing the Meeting Minutes of the Review Departmental Promotion Committee (DPC) dated 23.06.2023 (Annexure – 37) also the Meeting Minutes of the DPC dated 23.06.2023 (Annexure – 33), Officiating appointment of the respondent No. 4 vide Order dated 11.06.2003 (Annexure – 2), Officiating appointment Order of the respondent No. 5 vide Order dated 27.02.2004 (Annexure – 3) and the Order dated 19.01.2005 (Annexure – 5) by which the Officiating Appointment of the respondent Nos. 4 & 5 have been regularized from the date of sitting of the DPC i.e. 19.01.2005 (F/N). The petitioner has also sought for a direction for giving effect to the Minutes of the DPC dated 18.10.2022 (Annexure – 29), by which he and the respondent No. 4 have been found fit to be promoted to the two (2) vacant posts of District Land Revenue and Settlement Officer (DLR&SO). Pending disposal of the writ petition, the petitioner has sought for an interim order for staying/suspension of the DPC Minutes both dated 23.06.2023 (Annexure – 37). This Court, while issuing notice of motion on 26.07.2023, had passed an interim order staying the DPC Minutes both dated 23.06.2023 and the interim order continues as on today.

[3.] The case of the petitioner in brief is that he was appointed to the post of Supervisor Kanungo (hereafter referred as SK for short) in the Department of Land Management vide Order dated 24.08.2009 (Annexure – 10), pursuant to the recommendation made by the Constituted Board. The petitioner, after being appointed as such, was sent for Special Class Course Training at Assam Survey & Settlement Training Centre, Dakhingaon, Guwahati and successfully completed the training and his name appeared at Serial No. 29 of the Notification dated 02.06.2011 (Annexure – 11) by which the names of the successful trainees were notified.

[4.] The petitioner after serving about six (6) years as SK, was promoted to the post of Assistant Survey and Settlement Officer (AS&SO) on Officiating basis against the vacancy caused on account of superannuation of the incumbent concerned on the basis of the representation submitted by him to the Director of Land Management, Government of Arunachal Pradesh on 21.01.2016. The Officiating promotion was issued vide Order dated 02.02.2016 (Annexure – 20). Subsequently, the constituted DPC, which sat on 29.12.2016, found the petitioner fit for promotion and regularized his service from the date of his Officiating appointment. Accordingly, vide Order dated 29.12.2016 (Annexure – 23), the petitioner was given the promotion to the post of AS&SO w.e.f.

02.02.2016. Be stated herein that the post of Plane Tabler (PT) was re-designated as AS&SO vide Order dated 19.12.2014, which was published in the Arunachal Pradesh Gazette Notification dated 19.01.2015 (Annexure – 16).

[5.] The next promotional post from the post of AS&SO is to the post of District Land Revenue and Settlement Officer (DLR&SO) in terms of the Land Revenue and Settlement Officer, Group 'B' (Gazetted) Recruitment Rules, 2006 (Rules of 2006) and its amendment i.e., the District Land Revenue Settlement Officer Recruitment (Amendment) Rules, 2015 (Amendment Rules of 2015). As per the Amendment Rules of 2015, the post of DLR&SO may be filled up by promotion from Assistant Settlement & Survey Officer (AS&SO) having five (5) years of regular service in the grade, or from Surveyor who has rendered eleven (11) years of service in the grade, or from Recorder Kanungo/SK who has rendered fifteen (15) years of service in the grade, possessing the educational qualification of Graduation or a Bachelor's degree in any discipline from a recognized university along with a certificate course in Survey and Settlement from a recognized institution, following which, the post may also be filled by transfer on deputation from other departments from amongst officers possessing a degree in any discipline and a certificate course in Survey and Settlement from a recognized institution.

[6.] A DPC was constituted to consider filling up of two (2) posts of DLR&SO and the DPC held its Meeting on 18.10.2022, wherein, the petitioner as well as the respondent Nos. 4 & 5 were considered apart from other eligible candidates. The DPC found the petitioner as well as the respondent No. 4 to be fit for promotion in order of merit. While the petitioner was expecting to be promoted, a decision was taken to call for a Review DPC for filling up the two (2) posts of DLR&SO through a note prepared for the Director of Land Management, Government of Arunachal Pradesh on 20.06.2023 (Annexure – 31). Accordingly, a Meeting Notice was issued on 23.06.2023 (Annexure – 32) for holding a Review DPC to review the promotion of the petitioner from the post of SK to the post of AS&SO and to consider filling up the two (2) posts of DLR&SO.

[7.] The DPC was held as was scheduled, wherein it was found that an error has been committed in recommending the petitioner to be promoted from the post of SK to the post of AS&SO, while recommending the respondents Nos. 4 & 5 for promotion to the post of DLR&SO from the date of recommendation of the DPC. Further, on the same day in another meeting with the same composition of members, the DPC found the recommendation made in favour of the petitioner for promotion from the post of SK to the post of AS&SO to be defective, considering the fact that there were as many as twenty one (21) persons, who

were senior to the petitioner and who were not considered for promotion. The DPC, therefore, recommended withdrawal of the recommendation made in favour of the petitioner for promotion to the post of AS&SO from the post of SK on regular basis. Aggrieved with the same, the petitioner has filed the instant writ petition and while challenging the recommendation made by the Review DPC in the two (2) sittings held on 23.06.2023, the petitioner has sought for implementation of the recommendation of the DPC, which held its Meeting on 18.10.2022.

[8.] The petitioner has further challenged the Officiating appointment of the respondent Nos. 4 & 5 on the ground that the same has been done on pick and choose basis and not through selection as prescribed by the Supervisor Kanungo Recruitment Rules, 1986 (Rules of 1986). The learned counsel for the petitioner submits that since the initial appointment of the respondent Nos. 4 & 5 were de hors the rules, the illegality remains irrespective of their Officiating appointment having been subsequently regularized. He submits that such illegality cannot be cured by subsequent regularization and, therefore, even at this stage their appointment are liable to be cancelled.

[9.] The learned counsel submits that the petitioner, on the other hand was the only candidate, who was found eligible to be promoted to the post of AS&SO

and therefore, he was initially given the Officiating promotion, which was later on regularized by a duly constituted DPC. He was thus promoted with effect from his initial Officiating promotion. The petitioner, therefore, having rendered over seven (7) years of service as AS&SO, he is eligible to be considered for promotion to the post of DLR&SO in terms of the Amendment Rules of 1915, which provides that one has to have five (5) years regular service in the Grade of AS&SO in order to be considered for promotion to the post of DLR&SO. He submits that the DPC constituted for the purpose, in its Meeting held on 18.10.2022, recommended the petitioner for promotion along with the respondent No. 4 to the post of DLR&SO against the two (2) vacancies in order of merit and therefore, recommendation made by the DPC should be acted upon by the respondents.

[10.] The learned counsel submits that while the petitioner was expecting the respondents to act upon the DPC recommendation dated 18.10.2022, a Review DPC was contemplated and for which, a note was prepared by the Director of Land Management, Government of Arunachal Pradesh stating that the Chairman of the DPC Meeting dated 18.10.2022 has taken a view with regard to the promotion of the petitioner from the post of AS&SO to DLR&SO with reference to the discrepancies in his promotion to the post of AS&SO. The

Administrative Reforms Department, therefore, advised the Department that if there is an error apparent on the face the DPC recommendation, the remedy would be to place the matter before the Review DPC to take a view for appropriate action as per the guidelines pertaining to the Review DPC. Thereafter, the Review DPC, as was constituted had two (2) sittings on 23.06.2023, wherein some discrepancy was noticed in the promotion of the petitioner to the post of AS&SO, despite the recruitment rules for the said post having not been framed.

[11.] In the second sitting of the Review DPC, it was found that against one vacant post, four (4) candidates are to be considered as per the guidelines but the DPC at that relevant time considered the petitioner alone and that too, when there were twenty (20) officers, who were senior to him. Such being the case, the promotion of the petitioner was found to be erroneous and a recommendation was made for withdrawal of the same with immediate effect.

[12.] The learned counsel submits that such a decision is not only behind the back of the petitioner but the same is also not tenable in view of the fact that the petitioner was the only eligible candidate at the relevant time for consideration for promotion to the post of AS&SO, which is clear from the Office notings made by the officials of the Department. Accordingly, the decision was

taken to promote him on Officiating basis, which was then accorded to him and thereafter, his promotion was regularized by way of a DPC. The learned counsel submits that the same cannot be said to be illegal and be withdrawn at this point of time. He, therefore, submits that the recommendation of the DPC made in favour of the petitioner on 18.10.2022 should be upheld and acted upon, while the appointment of the private respondents are being dehors the recruitment rules should be set aside.

[13.] In support of his submissions, Mr. T. Tagum, the learned counsel has relied upon the following authorities:-

- (i) *Uma Rani Vs. Registrar Cooperative Society, (2004) 7 SCC 112;*
- (ii) *Nagendra Chandra Vs. State of Jharkhand, (2008) 1 SCC 798;*
- (iii) *State of Bihar Vs. Upendra Narayan Singh, (2009) 5 SCC 65;*
- (iv) *State of Orissa Vs. Mamta Mohanty, (2011) 3 SCC 436;*
- (v) *The State of Jammu & Kashmir Vs. District Bar Association, (2017) 3 SCC 410;*
- (vi) *Jomon K. K. Vs. Shajimon P. & Ors., 2025 LiveLaw (SC) 381;*
- (vii) *Madhya Pradesh Vs. Lalit Kumar Verma, (2007) 1 SCC 575;*
- (viii) *State of Karnataka Vs. Uma Devi, (2006) 4 SCC,*
- (ix) *National Fertilizer Limited Vs. Somvir Singh, (2006) 5 SCC 493;*
- (x) *Post Master General, Kolkata Vs. Tutu Das (Dutta), (2007) 5 SCC 317;*
- (xi) *Md. Ashif Vs. State of Bihar, (2010) 5 SCC 475;*

- (xii) *Dhires Ch. Paul Vs. Tripura Khadi & Village Industries Board, 2014 Supreme (Tri) 217;*
- (xiii) *Hemanta Changmai Vs. State of Assam, 2024 Supreme (online) (Gau) 13223;*
- (xiv) *Birendra Singh Nabiya Vs. State of Uttarakhand, 2025 Supreme (online) (U.K) 1964;*
- (xv) *Ajay Kumar Das Vs. State of Orissa, (2011) 11 SCC 136;*
- (xvi) *Jaiveer Singh Vs. State of Uttarakhand, (2024) 15 SCC 227;*
- (xvii) *Suraj Parkash Gupta & Ors. Vs. State of Jammu & Kashmir & Ors., (2000) 7 SCC 561;*
- (xviii) *State of Orissa & Ors. Vs. Sukanti Mohapatra & Ors., (1993) 2 SCC 486;*
- (xix) *Arun Kumar Chatterjee Vs. South Eastern Railway & Ors., (1985) 2 SCC 451;*
- (xx) *State of Uttar Pradesh Vs. Rafiquddin & Ors., 1987 (Supp) SCC 401; and*
- (xxi) *Judgment & Order dated 11.02.2022 of a Coordinate Bench of this Court in WP(C) No. 86(AP)/2020, Shri Ali Tallang Vs. State of Arunachal Pradesh & 11 Ors.*

[14.] Mr. N. Ratan, learned Additional Advocate General, on the other hand, submits that a provisional list of Land Management Department was published on 22.05.2012, wherein, amongst the SK, the name of the petitioner appeared at Serial No. 20, whereas, the private respondent Nos. 4 & 5 were placed at Serial No. 9 & 10 respectively. Although objections were invited to be submitted within a stipulated time but the petitioner apparently did not submit his objection. Thereafter, another provisional seniority list of survey staffs of Land Management Department was published on 15.10.2015, wherein, the

name of the petitioner appeared at Serial No. 21, whereas, the private respondent Nos. 4 & 5 were placed at Serial Nos. 7 & 8 respectively. Although the petitioner submitted his representation against the same, but he did not pursue the same, as in the meantime, acting upon his representation for promotion to the post of AS&SO, he was promoted on Officiating basis to the said post without considering any other person, importantly his seniors in the post of SK.

[15.] Drawing the attention of this Court to the proposal that was made pursuant to the representation submitted by the petitioner for his promotion to the post of AS&SO, the learned Additional Advocate General submits that the incumbent concerned holding the post of AS&SO was due to retire from service on 29.02.2016 on attaining the age of superannuation and in order to fill up the same, it was suggested that as there was no qualified Surveyors eligible to be considered for promotion to the post of AS&SO, since the serving Surveyors were only Class – X pass, relaxation of the recruitment rules to absorb capable officials from amongst the senior SKs was therefore proposed. However, instead of considering the eligible senior SKs by relaxing the recruitment rules, the petitioner alone was considered and given Officiating promotion and later on his promotion regularized by way of DPC. This anomaly and illegality having been

detected at a later stage, a Review DPC was therefore convened to re-examine the matter on 23.06.2023, wherein it was found that the petitioner had been erroneously recommended without adhering to the seniority list of SKs and by considering his case only while excluding his seniors. A recommendation was therefore made to withdraw the promotion given to him in the post of AS&SO with immediate effect.

[16.] The learned Additional Advocate General submits that there is no bar in convening a Review DPC at a subsequent stage upon the detection of an anomaly or error committed by the earlier DPC. Therefore, the findings of the Review DPC being based on the actual facts, the same should be upheld and the Department should be allowed to take the follow up steps. The learned Additional Advocate General submits that insofar as the challenge made to the appointment of the private respondents is concerned, the same is hit by delay and laches. He submits that the private respondents were appointed in the year 2003 & 2004 and during which time the petitioner was not even in service. The petitioner entered service in the year 2009 and he had never questioned the appointment of the private respondents at any point of time. In fact, the seniority list that was drawn and published, clearly demonstrate that the petitioner is very much junior to the private respondents and that the petitioner

never questioned the same. Therefore, it is not open for the petitioner to question the appointment of the private respondents at this stage.

[17.] The learned Additional Advocate General, thus submits that the erroneous promotion granted to the petitioner having been detected by the Review DPC and the same being detrimental to all the seniors to the petitioners for the post of SK, the findings of the Review DPC should be upheld and the writ petition should be dismissed. The learned Additional Advocate General, in support of his submissions has relied upon the following authorities:

- (i) *Vijay Kumar Kaul & Ors. Vs. Union of India & Ors., 2012 7 SCC 610;*
- (ii) *Ajit Singh & Ors. Vs. State of Punjab & Ors., 1999 7 SCC 209; and*
- (iii) *Shankara Cooperative Housing Society Limited Vs. M. Prabhakar & Ors., 2011 (5) SCC 607.*

[18.] Appearing for the private respondent No. 4, Mr. T. T. Tara, learned counsel, submits that in view of the provisions of the General Clauses Act, 1897, more particularly Section 20 and 21, the State respondents have acted within their powers to recall the illegality that was committed by convening a Review DPC. He submits that when there is a power to issue certain notification or order, the same includes the power to amend, rescind, or withdraw. He, therefore, submits that the action of the Official respondents in convening the

Review DPC is maintainable. The learned counsel also submits that he adopts the argument of the learned Additional Advocate General, regarding the delay and laches and waiver. He submits that the private respondents were appointed much earlier to the petitioner and the petitioner never questioned the appointment of the private respondent No. 4 and therefore, it is not open for him to do so at this stage.

[19.] Referring to the prayer of the petitioner in the writ petition, Mr. T. T. Tara, the learned counsel submits that the petitioner has not sought for a writ of *quo-warranto* and therefore, he cannot seek the setting aside of the appointment of the respondent No. 4. He, therefore, submits that there is no merit in the writ petition and the same should be dismissed. Mr. T. T. Tara, learned counsel submits that the petitioner was promoted to the post of AS&SO on Officiating basis, despite not being qualified and despite there being no relaxation to the recruitment rules and further the promotion was made without considering his seniors in the post of SK. The same being clearly illegal, the Review DPC was right in making its observations and recommendations and the same may not be interfered with by this Court.

[20.] Mr. T. T. Tara, learned counsel for the respondent No. 4, in support of his submissions, relies upon the following authorities:

- (i) *Madeva Upendra Sinai & Ors. Vs. Union of India & Ors., (1975) 3 SCC 765;*
- (ii) *Pramod Kumar Vs. U.P. Secondary Education Services Commission & Ors., (2008) 7 SCC 153;*
- (iii) *H.S. Vankani & Ors. Vs. State of Gujarat & Ors., (2010) 4 SCC 301; and*
- (iv) *Union of India & Ors. Vs. N. Murugesan & Ors., (2022) 2 SCC 25.*

[21.] Mr. L. Perme, learned counsel for the respondent No. 5, adopts the argument made by Mr. N. Ratan, learned Additional Advocate General and also that of Mr. T. T. Tara, learned counsel for the respondent No. 4. He submits that since the respondent No. 5 was appointed much prior in time before the petitioner and therefore, the petitioner does not have the *locus standi* to challenge the appointment of the respondent No. 5. He submits that the petitioner cannot be considered as the party aggrieved and therefore a party who is considered not to be the aggrieved person does not have the right to challenge or question the appointment given to a person earlier in time. Referring to the Order dated 19.01.2005 (Annexure – 4) by which the Officiating appointment of the respondent Nos. 4 & 5 have been regularized apart from six (6) other persons, the learned counsel submits that the petitioner cannot selectively challenge the regularization of the private respondents while

excluding the other six (6) persons. He submits that the petitioner cannot not seek for issuance of writ selectively. Therefore, on account of non-joinder of parties or mis-joinder of parties, the writ petition should be dismissed.

[22.] The learned counsel, further, referring to the Meeting Notice dated 23.06.2023 (Annexure – 32) issued by the Secretary, Land Management Department, submits that a concurrent Meeting had been chopped out on 23.06.2023. He submits that one meeting was for reviewing the promotion of the petitioner from the post of SK to the post of AS&SO and the other meeting for considering the filling up of two (2) posts of DLR&SO under the Land Management Department. Therefore, there is no any irregularity in having two (2) meetings by the DPC that was constituted on 23.06.2023. The learned counsel submits that besides this, the challenge made to the appointment of the private respondents suffers from delay and laches and particularly keeping in mind the seniority list that was drawn on more than one occasion without any meaningful objection from the petitioner. He submits that under the facts and circumstances, the writ petition has no merit and the same should be dismissed.

[23.] I have heard the submissions made by the learned counsels for the rival parties and have also perused the materials available on record. The parties have strenuously made their submissions in favour of the respective

parties they represent.

[24.] From the projection that has been made, the issue to be considered is as to whether the impugned Meeting Minutes of the Review DPC both dated 23.06.2023 by which the promotion of the petitioner from the post of SK to AS&SO was sought to be reviewed and ultimately found to be erroneous and recommended for withdrawal with immediate effect should be set aside. Further, as to whether the recommendation made in favour of the petitioner by the DPC meeting held on 18.10.2022, recommending promotion of the petitioner to the post of DLR&SO should be upheld. Further, as to whether the appointment of the respondent Nos. 4 & 5 are dehors the recruitment rules and therefore their appointment and regularization should be set aside.

[25.] Coming to the first issue, it may be seen that the petitioner came to be appointed as SK on the recommendation of the Constituted Selection Board vide Order dated 24.08.2009. Thereafter, the petitioner successfully completed the Special Class Course Training and his name appeared at Serial No. 29 in the list that was published vide Notification dated 02.06.2011. In the provisional combined seniority list of survey staff of Land Management Department published on 22.05.2012, the name of the petitioner amongst the SK is placed at Serial No. 20, while the private respondent Nos. 4 & 5 are placed at Serial

No. 9 & 10 respectively. Objections to the provisional seniority list was invited from those interested to file objection within a stipulated time. Thereafter, another provisional seniority list was published on 15.10.2015, in which the name of the petitioner appeared at Serial No. 21 while the private respondent Nos. 4 & 5 appeared at Serial No. 7 & 8 respectively.

[26.] While the above was the position, it so happened that the post of AS&SO was going to be vacant on account of retirement of the incumbent on superannuation on 29.02.2016. The petitioner, therefore, submitted his representation on 21.01.2016 to the Director of Land Management Department seeking his promotion to the said post. His representation was then considered at different levels and as per the file notings at Annexure – 19, it is recorded that the post of Plane Tabler (PT) which was re-designated as AS&SO is a post which is to be filled up 100% by way of promotion from amongst Surveyors of the Department. It was however noticed that the serving Surveyors of the Department were only Class – X pass and therefore a proposal was made to the effect that it was a fit case for one time relaxation of the recruitment rules to absorb a capable official from amongst the senior SKs. The seniority list of SKs was also circulated. While such was a noting, it was also mentioned that the petitioner was appointed as SK on 24.08.2009 had undergone Special Survey

Training and was capable so any handling the Station, GIS, GPS, Auto(A), Mapping etc., and that he had submitted his representation seeking promotion to the post of AS&SO. It was therefore decided to give the petitioner an officiating promotion, in view of the incumbent in the post of AS&SO retiring shortly on 29.02.2016. Accordingly, the petitioner was given Officiating appointment vide Order dated 02.02.2016, which was then followed by his regular promotion vide Order dated 29.12.2016 with effect from the date of his officiating appointment.

[27.] The aforesaid Order indicates that promotion was made on the recommendation of the DPC, which sat on 29.12.2016. The Minutes of the DPC proceedings dated 29.12.2016 is annexed as Annexure – 22 to the writ petition. It would be gainful to reproduce the same as below:

“MINUTES OF DPC PROCEEDINGS DATE 29TH DECEMBER, 2016

The Department Promotion Committee (DPC) constituted vide Order No. LR 73/86 Dated 28th December, 2016 comprising of the following Officers assembled in the office chamber of the Secretary to the Govt. of Arunachal, Department of Land Management, Itanagar on 29.12.2016 at 11.00 AM for promotion of Shri Nakap Hina Nabam who is officiating in the post of Assistant Survey & Settlement Officer (AS&SO) Govt. of Arunachal Pradesh, Itanagar from 2nd February, 2016.

1. *Shri T.T. Gamdik, Secretary (LM) : Chairperson*
2. *Shri E. Nangkar, Director (LM) : Member*

3. *Shri Mari Angu, Under Secretary (P&AR) : Member*

The Department had placed all the relevant documents pertaining to the post of AS&SO/Plan Tabler. As per materials produced by the Department, the lone post of AS&SO is lying vacant following retirement of Shri Gope Kamdak, who retired on attainment of superannuation from AS&SO on 29th February, 2016 and one Shri Nakap Hina Nabam has appointed on officiating basis in the post in the resultant vacancy. DPC is to examined the service records, ACRs and other relevant records of Shri Nakap Nina Nabam with the proposal to promote him to the post of AS&SO and also to regularize his officiating service in the Pay band 2 Rs. 9300-34000 and Grade Pay Rs. 4200/-PM.

The DPC had examined all the required particulars of the incumbent relating to ACRs/APARs, Dossiers, NOC, Vigilance clearance and are found to be in order expect seniority list since Shri Nakap Hina Nabam was already officiating in the post of AS&SO and his name has been taken out/omitted from the seniority list of Supervision Kanungo (SK) by the Department.

<i>Year</i>	<i>Grading</i>
<i>2013-2014</i>	<i>Very Good</i>
<i>2014-2015</i>	<i>Very Good</i>
<i>2015-2016</i>	<i>Very Good</i>

The DPC found Shri Nakap Hina Nabam to be fit for promotion and regularisation from the date of officiating promotion in view of the doctrine of continuous officiating under Article 309 of the Constitution of India.

Sd/-29/12/016(E.Nangkar) Member

Director, Land Management

Govt. Arunachal Pradesh

Sd/-29/12/2016 (Mari Angu) Member

Under Secretary(P&AR)

Govt. of Arunachal Pradesh

Sd/-29/12/16 (T.T.Gamdik) Chairman

Secretary (LM)

Govt. of Arunachal Pradesh

Sd/- Public Information Officer

Land Management Department

Govt. of Arunachal Pradesh

Itanagar"

[28.] From the above abstract, it may be seen that according to the DPC, the lone post of AS&SO which was re-designated from the post of PT was lying vacant due to retirement of the incumbent on 29.02.2016. Therefore, the petitioner was appointed on Officiating basis in the resultant vacancy. The DPC was required to examine the service records, ACRs and other relevant records of the petitioner with the proposal to promote him to the post of AS&SO and also to regularize his officiating service in the pay band and grade pay concerned. The DPC, after examining all the particulars and documents found to be same in order except for the seniority list, since he had already been officiating in the post of AS&SO and his name has been taken out/omitted from the list of SKs by the Department. Accordingly, the DPC found him fit for promotion and

regularization from the date of his promotion by applying the doctrine of continuous officiation under Article 309 of the Constitution of India.

[29.] From the above, it may be seen that the DPC did not consider the basis on which the petitioner had been given Officiating promotion to the post of AS&SO on 02.02.2016 when admittedly there were as many as twenty (20) SKs, who were senior to him in terms of the provisional seniority list dated 15.10.2015. Further, in the proposal that was initiated for filling up the lone post of AS&SO due to the retirement of the lone incumbent, pursuant to the representation submitted by the petitioner on 21.01.2016, it was specifically mentioned that promotion to the post of AS&SO is 100% by way of promotion from the post of Surveyor of the Department. Admittedly, the petitioner as well the other seniors of the petitioner were not Surveyors and could not have been in the feeder grade for promotion to the post of AS&SO. It was observed that as the maximum qualification amongst the serving Surveyors was Class – X pass only and therefore, it was proposed that the recruitment rules should be relaxed as a one time measure to absorb capable official from amongst the senior SKs. While such was the proposal, the case of the petitioner was singled out for consideration, in view of his representation as well as the Special Survey Training said to have been undergone by him and then promoted to the post of

AS&SO on Officiating basis vide Order dated 02.02.2016.

[30.] As already stated, the DPC, which was met on 29.12.2016 to consider promotion and regularization of the petitioner to the post of AS&SO, did not consider this aspect of the matter. In other words, the DPC did not consider as to how the petitioner had been promoted to the post of AS&SO, even though it being on officiating basis. Therefore, it only appears that an error has been committed by the DPC in not taking into account the case of all other senior SKs, who are eligible to be considered for the said post of AS&SO. The petitioner, after being promoted and regularized with effect from 02.02.2016 has now aspired to be promoted further to the post of DLR&SO.

[31.] The Amendment Rules of 2015, provides that an AS&SO having regular service in the grade for five (5) years is eligible to be considered for promotion to the post of DLR&SO. Admittedly, the petitioner by taking into account his date of promotion as 02.02.2016 in the post of AS&SO has rendered over six (6) years of service when the DPC met on 18.10.2022 to consider promotion of eligible candidates to the two (2) posts of DLR&SO. Further, as per the Amendment Rules of 2015, a person serving as SK regularly for fifteen (15) years and having the educational qualifications of bachelor's degree with certificate in course of Surveyor and Settlement from a recognized institution is

also eligible to be considered for promotion to the post of DLR&SO. That is how the respondent Nos. 4 & 5 have come in the zone of consideration for promotion to the said post.

[32.] The petitioner as well as the respondent No. 4 came to be recommended by the DPC, which held its Meeting on 18.10.2022 but however, some irregularity was deducted by the Chairman of the DPC, despite the recommendation that was made and therefore a note for Review DPC was prepared by the Director of Land Management on 20.06.2023 and following which a Meeting Notice was issued on 23.06.2023, fixing 23.06.2023 as the date of the review meeting. Two (2) agendas were mentioned in the Meeting Notice and for which reason two (2) separate Meeting Minutes have been prepared, which has been challenged by the petitioner. One of the Minutes of the DPC Meeting dated 23.06.2023 (Annexure – 33) indicates that the post of AS&SO was re-designated from the post of PT and since the recruitment rules for AS&SO had not been framed, the qualifying service for promotion be as per the norms. Therefore, there was an error apparent on the face of it and for which, the remedy was to hold a Review DPC to take a view.

[33.] It may be stated herein that the post of PT is covered by the Plane Tabler Recruitment Rules, 1986 (PT Rules of 1986), wherein, the post of PT is to be

filled up 100% by way of promotion from amongst the Surveyors with five (5) years qualifying service in the grade on seniority-cum-merit basis. The petitioner admittedly was not a Surveyor at any point of time and therefore in order to be considered for the post of AS&SO, which was re-designated from the post of PT, the relaxation of the recruitment rules was necessary. Although, the note-sheet annexed in the writ petition as Annexure – 19, suggests that the relaxation of the recruitment rules to absorb capable official from amongst the senior SKs has been mentioned but no materials have been placed before this Court to show that there was relaxation made in respect of the petitioner to enable the consideration of his case for promotion to the post of AS&SO. Likewise, there is no material to show that apart from the petitioner, other senior SKs have been taken into consideration. Therefore, the observation made by the Review DPC in one of the Minutes about there being an error in considering the case of the petitioner for the post of AS&SO only appears to be in order.

[34.] Similarly, in another Meeting Minutes of the Review DPC on the same day, the observation and conclusion made to the effect that the petitioner could not have been considered by excluding all his seniors in the post of SK and therefore the same being an error also appears to be in order. In this connection, reliance placed by the learned counsel for the petitioner, more

particularly, the case of *Uma Rani (supra)*, *Mamta Mohanty (supra)* and *the State of J&K and District Bar Association (supra)* amongst others are found to be squarely applicable under the facts and circumstances of the instant case and they do not support the case of the petitioner. In other words, the Apex Court in the given facts and circumstances of the case concerned has held that an illegality cannot be cured by resorting to regularization. If the initial appointment order is bad in law, then all consequential order thereof will be non est in the eye of law and the State and its instrumentality cannot validate the illegal appointment in the garb of regularization. Further, in the case of *Jomon K. K. (supra)*, the Apex Court also held that if an appointment is illegal, it is non est in the eye of law and in a case of such nature, the principle of equity will have no role to play and sympathy should not be misplaced.

[35.] The above decisions have been relied upon by the learned counsel for the petitioner to persuade the Court that the appointment of the private respondents are illegal and therefore they have to be set aside. It is however seen that the ratio would only apply to the case of the petitioner himself. Stand taken by the petitioner would be discussed in the subsequent paragraphs.

[36.] The petitioner has challenged the initial appointment of the private respondent Nos. 4 & 5 on the ground that the Rules of 1986 provides for

recruitment to the post of SK, 50% by way of promotion and 50% by way of direct recruitment. The private respondents were appointed by way of direct recruitment without any process of selection and on officiating basis. Their officiating appointment was thereafter regularized vide Order dated 19.01.2005. The petitioner entered into the service as SK on being recommended by the Selection Board vide Order dated 24.08.2009. After his entry into service, provisional combined seniority list of Surveyor staffs of Land Management Department was circulated, wherein, he was shown to be much junior to the private respondents. The petitioner did not raise any grievance against his position in the seniority list much less the appointment and regularization of the private respondents at any point of time. It is only through the instant writ petition; the petitioner has brought out the issue. Both the respondent Nos. 4 & 5 have rendered their services since the year 2004 & 2005 respectively and therefore in the considered view of this Court, it is too late in the day to unsettle the position now. Further, it is nobody's case that due to the appointment of the respondent Nos. 4 & 5, deserving candidates had been denied the opportunity of appointment. On the other hand, in view of the policy adopted to pick and choose the petitioner for promotion to the post of AS&SO without relaxation of the recruitment rules and without considering the SKs, who are senior to him, the same has resulted not only in the commission of serious

irregularity but has also caused an infringement upon the Fundamental Rights of the private respondents and other similarly situated persons, guaranteed under Article – 14 of the Constitution of India.

[37.] Thus, upon an overall consideration of the matter and its entirety, this Court is not inclined to interfere with the initial appointment of the private respondents and similarly, with the impugned Review DPC Minutes both dated 23.06.2023 insofar as the finding and observation that the petitioner could not have been singly considered without considering the case of twenty (20) other SKs, who admittedly were senior to him is concerned. Further, insofar as the recommendation made by the said DPC for filling up of two (2) posts of DLR&SO, this Court is of the considered view that the same will have to be re-considered in the light of the conclusion arrived at. Accordingly, the recommendation stands interfered with. As for the petitioner, his promotion to the post of AS&SO also stands withdrawn. However, as the official respondents, themselves were equally responsible for the unwarranted promotion given to the petitioner and therefore on the withdrawal of the promotion given to the petitioner to the post of AS&SO, there shall be notional fixation of his pay without resorting to recovery of the excess payment of the salary already given to him.

[38.] Upon the interference made by this Court to the recommendation made by the DPC for filling up the two (2) posts of DLR&SO, the Official respondents shall now convene a fresh DPC for filling up the said two (2) posts by taking in to account the services of the petitioner as SK in terms of his initial appointment dated 24.08.2009 along with all other candidates who are eligible to be considered for the post as on 23.06.2023 within a period of six (6) weeks from the date of receipt of certified copy of this order. Upon the recommendations being made, consequential orders be passed without further delay. The entire exercise shall be completed within a period of three (3) months from the date of receipt of a certified copy of this Order.

[39.] Having come to the above conclusion, reference to the remaining authorities relied upon by the parties is found to be not necessary.

[40.] With the above observations and directions, the writ petition stands disposed of by leaving the parties to bear their own costs.

JUDGE

Comparing Assistant

