

**Mhabemo Ovung & Ors.**

v.

**M. Moanungba & Ors.**

(Civil Appeal No. 9927 of 2024)

28 August 2024

**[J.K. Maheshwari and Rajesh Bindal,\* JJ.]**

#### **Issue for Consideration**

Issue arose as regards inter-se seniority of the incumbents appointed to the post of Junior Engineer on direct recruitment basis and those whose posts of Sectional Officer, Grade-I, were upgraded to Junior Engineer.

#### **Headnotes<sup>†</sup>**

**Service law – Seniority – Members of the cadre of Junior Engineers – Inter-se seniority of the incumbents appointed to the post of Junior Engineer on direct recruitment basis and those whose posts of Sectional Officer, Grade-I, were upgraded to Junior Engineer – Direct recruitment of the Junior Engineers in 2003 – Circulation of tentative seniority list, however its finalization remained pending – During the interregnum 47 posts of Sectional Officer, Grade-I, working in the Department upgraded to Junior Engineer (Class-II Gazetted) and thereafter, seniority list finalized – Appellants-directees shown in the beginning of the seniority list, however, the respondents who were upgraded as Junior Engineer in 2007 were shown much below – Aggrieved thereagainst, writ petitions filed by the incumbents upgraded as Junior Engineers – Single Judge of the High Court dismissed the same as the Sectional Officer, Grade-I, whose post was upgraded only in 2007 as Junior Engineers could not be treated to be senior to the Junior Engineers, directly recruited in 2003 and the impugned seniority list was upheld – However, the Division Bench set aside the order passed by the Single Judge – Correctness:**

**Held:** Division Bench of the High Court totally misdirected itself while examining the 1997 Rules; the date of appointment of the respondents as Sectional Officer, Grade-I and the date

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## Digital Supreme Court Reports

of their regularization as such – Said facts were not of any relevance – Date on which they became members of the cadre of Junior Engineers coming from two different sources is to be considered – Dates on which the Sectional Officer, Grade-I, were promoted as such either on officiating basis or their promotions were regularised as per the order of 2007 will not have any bearing to the instant case – Even if the Sectional Officer, Grade-I, are treated to be working from the date they were officiating as such, nothing hinges on that as far as the seniority in the cadre of Junior Engineers is concerned – Post of Sectional Officer, Grade-I, on which they were working was upgraded to that of Junior Engineer (Class-II Gazetted) in 2007 – Pay-scales of Sectional Officer, Grade-I, was ₹4500- 7000 and of Junior Engineer was ₹6000-9750, meaning thereby that the respondents were working on a lower non-gazetted post – Division Bench committed blatant error that upgraded Sectional Officer, Grade-I, are directed to be given seniority in the cadre of Junior Engineers from a date on which they were not even born in the cadre as it was only after 2007 upgradation order that they became Junior Engineers, which was much after the direct recruitment made in 2003 – Impugned order passed by the Division Bench of the High Court set aside – Seniority list of the Junior Engineers upheld – Nagaland Engineering Services Rules, 1997. [Paras 9-16]

### Case Law Cited

*State of Uttaranchal and Another v. Dinesh Kumar Sharma* [[2006 Supp. 10 SCR 1](#)] : (2007) 1 SCC 683 : 2006 INSC 944; *P. Sudhakar Rao and Others v. U. Govinda Rao and Others* [[2013\] 13 SCR 540](#)] : (2013) 8 SCC 693 : 2013 INSC 420; *Ganga Vishan Gujrati and Others v. State of Rajasthan and Others* [[2019\] 11 SCR 444](#)] : (2019) 16 SCC 28, 2019 INSC 938 – referred to.

### List of Acts

Nagaland Engineering Services Rules, 1997.

### List of Keywords

Seniority; Post of Junior Engineer on direct recruitment basis; Posts of Sectional Officer, Grade-I, upgraded to Junior Engineer; Tentative seniority list; Direct recruits; Regularization; Promotions; Pay-scales; Lower non-gazetted post.

**Mhabemo Ovung & Ors. v. M. Moanungba & Ors.****Case Arising From**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 9927 of 2024

From the Judgment and Order dated 09.09.2021 of the Gauhati High Court in WA No. 4 of 2020

With

Civil Appeal No. 9928 of 2024

**Appearances for Parties**

P.S. Patwalia, Ranji Thomas, K N Balgopal, Rana Mukherjee, Sr. Advs., Sudarsh Menon, Shine P. Sasidhar, Manish Kumar Tiwari, Ms. Tatini Basu, Byrapaneni Suyodhan, Kumar Shashank, Ms. Nitya Nambiar, Avijit Roy, Samarth Mohanty, Advs. for the appearing parties.

**Judgment / Order of the Supreme Court****Judgment**

**Rajesh Bindal, J.**

1. Leave granted.
2. The issue under consideration in the present appeals is regarding *inter se* seniority of the incumbents appointed to the post of Junior Engineer on direct recruitment basis and those whose posts of Sectional Officer, Grade-I, were upgraded to Junior Engineer.
3. Final seniority list of Junior Engineers was circulated on 26.03.2018 showing the seniority position of the incumbents manning the posts from two different sources. Aggrieved against the seniority list, Sectional Officers, Grade-I, who were redesignated/upgraded as Junior Engineers challenged the same by filing W.P.(C)No.264(K) of 2018 and W.P.(C) No.74(K) of 2019 filed by the respondent Nos.1 to 16 herein. The Learned Single Judge vide order dated 07.02.2020 dismissed both the writ petitions. Aggrieved against the judgment of the learned Single Judge in W.P.(C)No.74(K) of 2019, an intra-court appeal, W.A. No.4 of 2020 was filed. The Division Bench of the High Court set aside the judgment of the learned Single Judge. As a consequence, the impugned seniority list circulated on 26.03.2018 was set aside and the department concerned was directed to refix the seniority of the Junior Engineers in terms of the directions given in the judgment.

**Digital Supreme Court Reports**

- 3.1 Aggrieved against the aforesaid judgment, the directly recruited Junior Engineers in Civil Appeal arising out of S.L.P.(C)No.17102 of 2021 and the State in Civil Appeal arising out of S.L.P.(C) No.1136 of 2022 are before this Court.
4. Mr. P.S. Patwalia, learned senior counsel appearing for the directly recruited Junior Engineers/appellants in C.A. @ S.L.P.(C)No.17102 of 2021 submitted that they were selected as such after qualifying the exam conducted by the Nagaland Public Service Commission and appointed in the pay-scale of ₹6000-9750, vide Notification dated 01.05.2003. Their selection and appointment were strictly in terms of the Nagaland Engineering Service Rules, 1997.<sup>1</sup> Ever since their appointment they have been performing their duty diligently.
  - 4.1 The contesting private respondents are incumbents who were earlier working in the cadre of Sectional Officers, Grade-I in the pay-scale of ₹4500-7000. Their posts were upgraded to that of Junior Engineers by the Government of Nagaland vide Communication dated 11.10.2007. It was only thereafter that they entered in the cadre of Junior Engineer. Prior to that they were working in a lower grade as compared to the direct recruits/Junior Engineers.
  - 4.2 After the selection of the direct recruits, a number of tentative seniority lists were circulated starting from 31.05.2004. However, none of them were finalized. It was only on 26.03.2018 that the seniority list was finalized. The appellants herein were shown above the incumbents/respondents who entered in the grade of Junior Engineers after their post of Sectional Officer, Grade-I, was upgraded to Junior Engineer. It was for the reason that the appellants have been working as Junior Engineer ever since their appointment vide Notification dated 01.05.2003 whereas the post of the Sectional Officer, Grade-I, was upgraded to that of Junior Engineers only vide Communication dated 11.10.2007. Prior to that they were working on non-gazetted lower post of Sectional Officer, Grade-I.
  - 4.3 Even otherwise if considered in terms of the 1997 Rules, the manner in which post of Sectional Officer, Grade-I, has been

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<sup>1</sup> The 1997 Rules

**Mhabemo Ovung & Ors. v. M. Moanungba & Ors.**

upgraded to Junior Engineer, is not the manner provided in which the post of Junior Engineer can be filled up. Be that as it may, the appellants are not aggrieved with that action of the State, in case they are granted proper position in the seniority list. The result of the judgment of the Division Bench of the High Court is that the private respondents have been assigned seniority in the cadre of Junior Engineers from the date on which they were not even born in the cadre, which is legally impermissible. In support of the arguments reliance was placed upon the judgments of this Court in State of Uttarakhand and Another v. Dinesh Kumar Sharma,<sup>2</sup> P. Sudhakar Rao and Others v. U. Govinda Rao and Others<sup>3</sup> and Ganga Vishan Gujarati and Others v. State of Rajasthan and Others.<sup>4</sup>

5. As the State is also aggrieved by the Judgment of the Division Bench of the High Court, in furtherance to the arguments raised on behalf of the directly recruited Junior Engineers, Mr. K.N. Balgopal, learned senior counsel appearing for the State in C.A. @ S.L.P.(C)No.1136 of 2022, submitted that the judgment of the Division Bench is based on certain wrong facts/premise. The Learned Judge had tried to trace out the history from 1997 onwards, which was not relevant for the lis to be examined. It is a case in which *inter-se* seniority was to be determined after the first ever direct recruitment to the post of Junior Engineer was made on 01.05.2003. Prior to that Junior Engineers were being appointed by upgrading different posts.
  - 5.1 There is no dispute that the private contesting respondents herein were not Junior Engineers as on the date when the direct recruitments were made. The private contesting respondents were promoted on an officiating basis as Sectional Officers, Grade-I, on different dates. The Departmental Promotion Committee (DPC) was held on 16.03.2007 to consider regularization of their officiating promotion. Officiating promotion of Sectional Officers, Grade-I, in the pay-scale of ₹4500-7000 was regularized vide Office Order dated 31.03.2007. Even if they had been working as Sectional Officer, Grade-I, from any

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2 [2006] Supp. 10 SCR 1 : (2007) 1 SCC 683 : 2006 INSC 944

3 [2013] 13 SCR 540 : (2013) 8 SCC 693 : 2013 INSC 420

4 [2019] 11 SCR 444 : (2019) 16 SCC 28 : 2019 INSC 938

**Digital Supreme Court Reports**

date prior to 16.03.2007, the same does not come to their rescue for the reason that they were working on a lower post. Sectional Officer, Grade-I, is a promotional post from Sectional Officer, Grade-II.

6. In response, Mr. Rana Mukherjee, learned senior counsel appearing for the contesting private respondents, who were the writ petitioners before the High Court in W.A.No.4 of 2020 submitted that Office Order dated 31.03.2007 clearly shows that the private contesting respondents were deemed to be promoted from various dates as Sectional Officers, Grade-I, as their officiating promotion was regularized. The dates as are available in the aforesaid Office Order in most of the cases was prior to the date of appointment of the appellants in C.A. @S.L.P.(C)No.17102 of 2021. Hence, they were rightly granted seniority from that date as it was that post which was subsequently upgraded to Junior Engineer. There is no error in the order passed by the Division Bench of the High Court and both the appeals deserve to be dismissed.
7. Heard learned counsel for the parties and perused the relevant referred record.
8. The undisputed facts in the case fall in a very narrow compass. There are two sets of employees working as Junior Engineers. The appellants in C.A. @S.L.P.(C)No.17102 of 2021 are the incumbents who were selected by the Nagaland Public Service Commission and were appointed as Junior Engineers vide Notification 01.05.2003. The private contesting respondents who were the writ petitioners and appellants before the Division Bench of the High Court in W.A.No.4 of 2020 were working as Sectional Officer, Grade-I and the post on which they were working was upgraded to that of Junior Engineer (Class-II Gazetted), vide letter dated 11.10.2007. The pay-scales on which the Sectional Officer, Grade-I, were working was ₹4500-7000 whereas the pay-scales on which Junior Engineer (Class-II Gazetted), were working was ₹6000-9750.
9. As stated before us, the post of Junior Engineer was governed by the 1997 Rules in terms of which 90% recruitment is to be done by direct recruitment and 10% by way of promotion. As stated before us, prior to 2003 selection by the Nagaland Public Service Commission no direct recruitment was made. Any seniority list of Junior Engineer which may have been circulated earlier will not have any bearing in

**Mhabemo Ovung & Ors. v. M. Moanungba & Ors.**

the case in hand. After the direct recruitment of the Junior Engineers a tentative seniority list was circulated on 31.05.2004. Its finalization remained pending for years. During the interregnum 47 posts of Sectional Officer, Grade-I, working in the Nagaland Public Works Department were upgraded to Junior Engineer (Class-II Gazetted) vide Letter dated 11.10.2007. After considering claims and objections of all the incumbents working in the cadre of Junior Engineers, the seniority list was finalized on 26.03.2018.

10. The appellants in C.A. @S.L.P.(C)No.17102 of 2021 were shown at Serial Nos.71, 72, 74, 75, 76, 77, 78 & 80 in the aforesaid seniority list; they being the direct recruits. Respondent Nos.1 to 16 who were earlier working as Sectional Officer, Grade-I, the post which was subsequently upgraded as Junior Engineer vide letter dated 11.10.2007 were shown at Serial Nos.156, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 157, 158, 159, 174 & 179.
11. Aggrieved against the aforesaid seniority list, two writ petitions were filed before the High Court. W.P.(C) No.74(K) of 2019 was filed by the respondent Nos.1 to 16 herein whereas W.P.(C)No.264(K) of 2018 was filed by 29 other incumbents who were earlier working as Sectional Officer, Grade-I, the post which was upgraded to Junior Engineer vide order dated 11.10.2007.
12. Learned Single Judge rightly dismissed both the writ petitions as the Sectional Officer, Grade-I, whose post was upgraded only on 11.10.2007 as Junior Engineers could not be treated to be senior to the Junior Engineers who were directly recruited on 01.05.2003. The impugned seniority list as circulated on 26.03.2018 was upheld.
13. A perusal of the impugned order of the Division Bench of the High Court shows that it had totally misdirected itself while examining the 1997 Rules; the date of appointment of the private contesting respondents as Sectional Officer, Grade-I and the date of their regularization as such. The aforesaid facts were not of any relevance for the decision of the question of seniority amongst the members of the cadre of Junior Engineers. All what was required to be considered was the date on which they became members of the cadre of Junior Engineers coming from two different sources. As to whether the upgradation of the post was right or wrong is not an issue canvassed before this Court. The Division Bench of the High Court has further gone wrong in considering the upgradation of post

**Digital Supreme Court Reports**

of Sectional Officer and certain other posts to that Junior Engineers prior to 01.05.2003 when direct recruitment to the post of Junior Engineers was made for the first time. That historical background did not have any relevance for the reason that prior to 2003 never before in the cadre of Junior Engineers there was recruitment from two different sources. The dispute arose only thereafter.

14. The dates on which the Sectional Officer, Grade-I, were promoted as such either on officiating basis or their promotions were regularised though as per the Order dated 31.03.2007 effective from the date when the DPC was held i.e. 16.03.2007 will not have any bearing on the case in hand. Even if the Sectional Officer, Grade-I, are treated to be working from the date they were officiating as such, nothing hinges on that as far as the seniority in the cadre of Junior Engineers is concerned. It is for the reason that the post of Sectional Officer, Grade-I, on which they were working was upgraded to that of Junior Engineer (Class-II Gazetted) vide letter dated 11.10.2007.
15. The pay-scales of Sectional Officer, Grade-I, was ₹4500-7000 and the Junior Engineer was having pay-scales of ₹6000-9750. Meaning thereby that they were working on a lower non-gazetted post. The dispute in the present appeals is only pertaining to the Sectional Officer, Grade-I, whose posts were upgraded on 11.10.2007 and not those whose posts were upgraded prior to the direct recruitment vide Notification dated 01.05.2003. The blatant error committed by the Division Bench of the High Court is that upgraded Sectional Officer, Grade-I, are directed to be given seniority in the cadre of Junior Engineers from a date on which they were not even born in the cadre as it was only after 11.10.2007 upgradation order that they became Junior Engineers, which was much after the direct recruitment made on 01.05.2003.
16. For the reasons mentioned above, appeals are allowed. The impugned order passed by the Division Bench of the High Court is set aside. The seniority list of the Junior Engineers as circulated on 26.03.2018 is upheld. There shall be no order as to costs.

*Result of the case:* Appeals allowed.

<sup>†</sup>Headnotes prepared by: Nidhi Jain