

**IN THE COURT OF
THE STATE COMMISSIONER FOR PERSONS WITH DISABILITIES**

New Secretariat Rd, Nagaland: Kohima – 797004

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(Vested with powers of Civil Court under Rights of Persons with Disabilities Act, 2016)

CASE NO. 04/SCPD/2021-22

Mr. Lanuchuba Lemtor,
Mechanic Grade-II (Electrician)
Nagaland State Transport
Central Workshop (Auto)
Dimapur, Nagaland

.....PETITIONER

-VERSUS-

1. The Secretary,
To the Government of Nagaland
Department of Nagaland State Transport
Nagaland, Kohima
2. The General Manager,
Directorate of Nagaland State Transport
Dimapur, Nagaland
3. The Additional Chief Engineer,
Nagaland State Transport
Central Workshop (Auto)
Dimapur, Nagaland

.....RESPONDENTS

Dated: 15-03-2022

ORDER

WHEREAS, the petitioner approached the Court by filing a Letter on 14.01.2021. The petitioner is presently serving as Mechanic Grade-II (Electrician), under the establishment of the Additional Chief Engineer, Nagaland State Transport, Central Workshop (Auto), Dimapur, Nagaland.

The case of the petitioner in brief is that he met with an accident and was electrocuted while performing his official duty on 25.08.2011, which was soon after his service was regularized and diagnosed with post spinal cord injury (quadriplegia). The same was duly acknowledged and compensated by the State. Thereafter, the respondents had deployed another person, whose salary is being deducted from that of the petitioner's salary. Further, the petitioner claimed that he has been verbally asked to apply for voluntary retirement time and again on the grounds of his disability. The petitioner also states that he is the senior most in his field and entitled for promotion. Thus, the claim of the petitioner is to seek entitlement in the form of all benefits that may be availed by him since his disablement was caused while performing his official duties.

Notice dated 26.01.21 was served upon the respondents. Thereafter, examinations of all the parties were recorded in person and also through their authorized representatives on 8.10.21, 18.11.21 and 18.02.22 respectively.

The State respondents submitted their reply vide Letter No. NST/ESTT/P/4164/06/548 dated 4.10.21, marked as **ANNEXURE- (i)** and by Letter No. TPT/NST/ESTT-17/2004(Pt) dated 28.11.17 marked as **ANNEXURE- (ii)**, the respondents submitted that the petitioner was granted Modified Assured Career Progress Scheme (MACPs). Both annexure have been placed on record.

Records show that though promotion was not granted to the petitioner who was the senior most in his Grade, he was granted Modified Assured Career Progress Scheme (MACP) wherein, a Government servant who holds a post for 10 (ten) years or more is entitled to a maximum of 3 (three) MACPs during his service which allowed him to draw higher grade scale pay. The respondents stated that the petitioner was not considered for promotion because ever since his accident in 2011, he has remained absent from official duties and that too without availing further leave. The respondents did not deny the fact that no alternate post was allocated to the petitioner as the respondents did not know where to accommodate him as he has remained absent for over 10 years. Furthermore, it has been categorically denied that no authorized official was

deputed to approach the petitioner to apply for voluntary retirement as the respondents are well aware of the Rights of Persons with Disabilities Act, 2016 and the Office Memorandum No. SW/CDC-5/35/2013-Vol-II dated 13.08.2019 issued by the Government of Nagaland.

The statement of the respondents is also corroborated with that of the petitioner as he stated that after the accident, he had taken 1 (one) year medical leave and has not attended Office till date as he is of the opinion that he shall join official duties only when called upon. The claim of the petitioner that another person was arranged by the Office to work on his behalf on payment from his salary was categorically denied. The respondents clarified that it was on the verbal request of the petitioner and also out of extreme exigency and on humanitarian consideration that deployment of another person which was arranged by the petitioner was allowed with a monthly nominal payment which was made out of the pay and allowances of the petitioner as per his request though it was not the intention of the respondent. However, from the month of May, 2021, the petitioner is receiving his full salary without any deduction.

The observation of the Court is that the respondents have, to the best of their capacity, initiated actions to assist the petitioner, right from the time of his accident back in 2011 by proposing the petitioner's name to the Labour Department for necessary compensation which was granted through the Commissioner, Nagaland, Kohima, and though the petitioner has not joined Office till date, the respondent authority has granted him MACPs to draw higher grade scale pay. It is understood that when a person has remained absent from service for a long time without availing leave, to be more precise, absent for the last 10 (ten) years in this case, promotion to next higher level would definitely be hampered. In this aspect, it will not be correct on the part of the petitioner to claim that promotion to the petitioner was denied basing solely on his disability.

The other observation made by the Court is for accessibility and accommodation of the petitioner at work place with an alternate post. This point has been heard at length between the parties. The petitioner stated that he is not aware whether the Office has made any provisions to accommodate him in his present condition as he is diagnosed with post spinal cord injury and is dependent on a wheelchair. The petitioner also stated that though he is unable to write, he would be able to manage working on a computer. To this effect, the respondents stated that so long as the petitioner is found fit to perform certain works, the Office would not bar him. The respondents would have to first test his skills for computer knowledge and/or find other alternative work. Further, the respondents also stated that necessary steps would be taken to accommodate the petitioner and make the work place accessible as to his convenience. The

respondents once again clarified that the Office is not against granting promotion to the petitioner if he joins duty. Hence, the petitioner's promotion would be considered as and when the next vacancy arises provided that he is regular at workplace.

With the above facts and circumstances and the observations made herein, the petitioner is directed to submit his Joining Report to the Office and the respondents are directed to take necessary steps to accommodate the petitioner by providing accessibility at workplace and find an alternate post which is suitable for the petitioner. The above directions are to be complied with **within 1 (one) months' time from the date of receipt of this Order and a compliance Letter to this effect be submitted to this Court.** The matter stands disposed of.

Given under my hand and the seal of the Court, the ^{15th}..... day of MARCH, 2022.



(DIETHONO NAKHRO)
State Commissioner for Persons with Disabilities,
Nagaland.

Court of Commissioner (Disabilities)
New Secretariat Road
Nagaland : Kohima

Copy to:

1. The Chief Secretary, Government of Nagaland for information
2. The Finance Commissioner, Government of Nagaland, for information
3. The Commissioner & Secretary, Social Welfare Department, Nagaland for information
4. The Chief Commissioner for Persons with Disabilities, for information
5. Office Copy

(DIETHONO NAKHRO)
State Commissioner for Persons with Disabilities,
Nagaland.