

GAHC010046742022



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

Case No. : WP(C)/1751/2022

KHANINDRA KUMAR NATH
S/O- LATE JOY CH. NATH, R/O- HOLI GOGOI PATH, GOROLI, NEAR
SARUSAJAI STADIUM, P.O- SAUKUCHI, P.S- BASISTHA, GUWAHATI, DIST-
KAMRUP, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE ADDL. CHIEF SECRETARY TO THE GOVERNMENT OF ASSAM,
ENVIRONMENT AND FORESTS DEPARTMENT, DISPUR, GUWAHATI-06

2:THE SECRETARY
TO THE GOVT. OF ASSAM
ENVIRONMENT AND FORESTS DEPARTMENT
DISPUR
GUWAHATI-06

3:THE BODOLAND TERRITORIAL AUTONOMOUS COUNCIL
REP. BY THE SECRETARY
BTC
ASSAM

4:THE PRINCIPAL CHIEF CONSERVATOR OF FOREST
AND HEAD OF FOREST FORCE ASSAM
PANJABARI
GUWAHATI-06

5:THE DEPARTMENTAL PROMOTION COMMITTEE
HEADED BY CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI-0

Advocate for the Petitioner : MR. J I BORBHUIYA

Advocate for the Respondent : SC, BTC

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 06/02/2023

Heard Mr. J.I. Barbhuiya, learned counsel for the writ petitioner. Also heard Ms. M.D. Borah, learned Government Advocate, Assam, appearing for the respondent nos. 1, 2, 4 & 5 and Mr. P. Nayak, learned Standing Counsel, BTC, present on behalf of the respondent no. 3.

The writ petitioner herein, is presently serving as Assistant Conservator of Forests (ACF) and is posted at Kokrajhar under the BTC administration. The petitioner is due for retirement on attaining the age of superannuation in the month of February, 2024. The grievance of the petitioner is that although his juniors were promoted to the rank of ACF with effect from 27/08/2009, he was denied promotion due to pendency of a departmental proceeding in respect of which, he has already been exonerated. According to the petitioner's counsel although his client has been exonerated, the respondents have not given retrospective effect to his promotion to the post of ACF given on 26/02/2021.

Mr. Barbhuiya submits that the petitioner is suffering from some serious ailments and at this point of time, he is only seeking retrospective effect to his promotion with effect from the date his juniors were promoted.

Ms. Borah submits that the respondent no. 2 has filed an affidavit bringing the stand of the department on record. According to the instruction received by her, the department is willing to consider the case of the petitioner in terms of the prayer made in the writ petition.

I find that the respondent no. 2 i.e. the Secretary to the Government of Assam, Forest and Environment Department, Assam, has filed an affidavit dated 25/05/2022 whereby, the following averments have been made in paragraphs 9 and 10, which are reproduced herein below for ready reference :-

“9. That with regard to the submissions made in paragraph 10 of the writ petition the deponent states that the officer was given regular promotion to officiate as ACF vide

Notification No. FRE.111/2019/79 dtd. 26/02/2021 after finalization of the 2 (two) departmental proceeding by exonerating him. The petitioner approached this department vide representation dtd. 29/11/2021 for giving retrospective effect of promotion. The department has initiated necessary steps for giving him retrospective effect/notional promotional effect as deemed fit as per law. The department has requested PCCF & HoFF for views in this regard.

10. That with regard to the submissions made in paragraph 11 of the writ petition the deponent states that due to pending Court cases regarding finalization of gradation list the department could not give promotion of Forest Ranger since the year 2014. However, the department took every step to give benefits of promotion to all eligible FRS and successfully made the same in the year 2021. The department has been trying to give all benefits like notional promotion by taking into consideration of the representation dated 29.11.2021 and accordingly department has initiated necessary steps."

The respondent no. 3 has not filed any affidavit. However, Mr. Nayak submits that the stand of the BTC administration is same as that projected in the affidavit dated 25/05/2022. If that be so, it is apparent that the authorities are willing to consider the case of the petitioner for giving retrospective effect to his promotion with effect from 27/08/2009 i.e. the date on which his juniors were promoted. As such, nothing further survives for adjudication in this case.

This writ petition is, therefore, being disposed of by providing that within four weeks from the date of receipt of certified copy of this order, the respondent no. 2 shall pass appropriate order, redressing the grievance of the petitioner, in accordance with law.

The writ petition stands closed.

JUDGE

sukhamay

Comparing Assistant