

GAHC010091682022



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

Case No. : WP(C)/3239/2022

SUMAN DAS
S/O. LT. SUKUMAR DAS, VILL. KAHILIPARA, BHAGADATTAPUR ROAD,
GUWAHATI-781019.

VERSUS

THE STATE OF ASSAM AND 7 ORS
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM, HOME
AND POLITICAL DEPTT., DISPUR, GUWAHATI-06.

2:THE COMMISSIONER AND SECY.
TO THE GOVT. OF ASSAM
HOME AND POLITICAL DEPTT.
DISPUR
GUWAHATI-06.

3:THE ADDL. SECRETARY
TO THE GOVT. OF ASSAM
HOME AND POLITICAL DEPTT.
DISPUR
GUWAHATI-06.

4:THE JOINT SECRETARY CUM ENQUIRY OFFICER
TO THE GOVT. OF ASSAM
HOME AND POLITICAL DEPTT.
DISPUR
GUWAHATI-06.

5:THE DIRECTOR GENERAL OF CIVIL DEFENCE AND COMMANDANT
GENERAL OF HOME GUARDS

ASSAM

BELTOLA
GUWAHATI-28.

6:THE SENIOR STAFFS OFFICER

HOME GUARDS
(G)
OFFICE OF THE DIRECTOR GENERAL OF CIVIL DEFENCE AND
COMMANDANT GENERAL OF HOME GUARDS
ASSAM
BELTOLA
GUWAHATI-28.

7:ABDUL HANIF

DIVISIONAL COMMANDANT
HOME GUARDS
HILLS DIVISION
CACHAR
SILCHAR
ASSAM
PIN-788818.

8:SMT. JONALI PATGIRI
COMMANDANT
ASSAM INDUSTRIAL SECURITY FORCE (IN SHORT
AISF) BN.I
BAHABARI
SONITPUR
TEZPUR
ASSAM
PIN-784502

Advocate for the Petitioner : MR. M KHAN

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 20/06/2023

Heard Mr. M. Khan, learned counsel for the writ petitioner. Also heard Mr. T.C. Chutia, learned

Additional Senior Government Advocate, Assam, appearing for the respondent nos. 1 to 6. None has appeared for the private respondent nos. 7 and 8.

The case of the writ petitioner, briefly stated, as projected in the writ petition, is that while serving as the 2nd in Command (ASP rank) in the Assam Industrial Security Force (AISF), Bn. -II in Chabua, Dibrugarh, a show cause notice dated 06/03/2020 was issued to him bringing certain allegations against the petitioner. The show cause notice dated 06/03/2020 was ultimately taken forward and a departmental proceeding was initiated against him which culminated in the order dated 19/07/2022 issued by the Principal Secretary to the Government of Assam, Home and Political Department, exonerating the petitioner in respect of the charges leveled against him.

The petitioner has approached this Court by contending that during the pendency of the departmental proceeding, persons junior to him, viz. Sri Abdul Hanif (Respondent no. 7) & Smt. Jonali Patgiri (respondent no. 8) have been promoted to the higher posts i.e. the posts equivalent to the rank of Superintendent of Police. However, the case of the petitioner was not considered in a 'sealed cover' thereby, resulting in serious prejudice to his interest.

By contending that where departmental proceedings are pending against the Government servant, their cases for promotion are considered under the sealed cover, Mr. Khan submits that the authorities had not acted in accordance with the Government of Assam OM No. ABP 29/2006/38 dated 09/05/2006, which mandates that the case of the candidates coming within the zone of consideration for promotion must be kept in sealed cover during the pendency of the departmental proceeding.

Mr. T.C. Chutia, learned Government Advocate, Assam, on the other hand, submits that no Officer junior to the petitioner has been promoted to a higher rank during the pendency of the departmental proceeding. Since the petitioner has now been exonerated of the charges brought against him by order dated 19/07/2022, his case for promotion to the next higher rank will be considered, in accordance with law, along with other departmental candidates coming within the zone

of consideration. Therefore, no further order is required to be passed in this case.

The fact that the petitioner has been exonerated in respect of all the charges leveled against him, is not in dispute. The only question is whether any person junior to the petitioner in the gradation list had been promoted to the higher rank during the pendency of the departmental proceeding. Although the petitioner's counsel has made assertion to that effect, there is nothing on record to substantiate the above claim.

It is no doubt correct that the respondent nos. 7 & 8 are junior to the petitioner in the gradation list. However, there are no documents placed on record by the petitioner to show that those two persons have been promoted to a higher rank during the pendency of the departmental proceeding, thereby, causing prejudice to the interest of the petitioner.

As such, this writ petition stands disposed of by providing that the respondents may consider the case of the petitioner for promotion along with other departmental candidates, who come within the zone of consideration, in accordance with the Rules as and when vacancies arise in the higher posts.

With the above observation, the writ petition stands disposed of.

JUDGE

sukhamay

Comparing Assistant