

GAHC010094532023



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

Case No. : WP(C)/2435/2023

JAYANTA KUMAR DEV
SON OF LATE CHUNILAI DEV RESIDENT OF HOUSE NO- 25, SOUTH JALAN
NAGAR, CHRING GAON P.O- CENTRAL REVENUE BUILDING,
DIBRUGARH, ASSAM, PIN- 786003

VERSUS

ASSAM GRAMIN VIKASH BANK AND 2 ORS
REPRESENTED BY THE CHAIRMAN HAVING ITS HEAD OFFICE AT ADAM'S
PLAZA, GS ROAD, CHRISTIAN BASTI , GUWAHATI- 781005, DIST-
KAMRUP(M), ASSAM.

2:THE CHAIRMAN
ASSAM GRAMIN VIKASH BANK ADAM'S PLAZA
GS ROAD
CHRISTIAN BASTI
GUWAHATI- 781005
DIST- KAMRUP (M)
ASSAM.

3:THE GENERAL MANAGER
ASSAM GRAMIN VIKASH BANK ADAM'S PLAZA
GS ROAD
CHRISTIAN BASTI
GUWAHATI- 781005
DIST- KAMRUP (M)
ASSAM

Advocate for the Petitioner : MR S CHAKRABORTY

Advocate for the Respondent : SC, A G V B

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 20-06-2023

Heard Mr. S. Chakraborty, learned counsel appearing for the writ petitioner. Also heard Mr. A. Ganguly, learned counsel appearing for the respondents.

The writ petitioner herein is an officer serving in the Assam Gramin Vikash Bank who is presently holding a MMG Scale-III post in the Bank. According to the petitioner, he is due for promotion to the next higher grade, i.e. MMG Scale-IV. Although, he had participated in the selection process for promotion to the next higher grade, the respondents have not promoted him.

Mr. Chakraborty submits that there is no reason cited by the respondents for not promoting his client. As such, the present writ petition has been filed seeking a writ of mandamus.

After taking note of the grievance expressed by the petitioner, this Court had issued notice asking the Bank to show cause in the matter. On receipt of notice, Mr. Ganguly has appeared for the respondents. Today when the matter is called up, records of the selection procedure has been produced.

It appears from the record that on 12-10-2022, the Bank had issued a notification declaring its intention to consider officers in the MMG Scale-III for promotion to 11 (eleven) vacant posts in the grade of MMG Scale-IV. The petitioner was one of the nine officers to take part in the selection process. The promotion was to be given on the basis

of marks scored in the interview and performance appraisal of individual officers. By applying the aforesaid criteria, the petitioner's name appeared in Sl. No. 7 in order of merit. However, by the notification dated 01-04-2023, the respondents have promoted only 05 (five) officers, in order of merit, by leaving aside the writ petitioner and 03 (three) other officers who had participated in the aforesaid process.

Mr. Chakraborty submits that his client is due for retirement on attaining the age of superannuation w.e.f. 30-06-2023. However, notwithstanding the fact that the writ petitioner had participated in the selection process for promotion to MMG Scale-IV and despite the fact that the Regional Rural Banks (Appointment of Officers and Employees) Rules, 2017, applicable in the present case, does not provide for any cutoff marks for promotion of officers from MMG Scale-III to MMG Scale-IV, the respondents have arbitrarily denied promotion to the petitioner. As such a writ of mandamus has been prayed for by the petitioner by relying upon some un-disclosed criteria.

Mr. Ganguly, on the other hand, has fairly admitted that there was no cutoff mark fixed by the selection committee for considering the cases of officers for promotion to MMG Scale-IV. He, however, submits that 05 (five) officers who were promoted were ranked higher than the petitioner in the merit list. He further submits that the other candidates did not challenge the selection process. As such, no relief be granted to the petitioner in this case.

I have considered the submissions advanced at the bar and have also gone through the materials available on record. There is no dispute about the fact that the writ petitioner herein is presently serving as MMG Scale-III officer in the Bank and he is

eligible for being considered for promotion to the next higher grade of MMG Scale-IV. It is also not in dispute that the petitioner had participated in the selection process and had emerged as the 7th candidate in order of merit. The candidates at Sl. No. 1 to 5 have already been promoted. Respondent have, however, not given any reason as to why the other candidates who had participated in the selection process were not promoted.

Record produced by Mr. Ganguly reveals that there was no cutoff mark fixed for consideration of the candidature of the officers who had appeared before the Selection Board. As a matter of fact, Rules of 2017 also do not permit fixation of any such cutoff mark for promotion from MMG Scale-III to MMG Scale-IV. A careful examination of the departmental records also goes to show that the Selection Board had not fixed any criteria based on which, candidates scoring marks below a particular level could be denied promotion. If that be so, the above action on the part of the respondents, in denying promotion to the petitioner herein, without applying any transparent and reasonable criteria, on the face of the record, appears to be arbitrary. If the petitioner is due for retirement w.e.f. 30-06-2023, then it is also apparent that he would not have any opportunity of being promoted to the post of MMG Scale-IV ever again, during the service career.

Under the circumstances, this Court is of the opinion that the petitioner has succeeded in making out a good case for interference by this Court, where a writ of mandamus can be issued to the respondent. As such, this writ petition succeeds and is hereby allowed.

The respondent Nos. 1 to 3 are hereby directed to give effect to the select list prepared by the Selection Board based on participation of the petitioner and thereafter, issue order of promotion in favour of the petitioner promoting him to MMG Scale-IV grade. The order of promotion be given effect from the date on which, his juniors have been promoted to the MMG Scale-IV grade

The aforesaid exercise be carried out and completed as expeditiously as possible but not later than 02 weeks from the date of receipt of a certified copy of this order.

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

The departmental records be returned back to Mr. Ganguly.

JUDGE

GS

Comparing Assistant