

GAHC010094542023



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

Case No. : WP(C)/2756/2023

JAGANNATH BHAGAWATI
SON OF LATE N.C. BHAGAWATI,
ASSISTANT TOURIST INFORMATION OFFICER,
PRESENTLY POSTED AT KAZIRANGA,
PERMANENT RESIDENT OF VILL. AND P.O.- JAGI, P.S.- JAGIROAD,
IN THE DISTRICT OF MORIGAON,
ASSAM, PIN- 782411.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM,
TOURISM DEPARTMENT, DISPUR,
GUWAHATI-06.

2:THE DIRECTOR
TOURISM DEPARTMENT
ASSAM
PANBAZAR
GUWAHATI-01.

3:THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF ASSAM
PERSONAL(B) DEPARTMENT
ASSAM SECRETARIAT
DISPUR
GUWAHATI-781006.

4:THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF ASSAM
FINANCE DEPARTMENT
3RD FLOOR
CHIEF MINISTERS BLOCK

JANATA BHAWAN
DISPUR

GUWAHATI
781006

Advocate for the Petitioner : MR A B DEY

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 19-05-2023

Heard Mr. A.B. Dey, learned counsel for the writ petitioner. Also heard Ms. M.D. Bora, learned Govt. Advocate, Assam appearing on behalf of the respondent Nos. 1 to 3 and Mr. P. Nayak, learned standing counsel, Finance Department, Assam appearing for the respondent No. 4

The writ petitioner herein is serving as Assistant Tourist Information Officer (ATIO) under the Tourism Department, Govt. of Assam and is presently posted at Kaziranga. Aggrieved by the speaking order dated 02-01-2023 whereby his case for promotion to the next higher post of Tourist Information Officer (TIO) was rejected, the instant writ petition has been filed.

By inviting the attention of this Court to the order dated 07-04-2021 passed by the Division Bench of this Court in W.A. No. 107/2021 preferred by the present petitioner as appellant, Mr. Dey submits that although the case of his client was considered by the DPC, yet, he was not promoted, *inter-alia*, on the ground that the vacancy was reserved only for

the Schedule Tribe (Hills) [ST(H)] category candidates. Contending that there is no ST(H) candidate in the department eligible for being promoted to the post of TIO, the petitioner has approached this Court by filing the present writ petition assailing the impugned order dated 02-01-2023.

Mr. P. Nayak, learned standing counsel, Finance Department submits that the case of the petitioner has been duly considered in terms of the directions contained in order dated 07-04-2021 but since the sole post of TIO could be filled up only by a ST(H) candidate, hence, he was not promoted. Similar is the stand of Ms. Bora, learned Govt. Advocate, Assam.

This case has a chequered history. The writ petitioner appears to be one of those persons who were initially appointed in the ex-cadre post of Receptionist in the year 1991. As such, having been appointed in an ex-cadre post, there was no promotional avenue available to the petitioner. In terms of the order passed by this Court from time to time, more particularly, the order dated 20-03-2015 passed by the Division Bench in W.A. No. 16/2015, the relevant rules, *viz.* Assam Tourism Service Rules, 1992 was amended w.e.f. 09-06-2017 and the post of Receptionist was encadred. Thereafter, the petitioner was promoted to the post of ATIO on 17-07-2017. As per the rules, the feeder cadre for the next promotional post of TIO is ATIO. The Rules, requires 05 years of continuous service in the feeder cadre for being considered for promotion as TIO. The writ petitioner did not fulfill the eligibility condition of 05 years service in the feeder cadre for being promoted. Notwithstanding the same, the writ petitioner, along with two others, had approached this Court by filing W.P.(C) No. 8130/2017 seeking promotion, on notional basis, with retrospective effect. The learned Single Judge had dismissed the writ petition by judgment and order dated 04-02-2021 in W.P.

(C) No. 8130/2017 which was challenged by the present petitioner by filing W.A. No. 107/2021 before the Division Bench.

Taking note of the grievance expressed by the petitioner, the Division Bench had disposed of the appeal being W.A. No. 107/2021, filed by the writ petitioner by the order dated 07-04-2021 with the following observations/ directions:

“7. We are, therefore, of the view that there is no scope for interfering with the view of the learned Single Judge. All the same, considering the fact that the writ appellant has remained in service for long years without any avenues for promotion and, by now, in any case he was appointed as Assistant Tourist Information Officer with effect from 17.07.2017 and he would complete five years of service in the post of Assistant Tourist Information Officer in the year 2022, and since the Assam Tourism Service Rules, 1992 provides that 50% of the post of Tourist Information Officer shall be filled up by promotion from amongst the Assistant Tourist Information Officers who have put in five years of service, we dispose of the writ appeal by directing the respondent authorities to consider the claim of the writ appellant along with other eligible candidates, in accordance with law, by convening DPC immediately after July 17, 2022. Then the claim of the present appellant along with other eligible candidates shall be considered for promotion to the next higher post of Tourist Information Officer. Needless to say that this shall be done in accordance with the Rules.”

It is not in dispute that in terms of the direction passed by the Division Bench by the order dated 07-04-2021, a DPC was convened on 08-08-2022 but a perusal of the minutes of the DPC goes to show that the petitioner was not considered for promotion on two grounds. Firstly, that he had not completed 05 years of continuous service in the cadre of ATIO as on the date of the DPC and hence, was not eligible for promotion. Secondly, as per roster point 14, the sole vacancy of TIO was reserved for ST(H). However, it is also seen from the minutes of the DPC that an advisory had also been issued by the DPC to the department to move the WPT&BC Department for de-reservation of the post of TIO.

By referring to the minutes of the DPC, Mr. Dey has argued that in the meantime the petitioner has acquired the eligibility. Therefore, the respondents be directed to consider his

case for promotion to the post of TIO afresh. Mr. Dey has also expressed a sense of urgency in the matter by submitting that his client is due for retirement from service w.e.f. 31-07-2023.

What is also to be noted herein that if there is no eligible candidate in the department from the ST(H) category, then respondents cannot deny promotion to the other eligible departmental candidate on the sole ground that as per the roster point, the vacancy was meant for reserved category candidate. In such a situation, it would be incumbent upon the department to de-reserve the vacancy by following the prescribed procedure and filled it up with eligible departmental candidate. Consequently, the reserved category vacancy can be carried forward to be filled up at a later date when candidates from the reserve category become available. Since the petitioner has in the meantime acquired the eligibility under the Rules and in view of the earlier order passed by this Court, it would now be incumbent upon the respondent to constitute a DPC for considering the case of the writ petitioner, along with the other eligible departmental candidates, if any, in terms of the rules for promotion to the post of TIO.

In the light of the observation made herein above, it is hereby directed that within 04 weeks from today, a DPC be constituted for considering the case of all the eligible departmental candidate for promotion to the post of TIO.

This writ petition stands disposed of accordingly.

JUDGE

GS

Comparing Assistant