

GAHC010098822022



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

Case No. : WP(C)/3430/2022

SUBHASH DAS
SON OF LATE TARANI KANTA DAS, RESIDENT OF KUNDIL NAGAR,
RAJGARH BYE LANE 12, HOUSE NO. 30, GUWAHATI- 781007, KAMRUP(M),
ASSAM.

VERSUS

THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM AND 3
ORS
HEALTH AND F.W. (B) DEPARTMENT.

2:THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
HEALTH AND F.W. DEPARTMENT
DISPUR
GUWAHATI-22.

3:THE DIRECTOR OF MEDICAL EDUCATION
ASSAM
SIXMILE
KHANAPARA
GUWAHATI-22
KAMRUP(M)
ASSAM.

4:THE SUPERINTENDENT
GAUHATI MEDICAL COLLEGE HOSPITAL
GUWAHATI- 781032
KAMRUP(M)
ASSAM

Advocate for the Petitioner : MR. A SARMA

Advocate for the Respondent : SC, HEALTH

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

09.08.2023

Heard Mr. A. Sarma, learned counsel for the petitioner. Also heard Mr. D Upamanyu, learned Standing Counsel for the Health.

2. This writ petition has been filed by the petitioner who is presently employed as a regular Medical Record Technician (MRT). The petitioner was appointed initially as Grade-IV employee under the Gauhati Medical College & Hospital on 13.01.1999. In the order dated 27.10.2010, the petitioner who was officiating as MRT was regularised in the said post with effect from the date of his joining against the original sanctioned post. The petitioner has, thereafter, rendered his services as MRT and it is his contention that the next higher post is the post of Medical Record Officer (MRO). He submits that as he was not being considered for promotion to the post of MRO, he filed a representation before the Directorate of Medical Education. The Directorate of Medical Education by communication dated 24.10.2019 has forwarded his proposal to the Commissioner & Secretary, Department of Health and Family Welfare. In the said forwarding letter, it is mentioned that the petitioner is an MRO which is a promotional post and once promoted the incumbent needs to undergo training for a period of one year in the MRO post. The proposal was sent with a request that necessary approval be accorded for deputing the petitioner who is an MRT, Gauhati Medical College & Hospital for higher training at Safdarjung Hospital for a period of one year and the vacant MRO post not to be filled up till then. By order dated 31.10.2020, the petitioner was also allowed to supervise the works

of the post of MRO, GMCH upon superannuation of the incumbent therein. However, the petitioner was not promoted to the post of MRO inspite of several representations. Being aggrieved, he has approached this Court praying for regularisation in the post of MRO. The respondent No. 4, Superintendent, GMCH, has filed an affidavit contending that for promotion to the post of MRO, the person must have the requisite qualification i.e. Diploma and experience, as per norms and procedure in the post of MRT. In a further additional affidavit filed by the Superintendent, GMCH, it was held that the petitioner does not have the MRT training from a recognised institution, therefore, he is not a suitable candidate for being promoted to the post of MRO.

3. The learned counsels for the parties have been heard. Pleading on record have been perused.

4. The case of the petitioner is that he has regularised as an MRT and he seeks his promotion to the next higher post which is MRO. As per the communication of the DME upon being promoted to the post of MRO, the incumbent is to be sent for training to the recognised institution for a period of one year.

5. The respondent counsel has not been able to point out any rules or guidelines to suggest that for executing the duties of MRT, training from a recognised institution is necessary and which the petitioner does not have.

6. The learned counsel for the respondents has referred to an advertisement, which is enclosed to the writ petition, to show that for the post of MRT besides being a graduate, training as Medical Record Technician in Government Hospital or Medical College is necessary. That apart for the post of MRO, the incumbent must be a graduate having Medical Record Officer Training from

recognised institute.

7. Upon hearing the learned counsels for the parties, it is seen that the prescription to the advertisement is for direct recruits who are sought to be appointed in the said post. The petitioner before this Court seeks promotion to the post of MRO.

8. In this context, the communication of the Director, Medical Education dated 24.10.2019 addressed to the Commissioner and Secretary to the Government of Assam, Health and Family Welfare Department has relevance. The said communication clearly indicates that the MRO is a promotional post and once promoted, the incumbent needs to undergo training for a period of one year. However, the affidavit filed by the Superintendent reflects that the petitioner is not even MRT trained from a recognised institution. No reference to any rules or OM or Guidelines etc has been made by the Superintendent in support of the averments made in the additional affidavit.

9. Under such circumstances, this Court is of the view that the question of whether the proper training for MRT would be necessary for the petitioner for consideration of the case for promotion to the post of MRO, if the said post of MRO is available for promotion, ought to be examined by the appropriate authority of the Department. While examining the case for promotion, the department will also examine whether training as MRT from a Government recognized institute is a condition precedent for considering any MRT like the petitioner for the promotion to his post of MRO. This Court is of the view that the matter should be decided by the Commissioner and Secretary, Department and Family Welfare, namely the respondent No.1, who will decide the issue with regard to the claim of the petitioner seeking promotion to the post of MRO from his present post held in the department which is MRT. The respondent No. 1

will take into consideration all relevant facts and circumstances including any Rules, Circular, Notifications etc and thereupon consider the case of the petitioner. For the purposes of deciding this issue, the petitioner will file a fresh representation before the Commissioner and Secretary, Department of Family Welfare within a period of two weeks from today and thereupon the Commissioner & Secretary will pass necessary order within a further period of thirty days from the date of receipt of the representation along with the certified copy of this order.

10. The writ petition stands disposed of in terms of the above. No order as to cost.

JUDGE

Comparing Assistant