

GAHC010111262021



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

Case No. : WP(C)/3648/2021

BINOD DAS
S/O- GHANA SHYAM DAS, R/O- P.O. PANJABARI, P.S. SATGAON, GHY-37,
DIST.- KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, HOME AND
POLITICAL DEPTT., DISPUR, GHY-06, DIST.- KAMRUP (M), ASSAM

2:THE ASSAM PUBLIC SERVICE COMMISSION
REP. BY THE CHAIRMAN
JAWAHAR NAGAR
KHANAPARA
GHY-06
DIST.- KAMRUP (M)
ASSAM

3:THE DIRECTOR GENERAL OF CIVIL DEFENCE AND COMMANDANT
GENERAL OF HOME GUARDS
ASSAM
BELTOLA
GHY-28
DIST.- KAMRUP (M)
ASSAM

4:THE COMMANDANT
1ST ASRF BATTALION
BARJAR
NALBARI
P.O. BARAMA
DIST.- NALBARI
ASSAM
PIN- 781346

5:ABHIJIT BARUAH
ASSTT. COMMANDANT
ASRF BN.-1 BARJAR
NALBARI
P.O. BARAMA
DIST.- NALBARI
ASSAM
PIN- 78134

Advocate for the Petitioner : MR Z ALAM

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

04.05.2023

Heard Mr. B. N. Sarma, learned counsel for the petitioner. Also heard Mr. H.

Sarma, learned Additional Senior Government Advocate, Assam appearing for the respondent Nos.1, 3 and 4 and Mr. S. Bora, learned counsel appearing for the respondent No.5. None has appeared for the respondent No.2.

In this writ petition, the provisional Gradation List dated 20.02.2021 in the cadre of Class-I (Junior Grade) Home Guard, published by the respondent No.1 is under challenge. In the Gradation List dated 20.02.2021 the name of the respondent No.5 has been shown above the writ petitioner. According to the petitioner, he had joined in service one day before the respondent No.5 and therefore, he ought to have been treated as senior to respondent No.5 in the Gradation List. It is the submission of Mr. B. N. Sarma, learned counsel for the petitioner that while making enquiry after receipt of the counter-affidavit in this matter, it has further come to light that the respondent No.5 had produced a forged "NCC-C" certificate, based on which, he was originally appointed as

Assistant Commandant and therefore, on verification of the records, the appointment of the respondent No.5 itself is liable to be interfered with by this Court.

Mr. H. Sarma, learned Addl. Sr. Govt. Advocate, Assam on the other hand, submits that during the pendency of this writ petition, three other candidates junior to the writ petitioner as well as the respondent No.5 viz., (1) Sri Satyabrata Das (SC), (2) Sri Joydeep Dawdung Langthasa (STH) and (3) Sri Roopjyoti Taye (STP) have been recommended for promotion by the Selection Committee pursuant whereunto, they have also been promoted to Class-I (Sr. Grade-II) of the Home Guards. Therefore, this writ petition has become infructuous.

Mr. S. Bora, learned counsel for the respondent No.5, submits that the name of his client appeared above the writ petitioner in the merit list published by the Assam Public Service Commission and that is the reason why the name of the respondent No.5 appears above the writ petitioner in the Gradation List. The learned counsel further submits that the writ petitioner and the respondent No.5 had both joined within the joining period but the respondent No.5 had joined a day later than the writ petitioner. It is on such count that the writ petitioner is claiming seniority. However, since both the candidates had joined within the joining time permissible under the law, no such advantage, as claimed by the petitioner, can be given to him. Therefore, the writ petition is liable to be dismissed.

I have considered the submissions advanced by the learned counsel for both the sides and have also gone through the materials available on record.

A perusal of the Notification dated 25.06.2010, by means of which, the writ petitioner and the respondent No.5 were appointed temporarily as Assistant

Commandant, along with six other candidates, goes to show that the respondent No.5 is placed above the writ petitioner in order of merit.

Mr. B. N. Sarma, learned counsel for the petitioner has fairly submitted that both the writ petitioner as well as the respondent No.5 had joined in their respective posts within the joining period as permissible by the authorities. If that be so, merely because the petitioner had joined one day ahead of the respondent No.5 that cannot, in the opinion of this Court, make him senior to the respondent No.5. Therefore, this Court is of the opinion that there is no infirmity in the provisional Gradation List where the respondent No.5 has been placed above the writ petitioner.

In so far as the allegation pertaining to use of fake "NCC-C" certificate by the respondent No.5 is concerned, the said plea has been taken subsequently in the additional affidavit. There is no prayer in the writ petition to set aside the appointment of the respondent No.5 on the ground of commission of fraud. Therefore, this Court is not inclined to go into the aforesaid aspect of the matter in the present proceeding. The writ petitioner would, however, be at liberty to agitate his grievance, if so advised, by filing a proper writ petition based on relevant pleadings so as to give the respondent No.5 an opportunity to defend his interest in the matter.

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

JUDGE

Comparing Assistant