

GAHC010123672022



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

Case No. : WP(C)/4233/2022

BINUD SONOWAL
SON OF KAMAL SONOWAL, RESIDENT OF VILLAGE- MATHAWANI, P.O.-
MATHAWANI, PIN- 786610, IN THE DISTRICT OF DIBRUGARH, ASSAM.

VERSUS

THE UNION OF INDIA AND 3 ORS
REPRESENTED BY THE SECRETARY, MINISTRY OF COMMUNICATION,
DEPARTMENT OF POST, DAK BHAWAN, SANSAD MARG, NEW DELHI-
110001.

2:THE CHIEF POST MASTER GENERAL
ASSAM CIRCLE
MEGHDOOT BHAWAN
GUWAHATI
ASSAM- 781001.

3:THE POST MASTER GENERAL
DIBRUGARH DIVISION
DIBRUGARH
ASSAM- 786001.

4:THE SUPERINTENDENT OF POST OFFICES
DIBRUGARH DIVISION
DIBRUGARH
ASSAM- 786001

Advocate for the Petitioner : MR. D DEKA

Advocate for the Respondent : ASSTT.S.G.I.

BEFORE
HON'BLE THE CHIEF JUSTICE (ACTING) MR. N. KOTISWAR SINGH
HON'BLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

08.02.2023

[N. Kotiswar Singh, CJ(Acting)]

Heard Mr. P. Mahanta, learned counsel for the petitioner. Also heard Ms. A. Gayan, learned CGC, appearing for the respondents.

2. The present writ petition has been preferred against the judgment and order dated 04.04.2019 passed by the Central Administrative Tribunal, Guwahati Bench in Original Application No.040/00066/2016 by which the plea of the petitioner for appointment to the post of Gramin Dak Sevak at Mathawani was dismissed on the ground that the said post was reserved for OBC and the said applicant was the ST candidate.

3. It has been submitted by the learned counsel for the petitioner that similar issues have been already decided by this Court in WP(C) No.4750/2021 and in WP(C) No.4690/2021, whereby this Court had allowed these petitions by setting aside the termination orders and reinstating in service as well as granting back wages. The effective portion of the order passed by this Court in WP(C) No.4750/2021 reads as follows:-

"15. In view of the above, the writ petition succeeds. The impugned dated 09.03.2021, passed by the CAT, Guwahati Bench is hereby set aside. The respondent authorities are directed to re-instate the petitioner in service within one month from the date of receipt of a certified copy of this order.

We have been told that at present the salary of the Gramin Dak Sevak is Rs.12,000/- per month but it was much less at the time the petitioner joined the service in the year 2007. Since we have held the termination of the petitioner from service to be bad in law

and have ordered the petitioner to be re-instated in service, we further ordered that this shall be done with 50% of the back wages/remuneration as applicable to the petitioner.”

4. Similarly, the effective portion order passed by this Court in WP(C) No.4690/2021 reads as follows:-

“5. We had adjudicated a similar dispute in WP(C) 4750/2021 pertaining to termination of the service of a Gramin Dak Sevak under similar facts and circumstances. The writ petition was filed by a Gramin Dak Sevak, whose service had been terminated. We had allowed the writ petition on 17.12.2021 by stating as follows:

“12. After hearing the learned counsel for the parties, we are of the considered view that there is not only a clear violation of the principles of natural justice and fair play but even on merits the petitioner’s service was not liable to be terminated on the ground which has been assigned by the respondent authorities. The only ground which the respondent department has assigned, that too, after seven years of litigation is that the petitioner’s service was terminated as he had applied for the post after the closing date. This, admittedly, the department realised when the incumbent had already completed almost one year of service. Even assuming for the sake of argument that the petitioner had applied after the closing date, the fact remains that the application was accepted by the respondent department and, thereafter, on selection by a valid Selection Committee he was declared selected and subsequently he was appointed. It is not the case of the respondent department that there was any fraud or cheating, or withholding of any document or any information at the hands of the petitioner. It is clearly a case where the application, which was submitted beyond the closing date, was accepted by the employer and, therefore, it is not open for the respondent department to cancel his candidature, after his joining in service and rendering service for almost one year, on the ground that the application was submitted after the closing date. Leaving aside this main reason for terminating the service of the petitioner, the fact remains that even this ground was not disclosed to the petitioner when his services were terminated. Therefore, the petitioner approached the CAT, Guwahati Bench twice where orders were passed directing the respondent department to disclose the reason for his termination, but the reason was withheld by the department. It was only when the petitioner filed an Execution Petition before the CAT, Guwahati Bench, against non-compliance of the direction of the Tribunal and the Tribunal directed the respondent department to comply with the directions passed in the Original Application, the reason was disclosed to the petitioner. By this time seven years had passed.

13. On a specific query made to the learned Assistant Solicitor General of India, appearing for the respondent department, this Court has been informed that the post of Gramin Dak Sevak, to which the petitioner was appointed is still lying vacant.

14. *There has been total apathy at the hands of the Postal Department in this case. Moreover, as we have already discussed above, in this case there has been total violation of the principle natural justice and fair play. The department had, admittedly, held an enquiry and the petitioner was liable to be given an opportunity of hearing in the said enquiry. However, no such opportunity was given to the petitioner before his service was terminated.*

15. *In view of the above, the writ petition succeeds. The impugned dated 09.03.2021, passed by the CAT, Guwahati Bench is hereby set aside. The respondent authorities are directed to re-instate the petitioner in service within one month from the date of receipt of a certified copy of this order.*

We have been told that at present the salary of the Gramin Dak Sevak is Rs.12,000/- per month but it was much less at the time the petitioner joined the service in the year 2007. Since we have held the termination of the petitioner from service to be bad in law and have ordered the petitioner to be re-instated in service, we further ordered that this shall be done with 50% of the back wages/remuneration as applicable to the petitioner.

6. Mr. R.K.D. Choudhury, learned Assistant Solicitor General of India, appearing for respondents admits the factual similarity in both the cases. In fact, the service of the petitioner in the aforesaid writ petition and the present petitioner were also terminated by the same order.

7. Under these circumstances, we dispose of the present writ petition under the same terms and conditions as given in our order dated 17.12.2021 in WP(C) 4750/2021."

5. Accordingly, it has been submitted that since the present petitioner is similarly situated as those petitioners in the aforesaid two writ petitions, similar order may be passed.

6. Ms. Gayan also submits that since the petitioner is also similarly situated as those two writ petitioners, similar order may be passed, however, she has no instruction as to whether there is still any vacant post of GDS BPM, Mathawani.

7. Under the circumstances, we allow this petition by setting aside the order dated 04.04.2019 passed in O.A. No.040/00066/2016 with a direction to reinstate the petitioner to the post of GDS BPM, Mathawani along with back wages in the district of Dibrugarh, provided

there is any vacant post available as on date, if not, she may be adjusted in any other subsequent vacancy which may arise.

8. With the above observation and direction, the present petition stands disposed of.

Sd/- Soumitra Saikia
JUDGE

Sd/- N. Kotiswar Singh
CHIEF JUSTICE (ACTING)

Comparing Assistant