

GAHC010124262015



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

Case No. : WP(C)/7246/2015

HIRAK JYOTI BORAH
S/O- LT. GAGAN CH. BORAH, R/O VILL.- BEZARCHUBURI, TOWN- TEZPUR,
P.O.- DA-PARBATIA, PIN- 784001, DIST.- SONITPUR, ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMMISSIONER and SECY., DEPTT. OF HOME, DISPUR, GHY-
6.

2:THE STATE LEVEL COMMITTEE
ASSAM
REP. BY THE CHIEF SECY. TO THE GOVT. OF ASSAM
PERSONNEL DEPTT.
DISPUR
GHY- 6.

3:THE SECRETARY
DEPTT. OF PERSONNEL B
GOVT. OF ASSAM
DISPUR
GHY- 6.

4:THE SECRETARY
DEPTT. OF FINANCE
GOVT. OF ASSAM
DISPUR
GHY- 6.

5:THE DIST. LEVEL COMMITTEE
REP. BY THE DY. COMMISSIONER
TEZPUR

SONITPUR
ASSAM.

6:THE DY. COMMISSIONER
TEZPUR
SONITPUR
ASSAM

Advocate for the Petitioner : MRK K DAS

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 11/09/2023

Heard Mr. W.R. Medhi, learned counsel for the petitioner. Also heard Mr. D. Borah, learned Government Advocate and Mr. R. Borpujari, learned counsel for respondent No.4.

2. This writ petition has been filed by the petitioner, who is aggrieved by non consideration of his application for seeking compassionate appointment.

3. The father of the petitioner was serving as a Junior Assistant in the Office of the Deputy Commissioner, Sonitpur, Tezpur and he died in harness on 30.07.2007. The petitioner submitted his application on 08.10.2007 in the Office of the Deputy Commissioner, Sonitpur, Tezpur praying for appointment on compassionate ground. However, no information was forthcoming from the said Office. The petitioner, thereafter filed application under Right to Information Act, 2005. In response to his application under RTI, the respondent authorities by communication dated 05.02.2015 submitted their reply. In the said reply, it was mentioned that the case of the petitioner would not be considered due to non-

availability of posts during the period of 2 (two) years from the date of death of his father and therefore, his proposal will not be recommended by the District Level Committee (DLC) in terms of the Judgment and Order passed by this court in W.P.(C) 3875/2005 (*Achyut Ranjan Das and Ors.-Vs- State of Assam and Ors*). In the said reply it was also mentioned that his prayer petition was also not traced out. The petitioner thereafter again represented before competent authorities but since that did not yield any response from the respondent authorities, he has approached this Court by filing this writ petition.

4. The respondent no.6 has contested the claims of the petitioner by filing counter affidavit. Pursuant to this Court's order dated 02.01.2023, the petitioner has also filed an affidavit to bring on record the financial status of the petitioner.

5. The affidavit encloses some revenue documents to show that the petitioner is a joint pattadar of land in the village of Da-Parbatia, which was mutated in his and other family members' name pursuant to the demise of his father.

6. The learned counsel for the petitioner submits that no reasons have been given by the respondent authorities as to the manner the petitioner's case was considered vis'-a-vis' the other candidates selected in the meantime. It is the claim of the petitioner that his case was not given due consideration in terms of the provisions of the relevant Office Memorandum. It is submitted that the claim of the petitioner ought to have been considered by taking into account the hardships faced by him and the other legal-heirs as his late father was the sole earner of the family.

7. It is submitted that a direction be issued to the respondent authorities to reconsider the claim of the petitioner for appointment on compassionate ground

and thereafter pass a speaking order.

8. Mr. D. Bora, learned Government Advocate appearing for the respondent department submits that the affidavit filed by the respondent No.6, clearly reflects that the case of the petitioner could not be considered due to non availability of 5% vacant posts within 2 (two) years. It is submitted that this criteria is as per the Judgment and Order dated 03.08.2006 passed by the Hon'ble Gauhati High Court in W.P.(C)/3875/2005 (*Achyut Ranjan Das and Ors. –Vs- State of Assam and Ors.*).

9. It is submitted by the learned counsel for the respondents that the application of the petitioner also could not be traced out. That apart since the petitioner has furnished documents showing his financial status and due to the efflux of time, the case of the petitioner does not require any further consideration by the competent authorities in the claim of the petitioner is in respect of compassionate appointment.

10. The learned counsels for the parties have been heard. Pleadings on record have been carefully perused.

11. It is seen from the affidavit filed by the respondent authorities that a reference has been made to the response by the RTI authorities to show that the case of the petitioner was rejected due to non availability of post during the period of 2 (two) years from the date of death of his father. That apart the other details in respect of the number of posts in Grade III and Grade IV were also reflected in the RTI reply. The reply is extracted below:-

“4(A) Shri Hirok Jyoti Borah, S/O Lt. Gagn Ch. Borah was applied on 08/10/2007 for appointment on Compassionate ground. But due to non availability of post during the period of 2 years from the date of death of his

father his proposal could not recommended in the DLC meeting and his proposal required no further considered as per Judgment and Order passed by the Hon'ble Gauhati High Court in W.P(C)/3875/2005 –Vs- State of Assam & Ors & Govt. Rules. His prayer petition also not traced out.

(B) Total 29 Nos. Grade III and 25 Nos. Grade IV applications were submitted before the Deputy Commissioner, Sonitpur, Tezpur since 2007 to 21.03.2015. All approved applications were submitted to Govt.

(C) Total 15 Nos. Grade III and 7 Nos. Grade IV were recommended in the DLC meeting from 2007 to 21.03.2015.

(D) Total 13 (Thirteen) Nos. Of DLC meeting held in the Dist during the period from 18.11.2008 to 21.03.2015. No any information is available in this office about how many SLC meeting held till date. You may collect this information from the Govt. of Assam.

(E) Total 15 Nos. Of Grade III and 7 Nos. Grade IV post were approved by the SLC meeting for appointment on Compassionate ground during 2007 to 2005.

(F) Total 29 Nos. Applications of Grade III and 25 nos. Of applications Grade IV were placed before the DLC meeting w.e.f 2007 to 21.03.2015.

(G) total 12 Nos. Of Grade III and 4 Nos. Of Grade IV candidates were appointed in the DLC w.e.f 2007 to 21.03.2015 after approved by the SLC”.

12. That apart upon perusal of the Case records, it is seen that a copy of the instruction furnished to the Government Advocate is available in the Court records. As per the said communication dated 07.04.2018 issued from the Office of the Office of the Deputy Commissioner, Sonitpur, Tezpur (Personnel Branch) it was mentioned that the petitioner's prayer was not considered at that time due to non availability of 5% vacant post and was therefore kept pending. It is further stated therein that the Minutes of the DLC Committees held between

2007 till 2015 were examined but there was no mention of the rejection of the petitioner's petition in any of these minutes. As such, the year when the DLC rejected the case of the petitioner could not be ascertained. The breakup of the vacancy position from 2007 to 31.03.2015 is also reflected in the communication issued by the Deputy Commissioner, Sonitpur, Tezpur. Contrary to the particulars furnished in the RTI reply, it is further stated therein that actually the number of posts in Grade III and Grade IV, which were filled up till 2015 were 12 and 4 respectively. And 17 numbers of Grade III and 10 numbers of Grade IV posts were recommended as per the resultant vacancy.

13. The communication dated 07.04.2018 No. SPE.1/2016/216 issued by the Deputy Commissioner, Sonitpur, Tezpur reflects a position which is contrary to the information furnished to the petitioner under RTI. Under the RTI reply dated 13.04.2015, it was stated that the case of the petitioner could not be considered due to non availability of post during the period of 2(two) years from the date of death of the father of the petitioner and therefore, his proposal could not be recommended in the DLC meeting. However, the communication No. SPE.1/2016/216 dated 07.04.2018 issued by the Deputy Commissioner, Sonitpur, Tezpur, which is available in the case records reflects that the petitioner's prayer was not considered at that time due to non availability of 5% vacant post and was therefore kept pending. It was further stated therein that the minutes of the DLC committee held between 2007 till 2015 upon being examined also did not reveal or refer to the rejection of the petitioner's petition.

14. Such clear statement or instructions coming from the Office of the Deputy Commissioner, Sonitpur, Tezpur clearly reveals that the case of the petitioner was not considered and was kept pending. The affidavit of the Deputy Commissioner, Sonitpur, Tezpur which was filed on 04.05.2016 also did not

reflect the position as reflected subsequently by the communication No. SPE.1/2016/216 dated 07.04.2018.

15. Under such circumstances, it is evident that the case of the petitioner was never considered under the relevant provisions of the O.M, which was prevalent at the relevant point in time. During the course of the hearing, it is also revealed that the application which was preferred by the petitioner could not be traced out nor is a copy available with the petitioner. However, a subsequent application dated 14.02.2015 was stated to have been submitted by the petitioner to the Commissioner, North Assam Division is available on record.

16. As have been discussed above, it is evident that the case of the petitioner was never considered by the DLC and was kept pending and the DLC minutes available from 2007 to 31.03.2015 upon being scrutinized by the Deputy Commissioner, Sonitpur, Tezpur did not refer to consideration of the petitioner's application any of these minutes, as stated in the communication dated 07.04.2018.

17. Accordingly, this writ petition stands disposed of with a direction to the Deputy Commissioner, Sonitpur, Tezpur, to consider the claims made by the petitioner for compassionate appointment in respect of vacancies available at the relevant point in time. The financial status etc. and other conditions necessary in respect of the petitioner will also be given due consideration. Although the petitioner completed his Graduation and since this case is for consideration of appointment on compassionate ground, the authorities concerned will consider the case of the petitioner against any available vacancy that may be available upon due consideration of the conditions necessary for satisfying the requirement as prescribed under the relevant Office Memorandum. His case if found suitable may not be rejected on the ground of

acquiring higher qualifications. The matter will be placed for consideration by the DLC within a period of 4 (four) weeks from the date of receipt of certified copy of this order.

18. In the event the District Level Committee makes a positive recommendation in respect of the petitioner then the same be placed before the next available State Level Committee, which will give due consideration to any such recommendations that may be made by the District Level Committee. Any such order that is passed by the District Level Committee or the State Level Committee, as the case may be, a copy thereof be furnished to the petitioner. The petitioner is given liberty to file copy of the writ petition along with the certified copy of this order.

19. Writ petition stands disposed of in terms of the above.

20. No order as to cost.

JUDGE

Comparing Assistant