

GAHC010149772023



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

Case No. : WP(C)/4042/2023

TRIBHUWAN ROY
SON OF LATE KHADUR ROY,
WORKING AS CHOWKIDAR,
OFFICE OF THE EXECUTIVE ENGINEER,
INDUSTRIES AND COMMERCE DEPARTMENT,
INDUSTRIAL ESTATE, BAMUNIMAIDAM,
GUWAHATI- 21.

VERSUS

THE STATE OF ASSAM AND 7 ORS.
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF
ASSAM,
INDUSTRIES AND COMMERCE DEPARTMENT,
DISPUR, GUWAHATI-6.

2:THE COMMISSIONER OF INDUSTRIES AND COMMERCE
ASSAM
UDYOG BHAWAN
BAMUNIMAIDAM

GUWAHATI-21.

3:THE DIRECTOR OF INDUSTRIES
ASSAM
UDYOG BHAWAN
GUWAHATI-21.

4:EXECUTIVE ENGINEER
INDUSTRIES AND COMMERCE DEPARTMENT
INDUSTRIAL ESTATE
BAMUNIMAIDAM

GUWAHATI-21.

5:THE PRINCIPAL ACCOUNTANT GENERAL (A AND E)
ASSAM
MAIDAM GAON
GUWAHATI-29.

6:THE DIRECTOR OF TREASURY AND ACCOUNTS
KAR BHAWAN
ASSAM
GUWAHATI-6.

7:THE TREASURY OFFICER
NEW GUWAHATI TREASURY
GUWAHATI-21.

8:MONOMOCHAN KALITA
JUNIOR ASSISTANT

OFFICE OF THE EXECUTIVE ENGINEER

INDUSTRIES AND COMMERCE DEPARTMENT
ASSAM

GUWAHATI-21

Advocate for the Petitioner : MR. S C KEYAL

Advocate for the Respondent : SC, INDUSTRIES AND COMMERCE

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 24-07-2023

Heard Ms. R. Deka, learned counsel for the writ petitioner. Also heard Mr. N. Kalita, learned standing counsel, Industries Department, Assam as well as Mr. K.K. Medhi, learned counsel appearing on behalf of respondent No. 5. Mr. A. Chaliha, learned standing counsel, Finance Department, Assam has appeared on behalf of respondent Nos. 6 and 7.

The writ petitioner herein was appointed as a Chowkidar against a Gr-IV post in the office of the Executive Engineer, Industries Department, Assam, i.e. the respondent No. 4 on 01-06-1996. Thereafter, his services were regularized vide order dated 07-02-1998 w.e.f. the date of his joining service. The grievance of the petitioner is that although he possess the requisite qualification for being considered for promotion to the next higher post in accordance with the provisions of Rule 6(b) of the Assam Ministerial District Establishment Service Rules, 1967, no action has been taken by the departmental authorities till today for considering his case for promotion to the post of Senior Assistant. On the contrary, persons junior to the petitioner have already been promoted thus, depriving the petitioner of the benefit of promotion. Hence, this writ petition.

Ms. Deka, learned counsel for the petitioner submits that several representations have been submitted by the writ petitioner ventilating his grievance in the matter. Notwithstanding the same, the authorities have maintained complete silence in the matter, as a result of which, the petitioner has been compelled to approach this Court by filing the present writ petition.

Since the decision of the Hon'ble Supreme Court rendered in the case of **Ajit Singh (2) Vs. State of Punjab & Ors.** reported in **1999 (7) SCC 209**, law is firmly settled that right to be considered for promotion is a fundamental right. If a candidate is otherwise qualified and comes within the zone of consideration, he or she cannot be denied consideration for promotion except in accordance with the provisions of law.

From a perusal of the materials available on record, nothing is discernable as to why, the petitioner was not considered for promotion despite having spent more than 27

years in the same post. Whatever be the reason, the petitioner is entitled to be informed about the same, even if the authorities are of the view that he cannot be promoted. Situated thus, I do not find any justifiable ground to keep this writ petition pending before this Court any further.

From a perusal of the documents on record, I find that out of the several representations, the last representation submitted by the writ petitioner was on 14-10-2022 (Annexure-17) addressed to the respondent No. 4 ventilating his grievance in the matter. This writ petition is, therefore, disposed of at the stage of motion hearing by directing the respondent No. 4 to consider the representation dated 14-10-2022 submitted by the petitioner. In the event the authorities are of the view that for any reason the petitioner cannot be considered for promotion as per the rules, he shall be communicated of the reasons thereof, in writing, within a period of 06 weeks from the date of receipt of a certified copy of this order enclosing a fresh copy of the representation dated 14-10-2022.

If the petitioner continues to remain aggrieved even thereafter, it will be open for him to approach this Court once again by filing fresh writ petition.

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

JUDGE

GS

Comparing Assistant