

GAHC010164812010



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

Case No. : WP(C)/6896/2010

HEAD CONSTABLE GENERAL DUTY MADHAB NAMASUDRA
S/O LT. DHANIRAM NAMASUDRA, R/O VILL- SAURAMURI, KAMRUP,
ASSAM. SERVICE DETAILS OF PETITIONER FORCE NO. 891151947,
CENTRAL RESERVE POLICE FORCE, PRESENTLY POSTED AT 151 BN, CRPF,
C/O DIGP, GROUP CENTRE, CRPF, KHATKHATI, ASSAM.

VERSUS

THE UNION OF INDIA and ORS
REP. BY THE SECY, MINISTRY HOME AFFAIRS, NEW DELHI.

2:THE DIRECTOR GENERAL
CENTRAL RESERVE POLICE FORCE
CENTRAL GOVT. OFFICE COMPLEX NEW DELHI.

3:THE DEPUTY INSPECTOR GENERAL OF POLICE
PERS-II
DIRECTORATE GENERAL
CENTRAL RESERVE POLICE FORCE
CGO COMPLEX
NEW DELHI.

4:THE INSPECTOR GENERAL OF POLICE
NORTH EAST SECTOR
CRPF
SHILLONG
MEGHALAYA.

5:THE DEPUTY INSPECTOR OF GENERAL OF POLICE
GROUP CENTER
CENTRAL RESERVE POLICE FORCE
KHATKHATI

KARBIANGLONG
ASSAM

Advocate for the Petitioner : MR.D DEKA
Advocate for the Respondent : ASSTT.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER

Date : 27-07-2023

Heard Mr. R. Mazumder, learned counsel for the writ petitioner. Also heard Mr. R.K.D. Choudhury, learned DSGI appearing for the respondents.

2. In the instant writ petition the core controversy pertains to purported promotion given to the writ petitioner under the category "10% unqualified quota". According to the writ petitioner, although his colleague, viz. Sri R.M. Dhote, who was a part of the same incident and was entitled to similar benefit for the act of gallantry, was promoted to the rank of Sub-Inspector (SI) under the "10% unqualified quota", in case of the writ petitioner, the authorities have merely preponed his date of promotion to the rank of Head Constable by about 03 months and dressed up the same as promotion against "10% unqualified quota" although the petitioner at that point of time was already in the approved A/GD list of constable for being promoted to the rank of Head Constable, in the usual course.

3. The facts of the case, in a nutshell, are that the writ petitioner herein had joined Central Reserve Police Force (CRPF) as Constable (General Duty) (CT/GD) in the year 1989. Thereafter, he was subjected to the usual in-service training which he qualified in

the year 2004 and therefore, was eligible for being promoted to the post of Head Constable (GD). In view of his above qualification, the petitioner was also brought into the approved list A/GD-8/2004. He was thereafter granted financial up-gradation w.e.f. 18-08-2004. Eventually, the promotion of the petitioner to the rank of HC/GD was notified on 11-04-2006 by giving effect to the same from 19-10-2005. However, the promotion of the petitioner to the rank of HC/GD was projected as a promotion given "out of turn" i.e. against the "10% unqualified quota". According to the petitioner, Sri R.M. Dhote who had joined CRPF as CT/GD in the year 1988 and hence, was senior to the petitioner in service, was one of the two Constables along with the petitioner who was on duty on 23-06-2005 when an incident of encounter with terrorist took place. Due to the act of bravery shown by the petitioner as well as Sri R.M. Dhote, both of whom were serving as Constable on the date of the incident, the authorities had recommended promotion of those two Constables against the "10% unqualified quota". Sri R.M. Dhote, being senior to the petitioner in the rank of Constable, was promoted to the rank of Head Constable w.e.f. 23-08-2005 in usual course. Thereafter, he was again promoted to the rank of Sub-Inspector (SI) against the "10% unqualified quota". However, the claim of the petitioner for promotion against "10% unqualified quota" was turned down by projecting his promotion to the rank of Head Constable as one coming within the said category. Aggrieved by the aforesaid decision of the authorities, the petitioner had submitted a legal notice addressed to the Addl. DIG (PERS-III) on 21-03-2007. However, by the communication dated 19-06-2007, the grievance raised by the petitioner was negated by the authorities by contending that while the petitioner would have been promoted as

HC/GD in normal course only on 25-01-2006, by preponing his promotion to the said rank w.e.f. 19-10-2005 thus giving his seniority over other constables, the benefit intended to be given to the petitioner under "10% unqualified quota" was extended to him.

4. By assailing the decision of the authorities as well as the communication dated 19-07-2007, Mr. Mazumder, learned counsel for the petitioner submits that the writ petitioner, in any case was in the approved list of HC/GD and his promotion to the rank of HC/GD was a foregone conclusion on the date of the incident, i.e. 23-06-2005. Thereafter, no promotion has been given to the petitioner. Therefore, in reality, it is a clear case where the authorities have extended the benefit of unqualified promotion to his colleagues, viz. Sri R.M. Dhote while denying such benefit to the petitioner although both of them, being part the same incident of gallantry, were entitled to similar benefit. In support of his above arguments Mr. Mazumdar has placed reliance on Rule 70 of the Central Reserve Police Force Rules, 1955 to contend that an unqualified promotion is given to those candidates to a rank to which, otherwise they were not qualified to be promoted. Since the writ petitioner was qualified to be promoted to the rank of HC/GD in usual course and his name was already included in the "approved-A list" no promotion can be said to have been given to the petitioner against "10% unqualified quota". Therefore, submits Mr. Mazumder it is a clear case of discrimination shown by the authorities towards the writ petitioner.

5. Mr. R.K.D. Choudhury, learned DSGI appearing for the respondents, on the other hand, has argued that from the communication dated 19-06-2007 it is apparent that the date of promotion of the petitioner to the rank of HC/GD had been preponed to 19-10-

2005 instead of 25-01-2006 i.e. the date when it was due. Mr. Choudhury has, however, submitted in his usual fairness that merely by giving accelerated seniority to the petitioner in the rank of HC/GD it cannot be said that he has been given the benefit of promotion under the "10% unqualified quota".

6. I have considered the submission made at the bar, gone through the materials available on record and also carefully examined the provision of the rules. A perusal of the procedure for promotion of NGO (GD) executive personnel (male/ female) to various ranks from constable to inspector under standing order No. 6/1999 has been annexed to the writ petition as Annexure-A. A perusal of the standing order clearly reflects that an approved list A/GD is prepared for promotion of constables who have completed minimum 08 years of service as constable and have successfully completed JCC, quailed in Section Commander Course (SCC) and are found to be fit. They shall alone be brought in the aforesaid approved list drawn by Selection Board subject to availability of vacancies. Particulars of such constables were required to be forwarded to the Director General, Personnel-II Branch, duly consolidated at range/ sector offices, for releasing them on promotion centrally, according to the force level *inter-se* seniority. From the above, it is clear that once the name of the constables finds place in the approved-A/GD list on meeting the eligibility norms, further action that would be required to be undertaken in the matter is to release the concerned candidates on promotion according to the *inter-se* seniority of the constable. In other words, as per the standing order, a constables whose name is included in the approved A/GD list can be deemed to have been already shortlisted for promotion to the rank of HC/GD and the only issue that would remain at

that stage is the date of release of the constable on promotion, depending on the *inter-se* seniority of the constables. If that be so, it cannot be said that the writ petitioner herein who was already included in the approved A/GD list prior to the date of the incident on 23-06-2005 was granted "out of turn" promotion or promotion against "10% unqualified quota". What has merely happened in the case of the petitioner is that the respondents appears to have released the petitioner on an earlier date by ignoring his *inter-se* seniority. However, even if that position is accepted, the same cannot be termed as "out of turn" promotion or promotion against "10% unqualified quota". Merely because a constable had been granted accelerated seniority in the rank of HC/GD, the same in the opinion of this Court, cannot be equated with under "10% unqualified quota".

7. For the reasons stated above, this Court is of the unhesitant opinion that despite having shortlisted the petitioner for promotion against "10% unqualified quota" along with the other constables, *viz.* Sri R.M. Dhote, no such promotion was actually given to him. On the contrary, his promotion to the rank of HC/GD, which would have come to him in normal course but after a delay of about 03 months, was dressed up as a promotion granted "out of turn" merely by tinkering with the *inter-se* seniority amongst ranks. The aforesaid position also stands clearly established from the reply dated 19-06-2007 forwarded by the Addl. DIG (PERS-III) in response to the legal notice dated 21-03-2007 served by the petitioner.

8. Having gone through the materials on record and in view of the discussions made hereinabove, this Court is of the opinion that the respondents have denied the petitioner, the benefit of promotion against "10% unqualified quota" for the act of gallantry shown

by him although similar benefit was give to other person, viz. Sri R.M. Dhote. This writ petition, therefore, succeeds and is hereby allowed.

9. The communication dated 19-06-2007 stands set aside. The matter is remanded back to the respondents to consider the case of the petitioner afresh for promoting him from the rank of HC/GD to a higher rank against "10% unqualified quota". In doing so, it will be open for the respondents to treat the promotion of the petitioner to the rank of HC/GD w.e.f. 25-01-2006, if so advised. In other words, no accelerated seniority need be given to the petitioner insofar as his promotion to the rank of HC/GD is concerned. On such basis the respondents shall now consider the case of the petitioner for promotion to the next rank of Sub-Inspector under the "10% unqualified quota". His promotion to the post of Sub-Inspector shall be given effect to from a date as the authorities may deem fit and proper.

The above exercise, as directed by this Court, shall be carried out and completed within a period of 03 weeks from the date of receipt of a certified copy of this order.

The writ petition stands disposed of.

No order as to cost.

JUDGE

GS

Comparing Assistant