

GAHC010165872022



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

Case No. : WP(C)/5480/2022

CHAITALI DAS
W/O LATE SWAPAN DAS @ SWAPAN KR. DAS,
R/O VIVEK SARANI, KARIMGANJ,
P.O. AND P.S.- KARIMGANJ,
DIST.- CACHAR, ASSAM.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE UNDER SECRETARY TO THE GOVT. OF ASSAM, EXCISE
DEPTT., DISPUR, GHY- 06.

2:THE STATE LEVEL COMMITTEE (SLC)
ASSAM
REP. BY ITS CHIEF SECRETARY AND CHAIRMAN
ASSAM
KAHILIPARA
GHY- 19.

3:THE DISTRICT LEVEL COMMITTEE (DLC)
REP. BY ITS CHAIRMAN
THE DEPUTY COMMISSIONER
KARIMGANJ

P.O. AND DIST.- KARIMGANJ
ASSAM. PIN.

4:THE SUPERINTENDENT OF EXCISE
KARIMGANJ
P.O. AND DIST.- KARIMGANJ
ASSAM. PIN

Advocate for the Petitioner : MR. N ALAM R K

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 16.08.2023

Heard Mr. A. Rahman, learned counsel for the petitioner. Also heard Mr. R.R. Gogoi, learned standing counsel for the Excise Department, respondent nos.1 and 4; and Mr. J.K. Goswami, learned Additional Senior Govt. Advocate appearing for the respondent nos.2 and 3.

2. Aggrieved by the State Level Committee ("SLC" for short) decision in the meeting held on 05.01.2022, thereby rejecting the application of the petitioner for appointment on compassionate ground due to overage of the petitioner at the time of application, the said decision has been assailed in this writ petition filed under Article 226 of the Constitution of India.

3. The case of the petitioner is that her husband, who was at the relevant point of time was serving as Excise Constable had died-in-harness on 12.09.2016, leaving behind the petitioner and one son. The petitioner had applied for appointment on compassionate ground and the District Level Committee ("DLC" for short), Karimganj in its meeting held on 04.03.2019 had recommended the name of the petitioner for appointment as Excise Constable. By referring to the Admit Card (Annexure-5), the learned counsel for the petitioner projects that the petitioner was born on 25.07.1976 and that as per Next of Kin certificate dated 30.11.2016 (Annexure-2), the age of the petitioner was 40 years. Accordingly, it is submitted that on the date of applying for

appointment on compassionate ground, the petitioner was 42 years of age.

4. The recommendation of the DLC in respect of the petitioner was placed before the SLC and the SLC in its meeting held on 05.01.2022, had rejected the candidature of the petitioner on the ground that the same could not be considered by the Committee due to overage at the time of application.

5. The learned counsel for the petitioner has referred to the Govt. OM dated 01.06.2015 relating to appointment on compassionate ground and has specifically referred to Clause-16 of the said OM, which reads as follows:

“16. The upper age limit could be relaxed wherever found to be necessary as per the existing Government policy. The lower age limit shall, however, in no case be relaxed below 18 years. Age eligibility shall be determined with reference to the date of application and not the date of appointment. The State Level Committee shall be competent to grant relaxation of upper age limit for making such appointment as per existing Government policy.”

6. Accordingly, it is submitted that the SLC, which is headed by Chief Secretary did not take adequate care to examine Clause-16 of the OM dated 01.06.2015, which requires that the age at the time of application should be considered and not the date of appointment and that the SLC had the competence to relax the upper age for making such appointment.

7. The learned Additional Senior Govt. Advocate has justified the rejection of the candidature of the petitioner on the ground that as per the policy, although there was power to relax the upper age, but it is not mandatory that the said exercise should always be undertaken by the SLC.

8. The stand of the learned Additional Senior Govt. Advocate is not found acceptable for the simple reason that as per Clause-16 of the OM dated 01.06.2015, the requirement was to consider the age that was referable to the

date of application and not the date of appointment.

9. The Admit Card of SEBA, Assam (Annexure-5) discloses the date of birth of the petitioner as 25.07.1976 and Next of Kin certificate (Annexure-2) discloses the age of the petitioner to be 40 years as on 30.11.2016. In terms of the Clause-16 of the OM dated 01.06.2015, the SLC had the power and competence to grant relaxation of upper age. The said exercise was not done by the SLC while taking a decision in its meeting held on 05.01.2022. Accordingly, the Court is inclined to set aside the minutes of the SLC held on 05.01.2022 (Annexure-4) insofar as it relates to the Excise Department on compassionate ground in respect of the petitioner, namely, Chaitali Das.

10. The SLC is directed to take note of Clause-16 of the OM dated 01.06.2015, which bestows as the competence to the SLC to grant relaxation of upper age limit for making appointment on compassionate ground as per the existing Govt. policy. The SLC is directed to also take an appropriate decision for relaxation of upper age of the petitioner for making appointment as per existing Govt. policy and pass fresh order after reconsidering the candidature of the petitioner.

11. The fresh exercise/reconsideration of the application of the petitioner for appointment on compassionate ground shall be taken up by the SLC preferably within a period of 3 (three) months from the date of service of certified copy of this order to the office of the respondent no.2, i.e. the SLC. It is also provided that in the event the SLC is unable to take a decision within the time allowed for good and compelling reasons, the SLC is given liberty to apply for extension of time by showing causes, subject to condition that such an application is filed prior to expiry of the time allowed.

12. With the aforesaid direction and liberty as indicated above, this writ petition stands allowed.

JUDGE

Comparing Assistant