

GAHC010169742023



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

Case No. : WP(C)/4425/2023

NAYANJYOTI BORAH
S/O- LATE BHUPEN BORAH, VILL.- TANGLA TOWN, WARD NO. 2, P.O. AND
P.S. TANGLA, DIST. UDALGURI, ASSAM, PIN- 784521.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, EXCISE DEPARTMENT, DISPUR, GUWAHATI-
781006.

2:THE COMMISSIONER
EXCISE DEPARTMENT
ASSAM
HOUSEFED COMPLEX
GUWAHATI-781006
DIST. KAMRUP(M)
ASSAM

3:THE DEPUTY COMMISSIONER OF EXCISE CUM CHD

EXCISE DEPARTMENT
BTC
KOKRAJHAR
ASSAM
PIN- 783370.

4:THE STATE LEVEL SELECTION COMMITTEE (SLC)

REPRESENTED BY ITS CHAIRMAN-CUM-CHIEF SECRETARY
GOVERNMENT OF ASSAM
DISPUR
GUWAHATI-781006.

5:THE PRINCIPAL SECRETARY
BTC

KOKRAJHAR-CUM- CHAIRMAN
DISTRICT LEVEL COMMITTEE (DLC)
KOKRAJHAR
ASSAM
PIN- 783370

Advocate for the Petitioner : MR A NATH

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

04-08-2023

Heard Mr. N. Sarma, learned counsel for the petitioner. Also heard Mr. C.S. Hazarika, learned Government Advocate, Assam.

2. The matter pertains to appointment of the petitioner under the die-in-harness scheme. The petitioner's father died-in-harness on 27.04.2012 while serving as a Head Excise Constable under the Superintendent of Excise, Udalguri leaving behind the petitioner and other dependents. The application of the petitioner submitted on 05.07.2012 before the Superintendent of Excise, Udalguri under the die-in-harness scheme was rejected by the State Level Committee (SLC) in its meeting held on 03.01.2019, on the ground of lack of vacancy though the District Level Committee (DLC), Kokrajhar had indicated the existence of 3 (three) number of vacancies in its proceeding held on 12.08.2016

and considered the name of the petitioner for appointment on compassionate ground against vacant post of Excise Constable (Grade-III). As such, it has been submitted that the aforesaid decision of the SLC is purely a case of non-application of mind.

3. Heard learned counsel for the parties and perused the materials available on record.

4. Though the SLC may disagree with the recommendation or findings of the DLC, however, if any such decision is taken regarding non-availability of vacancy by the SLC, in spite of vacancy being shown by the DLC, then the SLC should give reasons if it disagrees with the finding of the DLC, which evidently was not done by the SLC. That apart, as provided under the Para-15 of the OM. No. ABP.50/2006/Pt/182 dated 01.06.2015, the SLC would also be required to examine the availability of vacancy in any other Department. In the O.M. No.ABP.50/2006/Pt./182 dated 01.06.2015 under Para No.15, it has been clearly provided that if the appointment under the die-in-harness scheme cannot be made because of lack of vacancy in a Department, the authorities may also examine the existence of vacancies in other Departments. Para-15 of the aforesaid OM reads as follows:

“If sufficient vacancies are not available in any particular

office to accommodate the persons in the waiting list for compassionate appointment, it is open to the Administrative Department/ Office to take up the matter with other Department/Offices of the Government to provide at an early appointment on compassionate ground to those in the waiting list."

5. In view of above, the present petition is allowed by setting aside the decision of the SLC held on 03.01.2019 as far as the petitioner is concerned, directing the SLC to reconsider the case of the petitioner in the light of the recommendation made by the DLC in its meeting held on 12.08.2016 regarding the availability of vacancy and also with reference to Caluse-15 of the OM. No. ABP.50/2006/Pt/182 dated 01.06.2015.

6. This exercise shall be done by the respondent authorities in its next SLC meeting or within a period of 3 (three) months from the date of the receipt of a certified copy of this order, whichever is earlier and thereafter, the authority will intimate the decision to the petitioner by issuing a speaking order in this regard.

7. In terms of the above, the writ petition stands disposed of.

JUDGE

Comparing Assistant