

GAHC010179542021



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

Case No. : WP(C)/5900/2021

DUDUL KR PAYEG
S/O LT. MUHIRAM PAYENG, R/O J.E.C. COLONY JORHAT, P.S. AND P.O. J.E.C.
GARAMUR, DIST. JORHAT, ASSAM, PIN 785007

VERSUS

THE STATE OF ASSAM AND 7 ORS
TO BE REPRESENTED BY THE COMMISSIONER AND SECY., GOVT. OF
ASSAM, PUBLIC WORKS ROADS DEPTT., DISPUR, GUWAHATI 6

2:THE OFFICE OF THE CHIEF ENGINEER
PWD (ROADS) ESTT. CELL-II
CHANDMARI
GUWAHATI 03

3:THE EXECUTIVE ENGINEER
PWRD
MAJULI DIST. TERRITORIAL ROAD DIVISION
GARMUR
MAJULI
PIN 785104

4:THE ASSTT. EXECUTIVE ENGINEER
PWRD
ROAD SUB DIVISION-II
MAJULI
GARMUR
PIN 785104

5:THE EXECUTIVE ENGINEER
PWD
WEST ROAD DIVISION
JORHAT-7

6:THE EXECUTIVE ENGINEER
PWD

JORHAT RURAL ROAD DIVISION
PIN 785001

7:THE EXECUTIVE ENGINEER
PWRD
JORHAT NEC DIVISION
JORHAT 785001

8:MRIDU PABAN SAIKIA
HEAD ASSTT. OFFICE OF THE EXECUTIVE ENGINEER
PWRD
MAJULI DIST. TERRITORIAL ROAD DIVISION
GARMUR
MAJULI
PIN 78510

Advocate for the Petitioner : MR. A R BHUYAN

Advocate for the Respondent : SC, PWD

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

08.06.2023

Heard Shri AR Bhuyan, learned counsel for the petitioner. Also heard Shri R. Dhar, learned Standing Counsel, PWD whereas Shri N. Haque, learned counsel has appeared for the respondent no. 8.

2. Considering the subject matter of dispute, coupled with the fact that pleadings have been exchanged and as agreed to by the parties, this writ petition is taken up for disposal at the admission stage.

3. The issue is with regard to the promotion of the respondent no. 8 vide the impugned order dated 15.02.2020. By the said order, the respondent no. 8 has been promoted to the rank of Divisional Head Assistant.

4. The fact projected is that the petitioner was initially appointed as an LDA on 02.09.1993 in the Majuli Road Sub-Division of the PWD. On 20.07.2004 he was

promoted to the rank of UDA. Subsequent thereto, he was transferred on 05.05.2005 and was posted at the Jorhat West Sub-Road Division. Shri Bhuyan, learned counsel for the petitioner submits that though the document has not been annexed, the petitioner was posted at Majuli vide an order dated 01.03.2019 and to substantiate the said averment, a list of employees dated 18.03.2019 has been referred to wherein the name of the petitioner appears against Sl. No. 6. Shri Bhuyan has also referred to an order dated 04.07.2019 whereby the private respondent no. 8, as UDA was attached to the PWD Majuli Road Division. However, by ignoring the candidature of the petitioner, the impugned order was passed on 15.02.2020 whereby the respondent no. 8 was promoted to the rank of Divisional Head Assistant. Shri Bhuyan has also referred to a chart which has been annexed to the additional affidavit filed by the petitioner on 26.05.2023 which shows that while the respondent no. 8 had joined the post of UDA on 12.03.2013, the petitioner had joined such post of UDA on 02.08.2004.

5. The learned counsel for the petitioner submits that the post of Divisional Head Assistant should be filled up by taking into account the seniority and there is no dispute to the fact that in the feeder cadre of UDA, the petitioner is much senior to the respondent no. 8. Shri Bhuyan accordingly submits that the impugned order dated 15.02.2020 is liable to be interfered with and the benefit of the promotion be given to the petitioner.

6. Shri Dhar, learned Standing Counsel, PWD however submits that the petition is a misconceived one. According to the learned Standing Counsel, the respondent no. 8 was transferred to the present Office at Majuli on 04.12.2019 whereas the petitioner though was working w.e.f., 18.01.2019, the said Division was brought under the establishment of the Majuli District Territorial Road Division only in February 2020, he accordingly submits that the projection made by the petitioner may not be correct.

7. Shri Haque, learned counsel for the private respondent no. 8 has submitted that

in the seniority list prepared for the Office in question, the respondent no. 8 was the lone contender in the feeder cadre and therefore his promotion is not liable to be interfered with. He has also endorsed the submission of the learned Standing Counsel of the Department by submitting that the establishment of the petitioner where he was working was brought under the Office of the Majuli District Territorial Road Division later than the date of transfer of his client to the said Office.

8. The rival submissions made by the learned counsel for the parties have been duly considered and the materials placed before this Court have been carefully examined.

9. It is not in dispute that the petitioner had joined the post of UDA on 02.08.2004 whereas the respondent no. 8 had joined the said post of UDA on 12.03.2013. The parties are also in agreement that the criteria for promotion to the next higher cadre of Divisional Head Assistant is done on the basis of seniority. The question which therefore arises for determination is to whether such seniority has to be reckoned from the date when an incumbent joined the particular office or from the date when the incumbent is inducted in the feeder cadre. This Court is of the opinion that in a given case when the joining of an incumbent in an Office on transfer or attachment is done at his own request or the said incumbent had any role in such arrangement, the seniority of such incumbent may not be counted. However, when such transfer / attachment / arrangements are done by the Department in the interest of public service, affecting the seniority of an incumbent will lead to a situation which will not only be against the service jurisprudence but would also lead to a flood gate to adversely affect the service career of a Government employee. If such a scope is left open, in a given case, an incumbent can never have the opportunity of promotion if at such time, he is transferred to another Office, whereby he loses his seniority. The said proposition cannot be a reasonable proposition in the eyes of law.

10. In the instant case, the chart prepared by the Executive Engineer, PWD Roads

Division, Majuli District Territorial Road Division has taken into consideration that while the respondent no. 8 had joined the Division on 05.07.2019 and was substantially working from 06.12.2019, the petitioner was working in the Division from 18.01.2019 and the said Division was included in the establishment of the Majuli District Territorial Road Division w.e.f. February 2020. It transpires that even for argument sake the date of working in the Division is taking into consideration, the petitioner is working in the Division from 18.01.2019 whereas the respondent no. 8 is working from 05.07.2019. Therefore, from all angles, it cannot be held that the respondent no. 8 is senior to the petitioner. Further, as observed in details above, the seniority has to be reckoned from the date when an incumbent joins the feeder cadre which, in the instant case, would show that the petitioner is almost 9 years senior to the respondent no. 8 in the cadre of UDA.

11. Under those facts and circumstances, this Court is of the unhesitant opinion that the impugned order of promotion dated 15.02.2020 is not sustainable in law and accordingly set aside. Consequently, the respondents are directed to consider the case of the petitioner afresh and complete the exercise of promotion expeditiously in accordance with law.

12. It is further made clear that since the respondent no. 8 was working as a Divisional Head Assistant from the date of his promotion i.e. 15.02.2020, the question of making any recovery will not arise.

13. The writ petition accordingly stands disposed of.

JUDGE

Comparing Assistant