

GAHC010200622022



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

Case No. : WP(C)/7730/2022

TUN TUN BORA
D/O LT. BIREN BORA R/O KRISHNA ELITES 5C NIZARAPATH GANESH
TURNIG KAHILIPARA ROAD, P.O. GANESH TURNING P.S.
BHAGADATTAPUR DIST. KAMRUR (M) PIN-781019

VERSUS

THE STATE OF ASSAM AND ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
DEPTT OF FOOD AND CIVIL SUPPLIES, DSPUR GUWAHATI-781006

2:THE DIRECTOR
FOOD CIVIL SUPPLIES AND CONSUMER AFFAIRS BHANGAGARH
GUWAHATI-781005

3:THE SELECTION COMMITTEE
REP. BY THE CHAIRMAN FOOD CIVIL SUPPLIES AND CONSUMER
AFFAIRS BHANGAGARH GUWAHATI-781005

4:PANKAJ BASUMATARY
ACCOUNTANT FOOD CIVIL SUPPLIES AND CONSUMER AFFAIRS
BHANGAGARH GUWAHATI-781005

5:KULADHAR SONOWAL
ACCOUNTANT FOOD CIVIL SUPPLIES AND CONSUMER AFFAIRS
BHANGAGARH GUWAHATI-78100

Advocate for the Petitioner : MR. K M MAHANTA

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA**

Date : 04-01-2023

JUDGMENT & ORDER (ORAL)

Heard Mr. KK Mahanta, learned senior counsel assisted by Ms. N Begum, learned counsel for the petitioner and Mr. R Dhar, learned Additional Senior Government Advocate for the respondents No. 1, 2 and 3 being the authorities in the Food Civil Supplies and Consumer Affairs Department, Government of Assam. Considering the nature of the order proposed to be passed, notice is not required to be issued to the respondents No. 4 and 5.

2. The petitioner, who is a Junior Assistant Accounts in the Directorate of Food Civil Supplies and Consumer Affairs Department, is aggrieved by the order dated 13.07.2021 of the Director Food Civil Supplies and Consumer Affairs, Assam by which two of the incumbent Junior Assistant Accounts namely Sri Pankaj Basumatary and Sri Kuladhar Sonowal were promoted as Accountants. The grievance of the petitioner is that in the cadre of Junior Assistant Accounts, the petitioner was senior to the aforesaid two incumbents who were promoted.

3. Considering the nature of the grievance, by our earlier order dated 07.12.2022, we required the learned counsel for the respondents in the Food Civil Supplies and Consumer Affairs Department to produce the minutes of the selection committee which had decided on the promotion from Junior Assistant Accounts to Accountant pursuant to which the two aforesaid incumbents were promoted. Accordingly, the minutes of the selection committee dated 08.07.2021 is produced before the Court.

4. A reading of the minutes of the selection committee makes it discernible

that the petitioner Tun Tun Bora was not considered for promotion as the remarks in the concerned ACRs were found to be 'Poor'. In the circumstance, a further question has arisen as to whether the adverse remarks in the ACRs were communicated to the petitioner.

5. In response thereof, the communication dated 13.07.2021 of the Director of Food Civil Supplies and Consumer Affairs, Assam is produced before the Court which makes it discernible that the ACR for the period 01.04.2020 to 31.03.2021 was served on the petitioner through the said communication requiring her to give her response to the poor remarks.

6. In the factual conspectus as recorded above, it is noticed that the petitioner was subjected to the selection committee in its meeting of 08.07.2021 and was rejected for promotion on the ground that there was poor remarks in the ACR and the ACRs were communicated to the petitioner on 13.07.2021 i.e. after the decision of the selection committee.

7. It is an established principle of law that in order to act upon any adverse remarks in the ACR of an employee, there is a prior requirement that the adverse remarks be communicated to the employee concerned for his/her objection or representation against such adverse remarks.

8. In the instant case, the said principle of law cannot be said to have been followed inasmuch as, the adverse remarks were acted upon at a prior date and the adverse ACRs were communicated subsequently. In view of the above, we require the petitioner to submit her representation against the adverse ACRs communicated by the communication dated 13.07.2021 and after such representation is submitted, the respondent authorities to consider such representation and pass a reasoned order. Upon such reasoned order being

passed, the claim of the petitioner for promotion be placed before a review selection committee/DPC in the same terms as the earlier selection committee which was held on 08.07.2021. The entire process be done within a period of two months from the date of receipt of a certified copy of this order.

9. The minutes of the DPC dated 08.07.2021 and the communication dated 13.07.2021 are kept on record.

The writ petition is disposed of as indicated above.

JUDGE

Comparing Assistant