

GAHC010210682022



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

Case No. : WP(C)/6713/2022

BIPUL DEKA
S/O LATE BHAGABAN CH. DEKA, R/O VILL-BARSHALA BEELAR PATHAR,
P.O.-SARTHEBARI, DIST-BARPETA, PIN-781307, ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF
ASSAM, OFFICE OF THE IRRIGATION DEPARTMENT, DISPUR, GUWAHATI-
781006

2:THE CHIEF ENGINEER IRRIGATION
IRRIGATION DEPARTMENT
CHANDMARI
GUWAHATI-781003

3:THE EXECUTIVE ENGINEER
IRRIGATION
KOKRAJHAR MECHANICAL DIVISION
IRRIGATION DEPARTMENT
KOKRAJHAR-783370

4:THE SUPERINTENDING ENGINEER
KOKRAJHAR CIRCLE (IRRIGATION)
ASSAM AND COUNCIL HEAD OF DEPARTMENT
BTC-783370

5:THE PRINCIPAL SECRETARY
BODOLAND TERRITORIAL COUNCIL
DEPARTMENT OF PERSONNEL
KOKRAJHAR-783370

6:THE DISTRICT LEVEL COMMITTEE FOR COMPASSIONATE
APPOINTMENT
KOKRAJHAR DISTRICT
REPRESENTED HEREIN BY THE CHAIRMAN CUM PRINCIPAL SECRETARY
BODOLAND TERRITORIAL COUNCIL (BTC)
KOKRAJHAR-78337

Advocate for the Petitioner : MR H GUPTA

Advocate for the Respondent : SC, IRRIGATION

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 21.08.2023

Heard Mr. H. Gupta, learned counsel for the petitioner, Mr. N. Upadhyaya, learned standing counsel for the Irrigation Department, respondent nos. 1 and 2 as well as Mr. S. Bora, learned standing counsel for the BTC, appearing for respondent nos. 3 to 6.

2. By filing this writ petition under Article 226 of the Constitution of India, the case projected by the petitioner is that his father Late Bhagaban Chandra Deka, who at the relevant time was working as a Mechanical (Grade-I) in Kokrajhar Mechanical Division (Irrigation) and died in harness while in service on 01.04.2002. The petitioner had applied for appointment on compassionate ground on 21.05.2002. It is projected that the said application was duly forwarded by the concerned authorities on 21.05.2002.

3. The case of the petitioner is that the respondent authorities including the DLC did not take timely decision on the application filed by the petitioner. The learned counsel for the petitioner has referred to the communication dated

29.01.2011 by the Executive Engineer, Kokrajhar Mechanical Division (Irrigation) to the CHD, Irrigation, BTC and Superintendent Engineer, Kokrajhar Circle Irrigation, thereby submitting a list of candidates who had applied for appointment on compassionate ground. Despite the said communication, the respondent authorities did not take a timely decision on the candidature of the petitioner. However, the petitioner was informed that by a communication dated 28.09.2019, the proposal of the petitioner was returned back with a request to the Executive Engineer, Kokrajhar Division (Irrigation) to submit the same to the DLC for taking necessary action.

4. The learned counsel for the petitioner has also referred to a communication dated 19.07.2021 by the Deputy Chief Engineer (Irrigation), Assam that all the DDOs under the Irrigation Department were to take necessary action for finalizing all pending compassionate ground appointment case prior to 2017 within three months. The Executive Engineer, Kokrajhar Division (Mechanical) had once again enclosed the proposal for appointment of the petitioner on compassionate ground vide forwarding letter dated 10.09.2021, followed by another communication dated 16.10.2021 to the Council Head of Department, Irrigation, Kokrajhar. Thereafter, the meeting of Committee for Compassionate Appointment under the entrusted department of BTC was held on 01.11.2021 and the candidature of the petitioner was "not recommended due to non-fulfillment of criteria of 5% reserved quota".

5. The learned counsel for the petitioner has submitted that on the date when the proposal of the petitioner was considered by the Committee for Compassionate Appointment, BTC, the policy of the Govt. of Assam on compassionate appointment as per OM dated 01.06.2015 was prevailing, which

require under clause 15 thereof that if sufficient vacancies were not available in any particular office to accommodate the candidates, it would open to the administrative department to take up the matters with other department of the Government and to provide early appointment on the compassionate ground to those in the waiting list. It is submitted that the respondent authorities had only considered the candidature of the petitioner under the Kokrajhar Mechanical Department (Irrigation), Kokrajhar and not the other departments. It is submitted that it was the respondent authorities who had delayed consideration of the candidature of the petitioner, which is violative of the judgment of this Court in the case of *Achyut Ranjan Das Vs. State of Assam and Ors., 2006 (4) GLT 674* which provides that timely consideration of the application should be made.

6. The learned standing counsel for the BTC has opposed the prayer made in this writ petition and has submitted that there was an inadvertent delay for which the petitioner was not entitled to any relief on that account, because he had managed to survive for about 21 years after the death of his father.

7. Having regard to the materials available in the writ petition, it is a fact that as per pleading made in the writ petition, the father of the petitioner had died on 01.04.2002 and the petitioner had applied for appointment on compassionate ground on 21.05.2002. Therefore, the petitioner had submitted his application on time and no delay could be attributed to him.

8. As already referred hereinbefore, the petitioner is not to be blamed for the delay which is attributable to the respondent authorities as they had failed to take up the matter of the petitioner in the Committee for Compassionate Appointment of the BTC. It also appears that the respondent authorities have

blatantly violated the judgment of this Court in the case of *Achyut Ranjan Das (supra)* as well as the conditions contained in the OM dated 01.06.2015, which provides under Principle-4 that the District Level Committees would meet every two months on the last Saturday of the second month. The respondent authorities have also violated the provisions of clause 15 of OM which requires the Administrative Department to take up the matter with other departments to provide an early appointment on compassionate ground to those in the waiting list. Admittedly, the candidature of the petitioner was not rejected. Therefore, the petitioner is deemed to be in the waiting list as his candidature was ultimately considered in the meeting of the Committee for Compassionate Appointment of BTC on 01.11.2021.

9. The petitioner is not expected to know the vacancies which had arisen in the BTC. Therefore, it was the duty of the said Committee to find out if there was any vacancy earmarked for appointment on compassionate ground, where the petitioner could have been appointed.

10. The Court is the considered opinion that this is a fit and appropriate case for setting aside the minutes of meeting of the Committee for Compassionate Appointment under entrusted department of BTC held on 01.11.2021 insofar as the rejection of the candidature of the petitioner, namely, Sri Bipul Deka son of Late Bhagaban Chandra Deka is concerned. The Principal Secretary, BTC is directed to take up the case of the petitioner for appointment on compassionate ground and reconsider the same in terms of clause 14 and 15 of the OM no. ABP.50/2006/Pt./182 dated 01.06.2015 and other provisions of the said OM.

11. The petitioner shall produce a certified copy of this order before the

Principal Secretary, BTC. It is provided that on receipt of the certified copy of this order, the said authority shall reconstitute the Committee for Compassionate Appointment within an outer period of 2(two) months from the date of receipt of the certified copy of this order and to take up the candidature of the petitioner in terms of the said OM dated 01.06.2015 and specifically consider clause 14 and 15 thereof.

12. Needless to mention that any decision taken by the said Committee shall be communicated to the petitioner in the e-mail address to be provided by the petitioner.

13. With the aforesaid direction, this writ petition stands partly allowed to the extent as indicated above.

JUDGE

Comparing Assistant