

GAHC010010922013



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

Case No. : WP(C)/5481/2013

JYOTIPRAN KUMAR and 2 ORS.
S/O SHRI DEBEN CHANDRA KUMAR, R/O GOTANAGAR, GHY-33

2: ARUN KUMAR DAS
S/O LT. DHARMA KANTA DAS
R/O MANDIR PATH
MATHURA NAGAR
DISPUR
GHY-6

3: HARE KRISHNA KUMAR
S/O LT. JUTI RAM KUMAR
R/O SUNDARBARI
P.O. JALUKBARI
KAMRUP
ASSAM
GHY-1

VERSUS

THE STATE OF ASSAM AND 34 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVT.OF ASSAM, EXCISE DEPARTMENT, DISPUR, GHY-6

2:THE COMMISSIONER OF EXCISE
ASSAM
HOUSEFED COMPLEX
DISPUR
GHY-6

3:HIRENDRA MALAKAR
ASSTT. INSPECTOR OF EXCISE
C/O O/O THE COMMISSIONER OF EXCISE
ASSAM

HOUSEFED COMPLEX
DISPUR
GHY-6

4:ARJUN KR. DAS
ASSTT. INSPECTOR OF EXCISE
C/O O/O THE COMMISSIONER OF EXCISE
ASSAM
HOUSEFED COMPLEX
DISPUR
GHY-6

5:BHUPEN BORO
ASSTT. INSPECTOR OF EXCISE
C/O O/O THE COMMISSIONER OF EXCISE
ASSAM
HOUSEFED COMPLEX
DISPUR
GHY-6

6:MONORANJAN BANIA
ASSTT. INSPECTOR OF EXCISE
C/O O/O THE COMMISSIONER OF EXCISE
ASSAM
HOUSEFED COMPLEX
DISPUR
GHY-6

7:APURBA DAS
ASSTT. INSPECTOR OF EXCISE
C/O O/O THE COMMISSIONER OF EXCISE
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8:NIRANJAN DAS
ASSTT. INSPECTOR OF EXCISE
C/O O/O THE COMMISSIONER OF EXCISE
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9:RUDRA GOGOI
ASSTT. INSPECTOR OF EXCISE
C/O O/O THE COMMISSIONER OF EXCISE
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10:PRADIP KR. BORO
ASSTT. INSPECTOR OF EXCISE
C/O O/O THE COMMISSIONER OF EXCISE
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11:MRIDUL BANIKYA
ASSTT. INSPECTOR OF EXCISE
C/O O/O THE COMMISSIONER OF EXCISE
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12:CHARSING RONGLANG
ASSTT. INSPECTOR OF EXCISE
C/O O/O THE COMMISSIONER OF EXCISE
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13:BIPRA HUSUMA
ASSTT. INSPECTOR OF EXCISE
C/O O/O THE COMMISSIONER OF EXCISE
ASSAM
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GHY-6

14:SAMU MAIBONGSA
ASSTT. INSPECTOR OF EXCISE
C/O O/O THE COMMISSIONER OF EXCISE
ASSAM
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GHY-6

15:RINGSHORE BASUMATARY
ASSTT. INSPECTOR OF EXCISE
C/O O/O THE COMMISSIONER OF EXCISE
ASSAM

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16:MURCHI KULI
ASSTT. INSPECTOR OF EXCISE
C/O O/O THE COMMISSIONER OF EXCISE
ASSAM
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17:JEEVAN BARNAD SONOWAL
ASSTT. INSPECTOR OF EXCISE
C/O O/O THE COMMISSIONER OF EXCISE
ASSAM
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18:BISHNU DEV
ASSTT. INSPECTOR OF EXCISE
C/O O/O THE COMMISSIONER OF EXCISE
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19:PRASANTA KR. DAS
ASSTT. INSPECTOR OF EXCISE
C/O O/O THE COMMISSIONER OF EXCISE
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20:DEEPESH CH. ROY
ASSTT. INSPECTOR OF EXCISE
C/O O/O THE COMMISSIONER OF EXCISE
ASSAM
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21:NIRANJAN BANIKYA
ASSTT. INSPECTOR OF EXCISE
C/O O/O THE COMMISSIONER OF EXCISE
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22:MINTU KR. BORAH
ASSTT. INSPECTOR OF EXCISE
C/O O/O THE COMMISSIONER OF EXCISE
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23:GOBARDHAN DEKA
ASSTT. INSPECTOR OF EXCISE
C/O O/O THE COMMISSIONER OF EXCISE
ASSAM
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24:SUBHASH BAISHYA
ASSTT. INSPECTOR OF EXCISE
C/O O/O THE COMMISSIONER OF EXCISE
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25:SURENDRA NATH BARMAN
ASSTT. INSPECTOR OF EXCISE
C/O O/O THE COMMISSIONER OF EXCISE
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26:UMA KT. ROY
ASSTT. INSPECTOR OF EXCISE
C/O O/O THE COMMISSIONER OF EXCISE
ASSAM
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27:RUBUL KALITA
ASSTT. INSPECTOR OF EXCISE
C/O O/O THE COMMISSIONER OF EXCISE
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28:SUBHASH SARMA
ASSTT. INSPECTOR OF EXCISE
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29:NIRMAL CH. DAS
ASSTT. INSPECTOR OF EXCISE
C/O O/O THE COMMISSIONER OF EXCISE
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30:KHALILUR RAHMAN BORAH
ASSTT. INSPECTOR OF EXCISE
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31:CHANDRA KT. BORUAH
ASSTT. INSPECTOR OF EXCISE
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32:NABANIT AGARWALLA
ASSTT. INSPECTOR OF EXCISE
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33:BHUMIDHAR DAS
ASSTT. INSPECTOR OF EXCISE
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34:PANKAJ KR. BARMAN
ASSTT. INSPECTOR OF EXCISE
C/O O/O THE COMMISSIONER OF EXCISE
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35:ATUL SAIKIA
ASSTT. INSPECTOR OF EXCISE
C/O O/O THE COMMISSIONER OF EXCISE
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Advocate for the Petitioner : MR.M K CHOUDHURY

Advocate for the Respondent : MS.S SEAL

Linked Case : WP(C)/8027/2018

SHRI JYOTIPRAN KUMAR AND ANR.
S/O- SHRI DEBEN CHANDRA KUMAR
R/O- GOTANAGAR
GHY- 33

2: SHRI ARUN KUMAR DAS
S/O- LT DHARMA KANTA DAS
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VERSUS

THE STATE OF ASSAM AND 21 ORS.
REP. BY THE ADDL. CHIEF SECY. TO THE GOVT. OF ASSAM
EXCISE DEPTT.
DISPUR

GHY-6

2:THE COMMISSIONER OF EXCISE

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Advocate for : MR. M K CHOUDHURY

Advocate for : SC

EXCISE DEPTT. appearing for THE STATE OF ASSAM AND 21 ORS.

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 14-06-2023

Heard Mr. M. Sarma, learned counsel appearing for the writ petitioners in both these writ petitions. Also heard Mr. D. Gogoi, learned standing counsel, Excise Department, Assam appearing on behalf of the official respondents. Mr. D.J. Das, learned counsel has appeared on behalf of the private respondent Nos. 6, 8 and 21 to 23 in W.P. (C) No. 8027/2018. None has appeared for the private respondents in W.P.(C) No. 5481/2013.

Both these writ petitions raise common question of facts and law and therefore, are being taken up together for disposal by this common order. Pursuant to the advertisement notice dated 07-10-1991 issued by the departmental authorities for filling up a number of vacant posts of Assistant Inspector of Excise, the petitioners herein had applied and thereafter, participated in the selection process. The petitioners were awaiting a positive outcome in the process. However, since the respondent No. 2 did not publish the select list even after completion of the selection process and till the year 1993 and instead, went on to issue orders of appointments to some of the candidates without following the order

of merit of the selected candidates, the petitioner No. 1 had approached this Court by filing Civil Rule No. 1352/1995 seeking an order from this Court for publication of the select list and the particulars of appointments already made to the post of Assistant Inspector of Excise in terms of the select list. Similar writ petitions were also filed by the other writ petitioners as well. By the order dated 29-02-1996, this Court had directed the respondent No. 2 to show the select list to the writ petitioners and issue orders of appointment in terms of the select list. The writ petitioners herein were placed at Sl. Nos. 50, 56 and 57 in the merit list published in the year 1993. Therefore, although the persons below them in the merit list were already appointed in the post of Assistant Inspector of Excise, pursuant to the order of this Court, the petitioners were also appointed as Assistant Inspector of Excise, in which post they joined during the period between 1997 to 2000. However, when the gradation list of Assistant Inspectors of Excise were published, the writ petitioners found themselves placed below the private respondents who were below them in the merit list published in the year 1993. Aggrieved thereby, the petitioners had submitted representation before the respondent No. 2 for correction of the gradation list. However, the representation submitted by the petitioners was rejected by the respondent No. 2 vide order dated 05-04-2013 and thereafter, the final gradation list dated 05-08-2013 was published. Aggrieved by the final gradation list dated 05-08-2013, the instant writ petition has been filed.

It appears that during the pendency of the writ petition, as many as 03 (three) Assistant Inspector of Excise from the select list of 1993 were promoted to the post of Inspector of Excise. As such, the second writ petition being W.P.(C) No. 8027/2018 was

instituted by the petitioners. Be it mention herein that, during the pendency of these writ petitions, the petitioner No. 3, viz. Hare Krishna Kumar has expired.

By referring to the provision of the Assam Subordinate Excise Service Rules, 1990 (hereinafter referred to as "the Rules of 1990"), Mr. Sarma submits that the conditions of service of the petitioners as well as the private respondents are governed by the provisions of the Rules of 1990. According to Rule 17, the authorities were duty bound to make appointments from the select list in the order of preference. However, in the present case, although the petitioners' names were included in the final select list, no order of appointment was issued in their favour. Subsequently, appointment orders were issued to the petitioners' as per the direction of this Court. Therefore, it is not a case that there was delay on their part to join in the posts of Assistant Inspector of Excise. Under the circumstances, submits Mr. Sarma, Rule 21 of the Rules would not have application in the facts and circumstances of the case. Petitioners' counsel has, therefore, prayed for an order setting aside the gradation list dated 05-08-2013 and for recasting the same by following the order of merit in the select list published in the year 1993.

Mr. Gogoi, learned departmental counsel, has submitted in his usual fairness that this is not a case where there was delay on the part of the petitioners to join. However, according to Mr. Gogoi interfering with the gradation list at this point of time would upset the settled seniority position in the rank of Inspector/ Assistant Inspector of Excise in the department, thereby, creating fresh problems for the department

Mr. D.J. Das, learned counsel for the private respondents submits that he does not have any instruction to make submissions in the matter and therefore, would refrain from

advancing any arguments on behalf of his clients.

I have considered the submissions made by the learned counsel for both the sides and have also gone through the materials on record. The basic facts of the case, are more or less admitted. It is not in dispute that the names of the petitioners did find place in the select list published in the year 1992-93 for appointment to the post of Assistant Inspector of Excise. However, for the reasons not discernable on the face of the record, no order of appointment was issued in favour of the petitioners, although persons placed below them in the select list were appointed. It was only after directions were issued by this Court, in connection with C.R. No. 1352/1995, C.R. No. 323/1996 and C.R. No. 1474/1998 filed by the petitioners that orders of appointments were issued in their favour on the basis of inclusion of their names in the merit list published in the year 1993. When the provisional gradation list of officers in the cadre of Assistant Inspector of Excise was published, the petitioners found that the persons placed below them in the merit list were given seniority above them. On raising objection, the departmental authorities had turn down the plea by relying upon Rule 21 of the Rules of 1990, which provides that if a candidate fails to join within 15 days of his appointment, then his seniority would be affected. In other words, as per Rule 21, if an employee joins within 15 days from the date of receipt of appointment order or within the extended period, as mentioned in Rules 18 his/ her seniority will not be affected. As per Rules 21 seniority of members of cadre appointed by direct recruitment and by promotion would be determined in accordance with the preference in the respective select list recommended.

It appears that the departmental authorities were of the opinion that there was

delay on the part of the petitioners in joining their duties in the posts of Assistant Inspector of Excise pursuant to their appointment and therefore, their seniority would stand affected by virtue of Rule 21 of the Rules of 1990. However, as noted above, the facts and circumstances of the case indicates otherwise. It is certainly not a case where the petitioners had failed to join within 15 days of receipt of their order of appointment or within the extended period. Rather, the writ petitioners were denied appointment on the basis of the merit position in the select list, to which they were rightfully entitled to. Such being the position, the seniority of the petitioners, in order of their merit position in the select list, could not have been denied to them by the authorities. If persons below the petitioners in the merit list had joined earlier to them, the same was purely on account of a fortuitous circumstance and not because of any lapse on the part of the writ petitioners so as to affect their seniority. I, therefore, find sufficient force in the submission of Mr. Sarma that his clients have been wrongfully denied the benefit of seniority in the post of Assistant Inspector of Excise. Therefore, the fact that interference with the gradation list will upset the seniority position in the department cannot be a ground for this Court to deny relief to the writ petitioners on a proper case of violation of their legal rights having been made out on facts.

For the reasons stated hereinabove, the gradation list dated 05-08-2013, is hereby set-aside. The respondents are directed to recast the gradation list of Assistant Inspector of Excise by taking note of the merit position of all the candidates including the writ petitioners herein, by ignoring the delay in joining by the petitioners in their respective posts. Once the process is completed, the gradation list be published afresh.

Consequently, depending on the outcome of the aforesaid exercise, the authorities would pass appropriate order governing the claim of promotion of the private respondents in W.P.(C) No. 8027/2018 to the cadre of Inspector of Excise.

The aforesaid exercise be carried out and completed within a period of 08 (eight) weeks from the date of receipt of a certified copy of this order.

With the above observation, the writ petitions stand disposed of.

JUDGE

GS

Comparing Assistant