

GAHC010266462023



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

Case No. : WP(C)/7193/2023

JOY PRAKASH MACHAHARY
S/O SRI BINOD BHUSHAN MACHAHARY, R/O VILL-GWJWNPURI, WARD
NO. 4, P.O.-CHAPAGURI, P.S.-DHALIGAON, DIST-CHIRANG (BTAD), ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REPRESENTED BY THE COMMISSIONER AND SPECIAL SECRETARY TO
THE GOVERNMENT OF ASSAM, PUBLIC WORKS ROADS DEPARTMENT,
DISPUR, GUWAHATI-6

2:THE SECRETARY TO THE GOVERNMENT OF ASSAM
PUBLIC WORKS DEPARTMENT
DISPUR
GUWAHATI-6

3:THE PRINCIPAL SECRETARY
BODOLAND TERRITORIAL COUNCIL
P.O. AND DIST-KOKRAJHAR
ASSAM

4:THE ADDITIONAL CHIEF ENGINEER
PUBLIC WORKS DEPARTMENT
P.O. AND DIST-KOKRAJHAR
ASSA

Advocate for the Petitioner : MR. D P BORAH

Advocate for the Respondent : SC, PWD ROAD

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

15.12.2023

Heard Mr. D. P. Borah, learned counsel for the petitioner. Also heard Mr. R. Dhar, learned Standing Counsel, PWD, Assam appearing for the respondent Nos.1 and 2 and Mr. P. Nayak, learned Standing Counsel, BTC authorities appearing for the respondent Nos.3 and 4.

The writ petitioner herein is serving as Assistant Engineer (Civil) in the Assam Public Works Department and is posted at the Chirang R & B Division. The conditions of service of the petitioner is governed by the Assam Engineering (PWD) Service Rules, 1978. As per the provisions of the Rules, the petitioner was eligible for being considered for promotion to the next higher post of Assistant Executive Engineer. Accordingly, the Departmental Promotion Committee had also considered the case of the petitioner for promotion but had the proceedings kept in sealed cover due to the pendency of Sidli P.S. Case No.49/2015 wherein charge-sheet had been submitted implicating the writ petitioner. The aforesaid fact was also communicated to the petitioner by the communication dated 3.11.2021 issued by the respondent No.1. However, during the pendency of this writ petition, the petitioner, along with another similarly affected departmental candidate had assailed the criminal proceeding arising out of Sidli P.S. Case No.49/2015 by filing Criminal Petition No.882/2022 wherein, by the order dated 09.10.2023, the learned Single Judge had set aside the charge-sheet submitted in connection with Sidli P.S. Case No.49/2015 registered under Sections 120(B)/406/409/420 of the IPC read with Section 7 and 13 of the P.C. Act, 1988. The grievance of the petitioner is that

despite the setting aside of the criminal proceeding in connection with Sidli P.S. Case No.49/2015, the sealed cover proceeding has not yet been opened as a result of which, the petitioner has been deprived of his promotion.

Mr. D. P. Borah, learned counsel for the petitioner has also invited the attention of this Court to order dated 08.11.2023 passed by the learned Single Judge in WP(C) No.7902/2022 instituted by Sri Prashna Brahma expressing similar grievance, to submit that the writ petition filed by that petitioner was allowed by this Court.

Mr. Nayak, learned Standing Counsel, BTC authorities, has also fairly submitted that in view of the order dated 08.11.2023 passed in WP(C) No.7902/2022 he would have no objection if this writ petition is also disposed of in similar lines. From a reading of the order dated 08.11.2023 passed by the learned Single Judge in WP(C) No.7902/2022, I find that the petitioner therein, who was working as Assistant Executive Engineer (Civil), PWD, was also considered for promotion and his case was also kept in sealed cover due to pendency of Sidli P.S. Case No.49/2015. After the judgment and order dated 09.10.2023 passed in Criminal Petition No.882/2022, the writ petitioner in WP(C) No.7902/2022 had approached this Court by making a similar prayer, which was allowed by the learned Single Judge, subject, however, to the condition that no departmental proceeding is pending against the petitioner.

The present petitioner is also similarly situated as the petitioner in WP(C) No.7902/2022 and is praying for similar relief.

In view of the above, the instant writ petition is disposed of by providing that the "sealed cover" proceeding in respect of the petitioner be opened and thereafter, consequential orders be passed therein subject, however, to the

condition that there was no departmental proceeding pending against the petitioner at the relevant point of time. The exercise may be completed as expeditiously as possible but not later than 45 days from the date of receipt of a certified copy of this order.

With the above observation, this writ petition stands disposed of.

JUDGE

Comparing Assistant