

GAHC010001372024



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

Case No. : WP(C)/42/2024

BHUPENDRA NATH DEKA
SON OF LATE KHARGESWAR DEKA,
OFFICE OF THE EXECUTIVE ENGINEER,
PUBLIC HEALTH ENGINEERING,
GUWAHATI DIVISION NO. 1,
KAMRUP(M), GUWAHATI-21.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY TO THE
GOVERNMENT OF ASSAM,
PUBLIC HEALTH ENGINEERING DEPARTMENT,
DISPUR, GUWAHATI-06.

2:THE SECRETARY TO THE GOVT. OF ASSAM
PUBLIC HEALTH ENGINEERING DEPARTMENT
DISPUR
GUWAHATI-06.

3:THE CHIEF ENGINEER
PUBLIC HEALTH ENGINEERING
(WATER)
ASSAM
HENGABARI
GUWAHATI-36

DISTRICT- KAMRUP(M)
ASSAM.

4:THE EXECUTIVE ENGINEER
PUBLIC HEALTH ENGINEERING

GUWAHATI DIVISION NO.- I
GUWAHATI-21
DISTRICT- KAMRUP(M)

ASSAM.

5:THE DIVISIONAL LEVEL SELECTION COMMITTEE
REPRESENTED BY THE CHAIRMAN CUM SUPERINTENDENT ENGINEER

PUBLIC HEALTH ENGINEERING

GUWAHATI CIRCLE
GUWAHATI-21

Advocate for the Petitioner : MR. J I BORBHUIYA

Advocate for the Respondent : SC, P H E

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER

Date : 08-01-2024

Heard Mr. J.I. Borbhuiya, learned counsel for the writ petitioner. Also heard Mr. R.R.

Gogoi, learned standing counsel, PHE Department, Assam appearing for the respondents.

The writ petitioner herein is serving as 'Khalasi' in the office of the Executive Engineer, PHE, Guwahati Division- 1, Guwahati. On 30-12-2017 the Divisional Level Selection Committee (DLSC) had made a recommendation for promoting the petitioner to the post of Section Assistant which was forwarded to the office of the Chief Engineer, PHE(W), Assam, i.e. respondent No. 3 vide communication dated 03-01-2018 seeking approval of the said respondent for promoting the petitioner. However, till date the respondent No. 3 has not taken any decision in the matter, as a result of which, the valuable right of the petitioner to be considered for promotion to a higher rank has been

denied. Hence, this writ petition.

Mr. Borbhuiyan submits that whatever be the decision of the Chief Engineer, the same ought to be taken promptly and communicated to the petitioner, which has not been done, thereby prompting the writ petitioner to approach this Court by filing the instant writ petition.

Mr. R.R. Gogoi, learned standing counsel, PHE Department, Assam, on the other hand, submits that the writ petitioner is holding an *ex-cadre* post and therefore, he has no right to be promoted to the higher post of Section Assistant. That is the reason, why no decision was taken in the matter by the respondent No. 3. Mr. Gogoi has, however, fairly submitted that once a recommendation of the selection committee was forwarded to the respondent No. 3, it was incumbent upon the said official to take a decision in the matter and communicate the same to the petitioner/ departmental authorities.

It is no doubt correct that promotion is a creature of statute and therefore, question of promoting an employee to the next higher post would arise only if the employee is entitled to such promotion as per the rules. In this case since the Divisional Level Selection Committee had made a recommendation in favour of the petitioner, it *prima facie* appears that said aspect of the matter was duly taken note of by the Selection Committee before making the recommendation in favour of the petitioner. If the respondent No. 3 is indeed in disagreement with the said recommendation, then it would be incumbent upon him to record reasons for the same and communicate his decision not only to the departmental authorities but also to the petitioner, which has evidently and admittedly not been done in the present case. As such, without expressing any opinion on

the merit of the claim of the petitioner, this writ petition is being disposed of at the stage of motion hearing with a direction upon the respondent No. 3 to take a decision on the recommendation made by the DLSC in favour of the writ petitioner and thereafter, communicate the same to the departmental authorities as well as the petitioner, in writing.

The above exercise be carried out and completed within a period of 06 weeks from the date of receipt of a certified copy of this order.

In the event the decision turns out to be adverse to the interest of the petitioner, it would be open for him to assail the same by approaching this Court once again with a fresh writ petition.

With the above observation, this writ petition stands closed.

JUDGE

GS

Comparing Assistant