

GAHC010008462010



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

Case No. : WP(C)/6334/2010

DIPAK KUMAR GOSWAMI
S/O LT. PRAFULLA CH. GOSWAMI, R/O B.R.MAZUMDAR ROAD,
BAGHARBARI, GUWAHATI-37, ASSAM

VERSUS

THE STATE OF ASSAM AND ORS
THROUGH THE PRINCIPAL SECY. TO THE GOVT. OF ASSAM, PERSONNEL A
DEPTT., DISPUR, GHY-6.

2:THE CHIEF SECY. TO THE GOVT. OF ASSAM

DISPUR
GHY-6

3:THE COMMISSIONER AND SECY. OF THE GOVT. OF ASSAM

TOURISM DEPTT.
DISPUR
GHY-6

4:THE ACCOUNTANT GENERAL AandE
ASSAM
MAIDAM GAON
BELTOLA
GHY-29

5:THE DIRECTOR

PENSION AND PUBLIC GRIEVANCE
GOVT. OF ASSAM
HOUSEFED COMPLEX

BELTOLA
GHY

6:KAMALASON GOSWAMI

SECRETARY TO THE GOVT. OF ASSAM
SECRETARIAT ADMINISTRATION DEPTT.
GENERAL ADMINISTRATION DEPTT.
DISPUR
GUWAHATI

Advocate for the Petitioner : MRSB BHUYAN

Advocate for the Respondent : SC, IAAD

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 14.05.2024

Heard Ms. B. Bhuyan, learned senior counsel, assisted by Ms. B. Borah, learned counsel for the petitioner. Also heard Mr. T.C. Chutia, learned standing counsel for the respondent nos. 1, 2, 3 and 5, assisted by with Mr. R.K. Talukdar, learned standing counsel for respondent no.4.

2. The petitioner is an Assam Civil Service Officer of 1980 batch. On 27.07.2019 a show cause notice was issued to the petitioner for issuing 32 numbers of permanent resident certificates, by which departmental proceeding was drawn up against the petitioner. Thereafter, by an order dated 03.11.2009, the disciplinary authority imposed a penalty of censure upon the petitioner by taking a lenient view against him. Accordingly, the proceeding against the petitioner was closed with penalty of censure. During the pendency of the departmental proceeding against the petitioner, the recommendation of the Departmental Promotion Committee (DPC for short) in respect of the petitioner

was kept in seal cover. The proforma respondent no.6, who is stated to be junior to the petitioner in the seniority list was promoted to the post of Addl. Secretary vide notification dated 16.12.2009 issued by the Commissioner and Secretary to the Govt. of Assam, Personnel (A) Department with retrospective effect from 28.10.2009. However, the petitioner was promoted to the post of Addl. Secretary vide notification dated 28.03.2011 w.e.f. 01.07.2010. Accordingly, the petitioner has filed this writ petition under Article 226 of the Constitution of India, seeking a direction upon the respondent authorities to give all notional benefits of promotion and other consequential benefits w.e.f. 16.12.2009, the date on which the proforma respondent no.6 was given promotion.

3. Per contra, the learned Addl. Senior Govt. advocate has submitted that the DPC recommendation, which was kept in seal cover in respect of the petitioner cannot be given effect to because the proceeding against the petitioner was closed on 03.11.2009 with the penalty of censure and that thereafter, the petitioner was duly promoted to the rank of Addl. Secretary vide notification dated 28.03.2011.

4. Considered the materials available in the writ petition, affidavit-in-opposition filed by respondent no.4 as well as respondent no.1 and the affidavit-in-reply filed by petitioner against the affidavit-in-opposition filed by respondent no.1.

5. The facts which is not in dispute is that the disciplinary proceeding against the petitioner was closed vide order dated 03.11.2009 with penalty of censure. Therefore, when the Commissioner and Secretary to the Govt. of Assam, Personnel (A) Department had issued a notification dated 16.12.2009 to give promotion to the proforma respondent no.6, the date though departmental

or disciplinary proceeding was pending against the petitioner.

6. On a specific query made by the Court as to why the proforma respondent no.6 was given promotion with a retrospective effect from 28.10.2009, the learned Addl. Senior Govt. advocate by referring to his departmental instruction received dated 17.06.2023 has submitted that there was a departmental proceeding against the proforma respondent no.6, which terminated on 28.10.2009 and therefore, though the notification of his promotion was issued on 16.12.2009, the promotion was given effect from 28.10.2009.

7. If that be so, the same benefit is required to be extended to the petitioner because after the departmental proceeding was terminated with a penalty of censure on 03.11.2009, benefit similar to one extended to the proforma respondent no.6 ought to have been given to the petitioner by treating him equally.

8. In that view of the matter, the Court is inclined to allow this writ petition by directing the Head of the Department of Personnel (A) Department, Govt. of Assam, which is presently held by the Principal Secretary to the Govt. of Assam, Personnel (A) Department to re-examine the date on which the retrospective effect of promotion be given to the petitioner, namely, Dipak Kumar Goswami. As indicated hereinbefore, the disciplinary proceeding against the petitioner had come to an end on 03.11.2009. However, the notification of promotion of proforma respondent no. 6 was issued on 16.12.2009. In this case, the petitioner was promoted vide notification issued on 28.03.2011 w.e.f. 01.07.2010. The said authority had to reconsider the date on which the promotion of the petitioner be given effect to which can either be 04.11.2009, i.e. one day after the departmental proceeding against the petitioner was closed

with the penalty of censure and/ or 16.12.2009, the date when the proforma respondent no.6 was given promotion.

9. The Head of the Department of Personnel (A) Department, Govt. of Assam, which is presently held by the Principal Secretary to the Govt. of Assam, Personnel (A) Department shall take a decision in the matter within an outer period of 6(six) weeks from the date of receipt of certified copy of this order.

10. It is needless to mention that as the petitioner has already superannuated, he would provide his e-mail address to which the result of examination shall be communicated to him.

JUDGE

Comparing Assistant