

GAHC010021072019



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

Case No. : WP(C)/1761/2019

MAINUR ISLAM
S/O. NARAM ALI, R/O. KACHARI SOLMARI, P.S. RANGIA, DIST. KAMRUP,
ASSAM.

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, DEPTT. OF
FOREST, DISPUR, GUWAHATI-781006.

2:THE DY. SECRETARY TO THE GOVT. OF ASSAM

FOREST DEPTT.
DISPUR
GUWAHATI-781006.

3:THE PRINCIPAL CHIEF CONSERVATOR OF FOREST

GOVT. OF ASSAM
GUWAHATI-781008.

4:THE DIVISIONAL FOREST OFFICER

NORTH KAMRUP DIVISION
RANGIA
DIST. KAMRUP
ASSAM

Advocate for the Petitioner : MR. K K DEY

Advocate for the Respondent : ADDL. AG, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

JUDGMENT AND ORDER (ORAL)

Date : 26-06-2024

Heard Mr. K. K. Dey, learned counsel for the petitioner. Also heard Mr. I. Borthakur, learned Standing Counsel for the Forest Department.

2. The petitioner, by way of instituting the present proceedings has prayed for a direction upon the respondent authorities to promote him to the cadre of Forester Grade-II.

3. As projected in the writ petition, the petitioner herein was initially recruited as a Constable in the Assam Forest Protection Force on 14.12.1992. Subsequently, on a prayer made by the petitioner for change of his cadre, the petitioner came to be accommodated as a Forest Guard on 05.06.1996. Upon joining as a Forest Guard, it is seen that the petitioner submitted a representation before the respondent authorities requiring the authorities to promote him to the cadre of Forester Grade-I. In this connection, the petitioner had also instituted proceedings before this Court. In terms of the directions passed by this Court, the representations as submitted by the petitioner was considered and it was concluded therein that the petitioner as and when fulfills the required criteria for promotion as per the provisions of the Service Rules holding the field, would be considered for promotion to the cadre of Forester Grade-I. Being aggrieved by the speaking order dated 13.05.2009, passed by the respondents; the petitioner had instituted WP(C)/2746/2009 before this Court.

4. This Court, vide order dated 30.09.2015, on noticing the issues arising therein, proceeded to dispose of the writ petition by holding that the directions as

passed this Court in the earlier round of litigation, instituted by the petitioner, should not be understood as mandatory directions for promotion of the petitioner by disregarding the applicable norms, as the Court's direction was only to consider the claim of the petitioner on merits. Having so concluded, this Court had proceeded to uphold the speaking order dated 13.05.2009 with further observation that the claim for promotion made by the petitioner should be so considered as per the criterias stipulated in the Service Rules. It is seen that after the passing of the said order dated 30.09.2015 by this Court, the petitioner was vide a communication dated 26.05.2016, informed that he would be eligible for promotion to the rank of Forester Grade-I only upon successfully clearing the mandatory training in the Assam Forest Guards School, Makum, as per the provisions of the Assam Junior Forest Service Rules, 2005.

5. It is the further contention of the petitioner that he had in the year 2017 completed the said training programme and accordingly, in terms of the contentions as made in the said communication dated 26.05.2016, approached the respondent authorities for consideration of his case for promotion to the rank of Forester Grade-I and the same having not been considered, the petitioner has instituted the present proceedings.

6. At the outset, it is to be noted that the petitioner, who was initially recruited as a constable in the Assam Forest Protection Force had voluntarily prayed for change of his cadre and for appointment as a Forest Guard i.e. from a higher grade post to a lower grade post. The petitioner, on such change of his Cadre and on being allowed to join as a Forest Guard had assumed bottom seniority in the cadre of Forest Guard.

7. The provisions of Assam Junior Forest Service Rules, 2005, which had come into force on 04.01.2006, mandates that 60% of the posts in the cadre of Forester Grade-I would be filled up by competitive examination and the remaining

40% would be so filled up by way of promotion from the cadre of Forester Grade-II/Head Game Watcher. Accordingly, the feeder cadre for the post of Forester Grade-I is the post figuring the cadre of Forester Grade-II/Head Game Watcher. It is to be noted that the petitioner is presently in the cadre of Forest Guard and he is yet to be promoted to the cadre of Forester Grade-II; and accordingly, he cannot be construed to be figuring in the feeder cadre for promotion to the post of Forester Grade-I.

8. The provisions of the said Rules of 2005, more particularly, Rule 6 (g) mandates that a Forest Guard shall be eligible for promotion to the post of Forester Grade-II on completion of a minimum service of 10 years, out of which a minimum 3 years of service must be in wild areas and having a good performance report. The criteria applied for such promotion is "Seniority-cum-Merit". In the above view of the matter, this Court had required the learned Standing Counsel for the Forest Department to receive instructions as to whether there were vacancies available against which the petitioner could be considered for promotion to the cadre of Forester Grade-II. The learned Standing Counsel, on instructions, has submitted that at present there is no vacant posts available, against which the petitioner could be so considered for promotion to the Cadre of Forester Grade-II.

9. Having noticed the above position as well as the conclusions of this Court, in the order dated 30.09.2015, passed in WP(C)/2746/2009, this Court is of the view that the present writ petition is premature, inasmuch as, no right of the petitioner has been demonstrated to have been violated in the matter and no person junior to the petitioner having been promoted to the cadre of Forester Grade-II, no grievance in this direction can be raised by the petitioner in the matter.

10. In view of the above conclusion and having noticed that the writ petition,

admittedly, is a premature one, the present writ petition is disposed of by holding that the case of the petitioner for promotion to the cadre of Forester Grade-II, shall be so considered strictly, in accordance with the provisions existing in this connection in the Rules holding the field, as and when he comes within the zone of consideration for such promotion; and, on examination of his suitability for such promotion.

11. With the above observations and directions, the writ petition stands disposed of.

JUDGE

Comparing Assistant