

GAHC010093762023



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

Case No. : WP(C)/2476/2023

NILAKSHYA KUMAR ADHIKARY
SON OF LATE NARAYAN CHANDRA ADHIKARY,
RESIDENT OF HOUSE NO. 12, BYE LANE NO. 4,
LACHIT NAGAR, ULUBARI, GUWAHATI,
POST OFFICE- ULUBARI, POLICE STATION- PALTAN BAZAR,
DISTRICT- KAMRUP(M), ASSAM,
PIN- 781007.

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM,
IRRIGATION DEPARTMENT, DISPUR,
GUWAHATI, PIN- 781006.

2:THE CHIEF ENGINEER
IRRIGATION DEPARTMENT
CHANDMARI
GUWAHATI
PIN- 781003.

3:THE SELECTION BOARD
REPRESENTED BY THE SECRETARY

IRRIGATION
DISPUR
GUWAHATI

PIN- 781006.

4:SAILENDRA KUMAR BAHSHYA

ADDRESS- OFFICE OF THE CHIEF ENGINEER
IRRIGATION DEPARTMENT

CHANDMARI
GUWAHATI
PIN- 781003.

5:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI
PIN- 781006.

6:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
PENSION AND PUBLIC GRIEVANCES DEPARTMENT
DISPUR
GUWAHATI- 781006.

7:THE ACCOUNTANT GENERAL (A AND E)
ASSAM
MAIDAMGAON
BELTOLA

GUWAHATI
PIN-781029

Advocate for the Petitioner : MR. T DEURI, MR. D KONWAR,MR. D CHOWDHURY

Advocate for the Respondent : SC, IRRIGATION, MS. J DAS (R-7),MS. S BARUAH (R-6),MR. R C BARPUJARI (R-5),MR. N UPADHAYAY (R-1 TO R-3),SC, AG,SC, FINANCE,GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Judgment & Order (Oral)

Date : 16.09.2024

Heard Mr. T. Deuri, learned counsel for the petitioner. Also heard Ms. D. S. Neog, learned Standing Counsel for the Irrigation Department representing the respondents no. 1, 2 & 3. None has appeared for the

respondent no. 4. Mr. B. Sharma, learned Standing Counsel has appeared for the Accountant General (A&E), Assam representing the respondent no. 7.

2. The petitioner by way of instituting the present proceeding has sought for a direction upon the respondent authorities to promote him to the post of Additional Chief Engineer (Mechanical) w.e.f., 01.01.2022 i.e., the date on which he had become eligible for such promotion with all consequential benefits.

3. The petitioner, herein, on being selected by the Assam Public Service Commission came to be appointed as an Assistant Engineer (Mechanical) under Goalpara Mechanical Division, Irrigation Department. The petitioner, in terms of the said order of appointment joined his services on 14.10.1986. The petitioner was thereafter, promoted in the year 2007 to the post of Assistant Executive Engineer (Mechanical). The petitioner on being found to be so eligible came to be promoted to the post of Executive Engineer (Mechanical) in the year 2016. Thereafter, the petitioner in the year 2001 was promoted to the post of Superintending Engineer (Mechanical).

4. The next promotion available to an incumbent serving in the post of Superintending Engineer (Mechanical) in the Irrigation Department, is the post of Additional Chief Engineer (Mechanical). The petitioner contends that the respondent authorities had, vide the notification dated 17.03.2021, published a inter-se seniority list of the incumbents in the cadre of Superintending Engineer (Mechanical) and therein, the petitioner was placed at serial no. 3, while the respondent no. 4, herein, was so placed at serial no. 2. One Naba Kumar Shyam was placed at serial no. 1 in the said

provisional gradation list. The petitioner, being aggrieved by the seniority position so assigned to him in the provisional gradation list dated 17.03.2021, submitted his objection against the same, vide his communication dated 20.03.2021. In the said objection, the petitioner had contended that he ought to have been placed at serial no. 1 in the said select list. The said representation was followed by another representation dated 03.12.2021.

5. The respondent authorities having not considered the representations so made by the petitioner against the provisional gradation list dated 17.03.2021, and a meeting of the Departmental Selection Committee not having been so convened for consideration the cases of eligible incumbents in the cadre of Superintending Engineer (Mechanical) for promotion to the vacant post of Additional Chief Engineer (Mechanical), the petitioner retired from his services while holding the substantive post of Superintending Engineer (Mechanical) w.e.f., 30.09.2022. The petitioner has further contended that he had held the charge of the post of Additional Chief Engineer (Mechanical) from 31.12.2021 to 30.09.2022 i.e., till the date of his retirement from service. After having superannuated from his services, the petitioner has instituted the present proceeding on 03.05.2023, praying for a direction upon the respondent authorities to promote him to the post of Additional Chief Engineer (Mechanical) w.e.f., 01.01.2022.

6. Mr. T. Deuri, learned counsel for the petitioner by reiterating the facts noticed above, has submitted that the persons so placed above the petitioner in the provisional inter-se seniority list dated 17.03.2021, being persons belonging to the reserved community, were all promoted to the

cadre of Superintending Engineer (Mechanical) by way accelerated promotion by extending to them the benefit of reservation. It is contended that on the petitioner being promoted to the cadre of Superintending Engineer, he would be entitled to regain his seniority over the respondent no. 4.

7. The petitioner further submits that the incumbents placed in serial no. 1 in the provisional inter-se seniority list, published on 17.03.2021 i.e., Shri Naba Kumar Shyam has retired from his services on reaching the age of superannuation w.e.f., 31.12.2021. Mr. Deuri, submits that the respondent no. 4, admittedly, being junior to the petitioner, the petitioner was required to be promoted to the cadre of Additional Chief Engineer (Mechanical) w.e.f., 01.01.2022.

8. Mr. Deuri, learned counsel for the petitioner has further submitted that the respondent authorities by not convening a meeting of the Departmental Promotion Committee, has acted in violation of the provisions of the Assam Engineering (Irrigation Department) Service Rules, 1978. In the above premises, Mr. Deuri submits that the petitioner, admittedly, having been holding the charge of the Additional Chief Engineer (Mechanical) w.e.f., 31.12.2021 till 30.09.2022, he is entitled to have been so promoted on regular basis to the post of Additional Chief Engineer, at least w.e.f., 01.01.2022.

9. Per contra, Ms. D. S. Neog, learned Standing Counsel representing the Irrigation Department has submitted that on account of the dispute so raised by the petitioner, pertaining to his placement in the provisional inter-se seniority list, dated 17.03.2021 and the said list having not been

finalized, the respondent authorities were not in a position to convene the meeting of the Departmental Selection Committee in the matter at the relevant point of time. Ms. Neog has further submitted that the petitioner having superannuated from his services w.e.f., 30.09.2022 and the present proceeding having been so instituted only after his retirement from service, the petitioner, herein, would not be entitled to any direction for consideration of his case for such promotion with retrospective effect, inasmuch as, the provisions of the said Rules of 1978 do not contemplate effecting of promotions to various cadres of the service with retrospective effect.

10. Ms. Neog, learned Standing Counsel representing the Irrigation Department, in the above premises submits that the petitioner would not be entitled to the relief as sought for by him in the present proceeding and accordingly, the present writ petition is required to be so dismissed.

11. I have heard the submissions made by the learned counsels appearing for the parties and also perused the materials brought on record.

12. The service particulars of the petitioner, as noticed herein above is not disputed. The petitioner, admittedly, was promoted to the post of Superintending Engineer (Mechanical) in the year 2001. The next promotional avenue available to an incumbent in the post of Superintending Engineer (Mechanical) is the post of Additional Chief Engineer (Mechanical). It is not in dispute that the petitioner, herein, had held the charge of the post of Additional Chief Engineer (Mechanical) w.e.f., 31.12.2021 to 30.09.2022. However, a perusal of the inter-se seniority list of the incumbents in the cadre of Superintending Engineer (Mechanical) published

vide notification dated 17.03.2021, would go to reveal that on the date of publication of the said provisional inter-se seniority list, the petitioner, herein, was assigned seniority position below to that of the respondent no. 4. The petitioner although had submitted objections against the said select list, it is seen that the same were not considered and also it is not brought on record that the said provisional inter-se seniority list was so finalised subsequently. The petitioner, herein, has also in the present proceeding, not presented a challenge to the seniority position assigned to him in the provisional inter-se seniority list, dated 17.03.2021.

13. It is also an admitted position that the petitioner had retired from his services on reaching the age of superannuation w.e.f., 30.09.2022 and that the present proceeding were so instituted only thereafter, on 03.05.2023.

14. The issue as arising in the present proceeding is as to whether the petitioner, herein, would be entitled to claim promotion with effect from the date; the vacancy had so arisen in the cadre of the Additional Chief Engineer (Mechanical) figuring in the Irrigation Department, Assam.

15. A perusal of the Assam Engineering (Irrigation Department) Service Rules, 1978, would make it clear that no provision has been incorporated in the said Rules entitling the petitioner, herein, to receive promotion from the date of occurrence of the vacancy. Accordingly, the right of promotion would not crystallize on the date of occurrence of the vacancy, but such promotion would stand extended to the petitioner, herein, w.e.f., the date

when it is actually effected.

16. It is a settled position of law that a promotion takes effect from the date of the same being granted and not from the date of occurrence of the vacancy. Further, in absence of a provision in the said Rules of 1978, entitling the petitioner, herein, to be so promoted to the cadre of Additional Chief Engineer (Mechanical) w.e.f., the date of vacancy had so arisen in the said cadre, the petitioner having retired from his services, he would now not be entitled to be promoted, inasmuch as, the employee-employer relationship in respect of the petitioner, herein, had ceased to exist w.e.f., 30.09.2022. Accordingly, the petitioner would now be not entitled to a direction for consideration of his promotion to the cadre of Additional Chief Engineer, inasmuch as, the petitioner as on date, is not in service.

17. Support in this connection is drawn from the decision of the Hon'ble Supreme Court in the case of **Union of India & Ors. V. K. K. Vadera & Ors.**, reported in **1989 Supp (2) SCC 625**, wherein, the Hon'ble Supreme Court had in this connection concluded as follows:

“5. ...We do not know of any law or any rule under which a promotion is to be effective from the date of creation of the promotional post. After a post falls vacant for any reason whatsoever, a promotion to that post should be from the date the promotion is granted and not from the date on which such post falls vacant.”

18. The said decision was considered by the Hon'ble Supreme Court with approval in its decision in the case of **Nirmal Chandra Sinha V. Union of India & Ors.**, reported in **(2008) 14 SCC 29**, wherein, in Paragraph No. 7 of the said decision; the Hon'ble Supreme Court had concluded as under:

“7. ... It has been held in a series of decisions of this Court that a promotion takes effect from the date of being granted and not from the date of occurrence of vacancy or creation of the post vide Union of India Vs. K. K. Vadera, State of Uttaranchal Vs. Dinesh Kumar Sharma, K. V. Subba Rao Vs. Govt. of A. P. 3, Sanjay K. Sinha-II V. State of Bihar, etc.”

19. In view of the decisions of the Hon'ble Supreme Court as noticed herein above and also the fact that the provisions of the Rules governing the recruitment to the posts of the Additional Chief Engineer (Mechanical) in the Irrigation Department, Assam, does not provide for any provision entitling a promotee to receive his promotion from the date of occurrence of the vacancy; this Court is of the considered view that the petitioner, herein, is not entitled to the benefit of grant of promotion with retrospective effect to the cadre of Additional Chief Engineer (Mechanical). Further, the petitioner having already retired from his services, no direction can be so passed for considering the case of the petitioner as on date.

20. In view of the above conclusions, the writ petition is held to be devoid of any merit and accordingly, the same stands dismissed. However, there

shall be no order as to costs.

JUDGE

Comparing Assistant