



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

WP(C) No.100 of 2013

1. Shri Anup Saikia,
Son of Late Biswa Saikia,
Resident of Village: Dergaon, Lahatichowk,
PO: Dergaon, District: Golaghat, Assam.

2. Shri Arup Saikia,
Son of Late Biswa Saikia,
Resident of Village: Dergaon, Lahatichowk,
PO: Dergaon, District: Golaghat, Assam.

3. Mrs. Sangita Saikia Baishya,
Daughter of Late Biswa Saikia,
Resident of Village: Dergaon, Lahatichowk,
PO: Dergaon, District: Golaghat, Assam.

4. Shri Rajib Saikia,
Son of Late Biswa Saikia,
Resident of Village: Dergaon, Lahatichowk,
PO: Dergaon, District: Golaghat, Assam.

.....Petitioners

-Versus-

1. The State of Assam, represented by the
Commissioner & Secretary to the
Government of Assam, Home Department,
Dispur, Guwahati – 781006.

2. The Director General of Police (A), Assam,
Ulubari, Guwahati – 781007.

3. The Deputy Inspector General of Police
(A), Assam, Ulubari, Guwahati – 781007.

4. The Commandant, 16th AP (IR) Bn.
Barmonipur, Morigaon District, Assam
PIN – 782142.

.....Respondents

- B E F O R E -

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

For the Petitioners : Mr. R.C. Das, Advocate.

For the Respondents : Mr. K.K. Goswami, Govt. Advocate.

Date of Hearing : 22.03.2024.

Date of Judgment : 22.03.2024.

JUDGMENT & ORDER

Heard Mr. R.C. Das, learned counsel for the petitioners.
Also heard Mr. K.K. Goswami, learned Government Advocate,
Assam, representing all the respondents.

2. The original petitioner, namely, Biswa Saikia, had instituted the present proceedings praying for his promotion to the post of Sub-Inspector w.e.f. the date his juniors were so promoted with all financial benefits in terms of the orders passed by this Court dated 22.09.2003 in WP(C) No.5922/2001 and 18.08.2009 in WP(C) No.4331/2008.

3. During the pendency of the present proceedings, the original petitioner expired on 05.01.2024 and accordingly his legal heirs, more particularly, his children had instituted I.A. (Civil) No.440/2024 for substituting themselves in place of the original petitioner. This Court, vide order dated 17.02.2024, allowed the aforesaid interlocutory application by allowing the applicants therein to implead themselves as petitioners in place of the original petitioner in the present proceedings.

4. The original petitioner was initially appointed in the year 1968 as a Constable in 1st Assam Police Battalion (APBn.) at Dergaon. Thereafter, in the year 1986, he was promoted to the post of Havildar. In the year 1986, the original petitioner was transferred to the Central Arms Repairing Shop under the Armed Police Training Centre (APTC). In the year 1994, when the original petitioner was working in the Central Arms Repairing Shop, vide an order dated 05.01.1994, the services of the petitioner along with 6(six) other Police personnel came to be terminated by invoking the provisions of Article 311(2) of the Constitution of India and without holding any enquiry on the ground that the original petitioner and the said 6(six) other Police personnel were involved in a criminal case being Dergaon Police Station Case No.76/1993 registered under Sections 120(B)/409/210 IPC read with Sections 3/4 of the TADA (P) Act for shortage of ammunitions.

5. Being aggrieved by the order of termination dated 05.01.1994, the original petitioner approached this Court by way of instituting Civil Rule No.837/1994 and this Court, vide order dated 24.05.1994, was pleased to set aside the impugned order of termination dated 05.01.1994 and the original petitioner was directed to be reinstated in service. Accordingly, the original petitioner vide order dated 14.11.1994 came to be reinstated in service in the previous post of Havildar. The respondent authorities, by a separate order passed on the same day, i.e. on 14.11.1994, proceeded to draw up a departmental proceeding against the petitioner. The proceedings having remained pending, the original petitioner

again approached this Court by way of filing Civil Rule No.4038/1998 for appropriate relief. This Court, vide order dated 18.09.1998, was pleased to dispose of the said writ petition granting liberty to the respondent authorities to complete the departmental proceeding within a period of 4(four) months from the date of receipt of a certified copy of that order.

6. During the pendency of the criminal case as well as the departmental proceedings initiated against the original petitioner, the Deputy Inspector General of Police, Assam published a promotion list of 106 candidates selected for the post of ABSI and the name of the petitioner appeared in serial No.56 therein. The said order mandated that the promotions of the persons so incorporated in the list would be so effected in the event there is no Court cases, departmental proceeding, etc., pending or contemplated against any of them. The promotion in respect of the original petitioner not having been effected, he again approached this Court by way of instituting WP(C) No.5922/2001 and this Court vide order dated 22.09.2003 proceeded to dispose of the said writ petition requiring the respondent authorities to complete the departmental proceeding initiated against the original petitioner within a period of 2(two) months from the date of receipt of a certified copy of that order and in default, the departmental proceeding initiated against the original petitioner was held to stand quashed and the respondent authorities were to issue orders promoting the original

petitioner to the post of Sub-Inspector w.e.f. the date when his next junior was so promoted with all financial benefits.

7. The State respondents thereafter filed a review petition in the matter being Review Petition No.48/2004 and this Court, vide order dated 06.12.2004 on considering the issue, proceeded to dismiss the same. Thereafter, the respondent authorities concluded the proceeding against the original petitioner and proceeded vide an order dated 01.08.2005 to impose upon the original petitioner a penalty of stoppage of 1(one) increment with cumulative effect along with award of 2(two) black marks considering the gravity of the offence. Thereafter, the Revisional Authority *suo motu* conducted a review of the penalty as imposed upon the original petitioner and vide order dated 13.06.2008 proceeded to set aside the penalty as imposed upon the original petitioner vide the order dated 01.08.2005 and imposed the penalty of reversion upon the original petitioner to the rank of Constable for a period of 4(four) years from the date of disposal of the disciplinary proceeding by the Disciplinary Authority, i.e. w.e.f. 01.08.2005, with further direction for recovery of the amount as drawn by the original petitioner in the rank of Head Constable. It was further directed that the cost of 640 rounds of 9mm ammunitions to be recovered from the salary of the original petitioner. Accordingly, vide an order dated 19.06.2008, the Commandant, 16th AP (IR) Battalion, proceeded to revert the original petitioner to the rank of Constable and directed for recovery of the amount drawn by the petitioner after 01.08.2005 in the rank of Head Constable

with further direction that the cost of the 640 rounds of 9mm ammunitions shall be recovered from the salary of the original petitioner.

8. Being aggrieved, the original petitioner approached this Court by way of instituting WP(C) No.4331/2018 assailing the said order of Revisional Authority dated 13.06.2008 as well as the consequential order dated 19.06.2008 passed by the Commandant, 16th AP (IR) Battalion. This Court vide judgment & order dated 18.08.2009, on consideration of the matter, was pleased to interfere with the penalty as imposed upon the original petitioner vide the order dated 13.06.2008 on the ground that while imposing the enhanced penalty upon the original petitioner, he was not given an opportunity of hearing. It is to be noted that this Court in the judgment & order dated 18.08.2009 had recorded a finding to the effect that the original petitioner had not challenged the order dated 01.08.2005 passed by the Disciplinary Authority and the said order had accordingly attained finality. Liberty was given to the respondent authorities to take up the review matter *de novo* if so advised after giving due opportunity to the original petitioner. It is seen from the pleadings brought on record that thereafter the original petitioner was not proceeded against and no *de novo* proceeding was initiated in the matter against the original petitioner.

9. Mr. R.C. Das, learned counsel for the petitioners submits that this Court having interfered with the penalty as imposed upon the original petitioner vide the order dated

13.06.2008, he is now required to be granted his promotion in terms of the incorporation of his name in the select list prepared for the purpose of promotion of Havildars to the rank of ABSI vide the order dated 29.08.1998 w.e.f. the date his juniors were so promoted with all consequential benefits. The learned counsel for the petitioners submits that on the promotion being effected in respect of the original petitioner w.e.f. the date his juniors were promoted to the rank of ABSI in terms of the select list dated 29.08.1998, the arrears that becomes due on account of the enhanced salaries be released to the present petitioners.

10. The learned counsel appearing for the State respondents, by referring to the affidavit filed by the respondents in the matter, has justified the penalty as imposed upon the original petitioner vide the order dated 01.08.2005 and has contended that the said penalty having been imposed upon him, the short listing of the original petitioner vide the order dated 29.08.1998 for his promotion to the rank of ABSI cannot be implemented. It was brought on record that the original petitioner had retired from his service on reaching the age of superannuation on 30.06.2009 and the original petitioner was vide an order dated 16.03.2011 in terms of the directions passed by this Court vide the judgment & order dated 18.08.2009 passed by this Court in WP(C) No.4331/2008 reckoned to have so retired from the post of Havildar and not from the post of Constable, which he had so retired originally. It was also contended that the original petitioner had drawn his pay and allowances w.e.f. 01.08.2005 to 23.07.2008 as a

Havildar and have also drawn a lower amount during the period w.e.f. 24.07.2008 to 30.06.2009 and the same is yet to be paid to the original petitioner for which a proposal was already initiated and the same is pending. On query made by this Court as to whether the amounts due and as reflected in the affidavit filed by the respondents has been disbursed to the original petitioner, the respondents' counsel has stated that he has no instruction in this connection.

11. The issue that is arising in the present proceedings is as to whether upon interference made by this Court with the order dated 13.06.2008 passed by the Revisional Authority enhancing the penalty imposed upon the original petitioner by the Disciplinary Authority vide an order dated 01.08.2005, the original petitioner is entitled to be extended with the benefits of promotion to the rank of ABSI in terms of the empanelment of his name vide the order dated 29.08.1998 for such promotion. A perusal of the order dated 29.08.1998 empanelling the original petitioner for promotion to the rank of ABSI at serial No.56 of the said list as contained in the said order reveals that it was further stipulated therein that the promotion of the candidates so selected shall not be effected in the event there is any Court case, departmental proceeding, etc., pending and/or contemplated against any one of them. The original petitioner being under a cloud and a departmental proceeding pending against him, he was not promoted to the rank of ABSI in terms of his empanelment for the same vide order dated 29.08.1998. The departmental proceeding as initiated against the original petitioner came to be disposed of

by the Disciplinary Authority vide an order dated 01.08.2005 by imposing upon him a penalty of stoppage of 1(one) increment with cumulative effect and award of 2(two) black marks considering the gravity of the charge levelled against him.

12. On imposition of the said penalty, the disciplinary proceeding was concluded w.e.f. 01.08.2005. The effect of imposition of penalty against the original petitioner is that he would not be entitled to avail the benefits of promotion in terms of his empanelment for such promotion to the rank of ABSI vide the order dated 29.08.1998 and the same stood obliterated. The directions passed by this Court prior to 01.08.2005 requiring the consideration of the case of the original petitioner for promotion to the next higher grade also stands un-implementable in view of the penalty imposed upon the original petitioner vide the order dated 01.08.2005. It is to be noted that the original petitioner had assailed the order of enhanced penalty passed by the Revisional Authority vide order dated 13.06.2013 before this Court by instituting WP(C) No.4331/2008 and this Court had recorded a categorical finding in the judgment & order dated 18.08.2009 passed in WP(C) No.4331/2008 that the original petitioner had not assailed the penalty as imposed upon him vide the order dated 01.08.2005 passed by the Disciplinary Authority and it was further held by this Court that the said penalty had attained its finality.

13. It is to be noted that original petitioner retired from his services on attaining the age of superannuation w.e.f. 30.06.2009, i.e. prior to passing of the judgment & order dated 18.08.2009 in WP(C) No.4331/2008 and accordingly, there was no occasion for having the case of the original petitioner further considered for promotion to the post of ABSI after the currency of the penalty that was imposed upon him vide the order dated 01.08.2005 had expired. In the present proceedings also, the original petitioner had not prayed for any prospective consideration of his case for promotion to the rank of ABSI after the lapse of the currency of the penalty imposed upon him vide the order dated 01.08.2005. The only prayer made in the present proceedings is for a direction upon the respondents for effecting his promotion in terms of his such empanelment vide the order dated 29.08.1998 and that too w.e.f. the date his juniors from the said list was so promoted.

14. In that view of the matter, the relief as prayed for in the present proceedings by the original petitioner cannot be granted. This Court in view of the facts as existing in the matter and the conclusion reached by this Court vide the said judgment & order dated 18.08.2009 that the penalty as imposed upon the original petitioner vide the order dated 01.08.2005 having attained its finality, the original petitioner is not entitled to a direction for effecting his promotion in terms of the empanelment made in his case vide the order dated 29.08.1998. Accordingly, the writ petition is devoid of any merit and the same accordingly stands dismissed.

15. The dismissal of the writ petition will not bar the present petitioners to claim the amount receivable by the original petitioner on account of the services rendered by him in the rank of Head Constable and as reflected in Paragraph 12 of the affidavit filed by the respondents in the matter. In the event any such amount is due to the original petitioner, the same shall be released to the present petitioners along with interest @ 9% per annum from the date the said amount were so due for payment to the original petitioner. The present petitioners shall submit a representation along with a certified copy of this judgment & order before the Director General of Police, Assam and present a claim for the amount due to the original petitioner along with interest as granted by this Court hereinabove. In the event of any such representation being filed, the Director General of Police, Assam, shall duly consider the same and on verification of the claim so made, it is found that any amount is due to the original petitioner, the said amount shall be now released along with interest as noted hereinabove to the present petitioners within a period of 3(three) months from the date of receipt of a certified copy of this judgment & order.

J U D G E

Comparing Assistant