

GAHC010158612022



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

Case No. : WP(C)/5299/2022

DIBYAJYOTI BORAH AND 6 ORS.
SON OF LATE UPEN BORAH,
RESIDENT OF CHARIGAON BHARALI CHUK,
DIST.- JORHAT, ASSAM,
PIN- 785010.

2: HEMEN KAKATI
SON OF LATE HARI CHARAN KAKATI

RESIDENT OF JANIA

DIST.- BARPETA
ASSAM

PIN- 781314.

3: BABUL KURMI
SON OF RAGHUNATH KURMI

RESIDENT OF VILL. TIPOMIA NATUN MATI

DIST. JORHAT
ASSAM

PIN- 785630.

4: RAJENDRA SINGHA
SON OF LATE RABINDRA SINGHA

RESIDENT OF HOUSE NO. 69
UDAY NAGAR

KAINADHARA
KHANAPARA

DIST. KAMRUP(M)

ASSAM
PIN- 781022.

5: MIRAJUL HOQUE CHOUDHURY
SON OF LATE SAMSUL HOQUE

RESIDENT OF VILL. LACHIT ROAD
HOWLY

DIST.- BARPETA
ASSAM

PIN- 781316.

6: NAYANMANI DAS
SON OF LATE HARAKANTA DAS

RESIDENT OF HOUSE NO. 13
WARD NO. 12
FATASHIL (KAILASHPUR)

DIST.- KAMRUP(M)
ASSAM

PIN- 781009.

7: MRINAL KUMAR BORAH
SON OF LATE MONI RAM BORAH

RESIDENT OF VILL. CHAKARIGAON

DIST. NAGAON
ASSAM

PIN- 782003

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, ENVIRONMENT AND FOREST DEPARTMENT,

DISPUR, GUWAHATI- 781006.

2:THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS AND HEAD OF
FOREST FORCE
ASSAM
PANJABARI
GUWAHATI- 781037

Advocate for the Petitioner : MR. U K NAIR

Advocate for the Respondent : SC, FOREST

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

01.02.2024

Heard Mr. A. Chakraborty, learned counsel appearing for the petitioners.

Also heard Mr. I. Borthakur, learned Standing Counsel, Forest Department, Assam appearing on behalf of the respondents.

2. The 7 (seven) writ petitioners, who were serving as Forest Guards and were earlier promoted to the rank of Forester Grade-I vide order dated 29.06.2021, have approached this Court assailing the speaking order dated 02.07.2022 issued by the respondent No.2 cancelling the promotion given to them. The impugned order dated 02.07.2022 has been primarily assailed on the ground that the same was issued by the authorities without serving any prior notice or giving them any opportunity of being heard in the matter thus causing serious prejudice to their interest.

3. Mr. Chakraborty, learned counsel for the petitioners has submitted that his client are qualified under Rule 6 of the Assam Junior Forest Service Rules,

2005 (herein after referred to as the Rules of 2005), for being promoted to the next higher rank of Forester Grade-I and they fulfil the requirement of Rule 6(1) (b) of the Rules of 2005. Notwithstanding the same and merely because, according to the authorities, some other Forest Guards were also eligible for being considered for promotion, the impugned order has been issued by the respondent No.2 thus, depriving the petitioners of the order of promotion dated 29.06.2021 earlier passed in their favour by the departmental authority.

4. The respondents have not filed any affidavit despite several opportunities granted to them by this Court. On 29.11.2023 this Court had passed an order granting them time till 18.12.2023, on the request of the learned departmental counsel to file affidavit by making it clear that if no affidavit is filed within the said date, the right of the respondents to file affidavit would stand "struck off". Notwithstanding the order dated 18.12.2023, neither any affidavit is filed nor is there any application for recall/ review/modification of the order dated 29.11.2023.

5. Be that as it may, from the operative part of the impugned order dated 02.07.2022, I find that the promotion given to the petitioners vide order dated 29.06.2021 has been unilaterally cancelled by the respondent No.2 on the following grounds:-

"Findings :

Under Assam Junior Service Forest Rules, 2005 –

- i. As per Rule 6(2) of Assam Junior Service Forest Rules, 2005, a selection committee is to be constituted for promotion which was not constituted.*
- ii. A select list of qualified personnel 4 times the number of available vacancies was to be prepared as per*

6(1)(a) and (b) which was not done.

iii. Due to non-observance of the above provisions of the Rule, it is found that the promoted personnel of 1st, 2nd & 3rd position of **(a) Forester-I**, 1st Batch 6 months training from 01-01-2012 to 30-06-2012, 11th Batch 6 months training from 01-10-2015 to 31-03-2015, 12th Batch 6 months training from 15-11-2016 to 14-05-2017 and 13th Batch 6 months training from 01-06-2017 to 30-11-2017, **(b) Forest Guard**, 6 months training from 01-01-2012 to 31-07-2012, 6 months training from 17-12-2012 to 15-06-2013 and 6 months training from 21-09-2015 to 31-03-2016, superseded in seniority of the officers of batches 1990 onward which is observed to be highly unwarranted and is in violation of the Rules."

6. In so far as the first ground is concerned, Mr. Chakraborty has argued that proper procedure, as prescribed by Rule 6(2) of the Rules, has been followed before promoting his clients to the higher rank and therefore, the aforesaid ground is wholly untenable. According to Mr. Chakraborty, if a show-cause notice was served upon his clients giving them an opportunity of being heard in the matter, the said aspect of the matter could have been pointed out. Similar is the submission of the learned counsel with regard to ground No.2 mentioned in the order dated 02.07.2022. In the absence of any counter-affidavit filed by the department, this Court does not find any justifiable ground to disagree with the aforesaid submission of the petitioners' counsel.

7. Coming to the 3rd ground indicated in the operative part of the order dated 02.07.2022, it is to be noted herein that there is no allegation against the petitioners that they have not undergone the six months training which is a pre-

requisite for being considered for promotion to Forester Grade-I. Rather, the stand of the departmental authorities is that other senior Forest Guards who had undergone three months training period, were also eligible for being considered for promotion under the Rules but their cases have not been considered. Hence, the promotion of the petitioners was unsustainable in the eyes of law.

8. After a careful scrutiny of the Rule 6 of the Rules of 2005, I do not find any provision which permits Forest Guards completing three months training to be promoted in the next higher rank of Forester Grade-I. Moreover, even if it is assumed that other Forest Guards are eligible for promotion, the promotion already given to the petitioners and notified by the competent authority could not have been revoked in this fashion without giving an opportunity of being heard to the petitioners. Under the circumstances, this Court is of the unhesitant opinion that the order dated 02.07.2022 is not only illegal but the same is also in violation of the principles of natural justice making the same wholly unsustainable in the eyes of law.

9. Consequently, the impugned order dated 02.07.2022 stands set aside. The order dated 29.06.2021 stands restored to its original file. The order dated 03.07.2021 keeping the order of promotion in abeyance would also stand interfered with. All consequential benefits be given to the petitioners accordingly.

10. However, before parting with the record, it is clarified that in the event the authorities are of the view that the writ petitioners were not eligible or entitled to be promoted to the next higher rank of Forester Grade-I and the order of promotion is required to be modified/revoked for any good reason, the same shall be done only after serving prior individual notices upon each of the

petitioners and after giving them an opportunity of being heard in the matter.

With the above observation, the Writ Petition stands disposed of.

JUDGE

Comparing Assistant