

GAHC010174612015



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

Case No. : WP(C)/64/2015

BIJOY KR. DAS and 2 ORS
C/O CHANDAN THAKUR, R/O DAINIK JANAN BHUMI, DIST- JORHAT,
ASSAM

2: MAGHU TERON
S/O ADI RAM TERON
VILL. BIRKUCHI
P.O. NARENGI
GUWAHATI
ASSAM

3: AMIT KR. DAS
S/O LT. DILIP KR. BORO
R/O SAURAV NAGAR BELTOLA
H/NO.13
GUWAHATI
ASSA

VERSUS

THE STATE OF ASSAM AND 6 ORS
REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM,
TRANSPORT DEPTT., DISPUR, GHY-6

2: THE DIRECTOR
INLAND WATER TRANSPORT
GHY-7

3: THE JT. DIRECTOR
INLAND WATER TRANSPORT
GHY-7

4: THE DY. DIRECTOR
INLAND WATER TRANSPORT

GHY-7

5:ZAKIR HUSSAIN
S/O LT. SAMIDRA ALI
VILL. KALPUHA
P.O. KARIA
UNDER NALBARI POLICE STATION
DIST- NALBARI
ASSAM

6:AS PER HON'BLE COURT ORDER DTD. 28.03.2023
RESP. NO.6 IS STRUCK OFF.

7:THE SECRETARY TO THE GOVT. OF ASSAM
WPT AND BC DEPARTMENT
ASSA

Advocate for the Petitioner : MR.P K GOSWAMI

Advocate for the Respondent : MR.F U BORBHUIYAR

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

03.05.2024.

Heard Shri BP Borah, learned counsel for the petitioners and Ms. MD Bora, learned Standing Counsel, IWT. Also heard Shri FU Borbhuiya, learned counsel for the respondent no. 5 as well as Shri R Dharl, learned counsel for the respondent no. 7.

The matter was heard at some length on 01.05.2024 when the following order was passed:

“Heard Shri D Das, learned Senior Counsel assisted by Shri BP Borah, learned counsel for the petitioners. Also heard Ms. MD Bora, learned Standing Counsel, IWT, who has produced the records in original as well

as Shri FU Borbhuiya, learned counsel for the respondent no. 5. Shri R Dhar, learned counsel is present for the respondent no. 7.

After hearing the learned counsel for the parties and on a perusal of the records, it transpires that the consideration for promotion in the minutes of meeting held on 21.10.2013 was for two numbers of vacancies in the post of Senior Assistant. The said minutes reveal that the said vacancies had arisen on promotion of the incumbents holding the posts who were Shri MK Phukan, Senior Assistant to the post of Superintendent and Shri Anil Bora, Senior Assistant who was selected for promotion to the post of Inspector. The roster point, however, reveals that though the incumbent, Shri Anil Bora is an unreserved category candidate, his appointment in the post of Senior Assistant was in a reserved category i.e. ST(P). However, there are no details in the record regarding the status of the post held by the incumbent, Shri NK Phukan as Senior Assistant.

Ms. Bora, learned Standing Counsel, at this stage, prays for some accommodation to obtain necessary instructions.

In view of the said situation, the matter is adjourned to be listed on 03.05.2022 for further hearing.

Records are returned back to the learned Standing Counsel, IWT.”

Pursuant to the same, Ms. MD Borah, learned Standing Counsel, IWT has produced the records in original along with a copy of written instructions dated 02.05.2024 (wrongly typed as 02.05.2023).

The petitioners are represented by Shri BP Borah, learned counsel.

This Court in the last order, as extracted above, had noticed that the incumbent, Shri Anil Bora, who was promoted to the higher post, was an unreserved category

candidate, who, however, posted in a vacancy reserved for ST(P). As per the instructions placed on record, the other incumbent, Shri MK Phukan, in whose resultant vacancy, the present consideration would revolve around, was an unreserved candidate and the post which he had held as Senior Assistant is also earmarked as unreserved in roster point. Therefore, without going into the other facts and intricacies, this Court is of the opinion that the present challenge would be sustainable only in respect of the petitioner no. 3, Shri Amit Kr. Das, who is stated to be a ST(P) candidate. This Court is also of the view that since promotion to the private respondents were done more than a decade back, interest of justice may not require disturbing their promotions. At the same time, the right of the petitioner no. 3 which appears to be an existing right has to be recognized and the benefits thereof are required to be given.

Accordingly, the writ petition is disposed of with a direction to give the benefit of promotion to the petitioner no.3, Shri Amit Kr. Das in the category of ST(P) and gives the benefits of such promotion from the date when the private respondents were promoted to the post of Senior Assistant. It is, however, made clear that the benefit would be notional which would include his seniority and fitment in the pay scale and not for any arrear pay.

This Court has been informed that the said petitioner no. 3 has, in the meantime, been promoted to the post of Senior Assistant. Therefore, in any further promotional exercise, the case of the petitioner no. 3, Shri Amit Kr. Das has to be considered by giving effect his seniority from the same date when the private respondents were promoted.

JUDGE

Comparing Assistant