

GAHC010181472018



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

Case No. : WA/264/2018

THE UNION OF INDIA AND 5 ORS
REP. BY THE SECY., MINISTRY OF SHIPPING AND TRANSPORT, BORDER
ROAD DEVELOPMENT BOARD, B WING, 4TH FLOOR, SENA BHAWAN,
NEW DELHI-11

2: VIJAY KUMAR VV
STORE SUPERVISOR GRADE-II
GENERAL RESERVE ENGINEER FORCE POSTED AT 523 SS AND TC/14
BRTF (P) VTK RANGAPARA NORTH

3: THE JOINT DIRECTOR EG-2

DIRECTORATE GENERAL BORDER ROADS
SEEMA SADAK BHAWAN
RING ROAD
DELHI CANTT. NEW DELHI-10

4: SENIOR RECORD OFFICER
RECORD OFFICE
GENERAL RESERVE ENGINEER FORCE
DIGHI CAMP
PUNE-15
(MAHARASTRA)

5: THE COMMANDANT
EASTERN BASE WORKSHOP
GENERAL RESERVE ENGINEER FORCE C/O 99 APO
TEZPUR
DIST. SONITPUR

6: THE DIRECTOR GENERAL BORDER ROADS
SEEMA SADAK BHAWAN
RING ROAD
DELHI CANTT

NEW DELHI-1

VERSUS

SUNNI LAL SS

S/O LT. N SREEVALALSAN, R/O 1069 FIELD WORKSHOP (GREF), ATTACHED
WITH HQ 48 BRTF/HQ CE (P) UDAYAK C/O 99 APO
NOW POSTED IN
532 SS AND TC (GREF) C/O 99 APO PIN 930532

For the Appellant : Mr. R.K. Dev Choudhury, DSGI.

For the Respondent : Mr. M. P. Sharma, Adv.

BEFORE

**HON'BLE THE CHIEF JUSTICE
THE HON'BLE MR. JUSTICE SUMAN SHYAM**

Date of hearing & Judgement : 04/06/2024.

JUDGEMENT AND ORDER (ORAL)

Suman Shyam, J

- 1.** Heard Mr. R.K. Dev Choudhry, learned Deputy Solicitor General of India, appearing for the appellants. We have also heard Mr. M. P. Sharma, learned counsel appearing for the sole respondent.
- 2.** This writ appeal has been preferred by the Union of India through the Ministry of Shipping and Transport, Border Road Development Board as well as the officials of the Border Roads Organisation (BRO) against the judgement and order dated 06/02/2018 passed by the learned Single Judge in WP(C) No. 2820/2012, allowing the writ petition filed.
- 3.** The facts and circumstances of the case, shorn of unnecessary details, are that the respondent no.1/writ petitioner was originally appointed as Storeman (Group-D) on 17/09/1991. Subsequently, on the recommendation of the Departmental Promotion Committee (DPC), the respondent no.1/writ petitioner was promoted to the post of Store Keeper Technical (SKT) on 07/11/1997. The next higher post for SKT is the post of Store

Supervisor Grade-II. As per the provision of the "General Reserve Engineering Force Group-C and Group-D Recruitment Rules, 1982" (*herein after referred to as **the Rules of 1982***), more particularly, Rule 48, a candidate who has rendered 8 years of regular service as SKT, can be promoted to the cadre of Store Supervisor Grade-II on passing Departmental Examination (DE).

4. The respondent no. 1/ writ petitioner had appeared and passed the DE in the year 2003. The name of the petitioner figured in serial No. 38 of the list of candidates, who had passed DE in 2003 for promotion to the post of Store Supervisor Grade-II, circulated by the authorities on 16/10/2003 wherein, it was also stipulated that the incumbent/person who have once passed the DE, need not appear again. The respondent no. 1 had completed 8 years of service in the post of SKT as on 07/11/2005 and, therefore, he was eligible for promotion to the post of Store Supervisor Grade-II. The grievance of the respondent no.1/writ petitioner before the learned Single Judge was that although, he had passed the DE in the year 2003 and although the authorities have been filling up posts in the grade of Store Supervisor Grade-II by granting promotion to such candidates during the period from 08/11/2010 to 20/11/2010, yet, his case was not considered for promotion based on the DE results. Rather, the respondent no.1/writ petitioner was subjected to the fresh DE conducted on 26/12/2011. According to the petitioner, the said recourse taken on the basis of the communication dated 25/02/2010 issued from the office of the Director General of Border Roads, is wholly arbitrary and illegal, inasmuch as, the communication dated 25/02/2010 had also laid down that the existing DE candidates were to be adjusted.

5. It was also the case of the respondent no.1/writ petitioner that as per the Rules of 1982 (as amended from time to time) 75% of the posts in the cadre of Store Supervisor Grade-II are required to be filled up by way of promotion and the balance 25% by direct recruitment. It is the requirement of the Rules that out of the 75% posts meant for being filled up by way of promotion, 50% was required to be filled up based on the results of the DE and the remaining 50% on the basis of recommendation made by the DPC.

6. According to the respondent no.1/writ petitioner, in the year 2010, there were 42 vacancies in the cadre of Store Supervisor Grade-II and, therefore, by following the 50:50 ratio, 21 posts were required to be filled up on the basis of the DE result. Thereafter, there were 26 posts available. Notwithstanding the same, vide communication dated 11/03/2011,

only 11 posts were filled up based on the DE whereas, 15 posts were filled up on the recommendation of the DPC, on the basis of the master seniority list thus, promoting two extra candidates. The respondent no. 1/writ petitioner has also claimed that the respondent no. 6 has been illegally promoted by depriving him. Therefore, it had been urged before the learned Single Judge that since the authorities had failed to adhere to the criteria laid down by the Rules of filling up 50% of the existing vacancies based on the DE result and considering the fact that the writ petitioner had passed DE in the year 2003, he ought to have been promoted in the year 2010 based on DE results along with other similarly situated candidates since the DE of 2003 was valid till the year 2010. But instead of doing so, he was promoted only in the year 2011, vide office order dated 11/03/2011, pursuant where to, 26 candidates were promoted as Store Supervisor Grade-II thus, depriving him of the seniority in the cadre of Store Supervisor Grade-II. The writ petitioner had, therefore, prayed for *inter-alia* quashing the order dated 11/03/2011 and for granting him promotion on the basis of his merit position in the DE conducted in the year 2003, which, list was valid till the year 2010.

7. It appears that based on an RTI query made by the writ petitioner, by reply dated 10/04/2012 issued by the concerned authority, he was informed that in view of the Office Circular dated 25/02/2010, his candidature based on DE of 2003 stood forfeited and that his case for promotion will be considered on the basis of seniority position in the cadre. The communication dated 10/04/2012 is, however, not under challenge.

8. Taking note of the case of the writ petitioner, the learned Single Judge, upon hearing both the sides, had passed the impugned judgement and order dated 06/02/2018. The relevant portion of the judgement and order dated 06/02/2018 is reproduced herein below for ready reference :-

“12. I have heard the submissions advanced by the learned counsels for the rival parties and I have perused the materials available on record. From the communication dated 25.02.2010 (Annexure-6 of the writ petition), it can be seen that the instruction of the Directorate of the BRO was that the incumbents who have qualified in the Departmental Examination should be adjusted for consideration of their promotion before Departmental Examination were conducted again from the year 2010. The petitioner admittedly cleared the Departmental Examination in the year 2003 and in view of the two incumbents i.e. Shree Narayana Pillai and Rajendran S who had

declined unconditionally despite their promotion issued vide promotion cum posting order dated 11.03.2011, two vacancies were created. Since it is also the case of the official respondents that the petitioner could not be considered for promotion in the DPC of 2010 for want of vacancy, there appears to be no grounds as to why he should not be considered for promotion to the post of Supervisor Store Grade-II by reviewing the DPC of 2010. Moreover, when a review of the DPC of 2011 was unilaterally conducted by the official respondents themselves on the ground of misrepresentation. Under the given circumstance, I am of the considered opinion that there is substance and merit in the grievance expressed by the petitioner warranting appropriate remedy.

13. In that view of the matter, the writ petition is disposed of with a direction to the respondent authorities to convene a review DPC to review the DPC of 2010 and consider the case of the petitioner for his promotion to the cadre of Supervisor Store Grade-II along with other eligible candidates against the 2 (two) vacancies created on account of refusal of promotion by the 2(two) incumbents as has been noticed despite being recommended by the DPC of 2010. Upon the finalization of the review DPC, consequential order of promotion shall be passed by the respondent authorities promoting the petitioner with the date of his seniority in the post of Supervisor Store Grade-II as 20.11.2010. The respondent authorities shall carry out the entire exercise as directed as expeditiously as possible and at any rate not later than 3 (three) months from the date of receipt of a certified copy of this order.

14. With the above observations and directions, the writ petition stands disposed as allowed. No cost.”

9. Law is well settled that an employee would have a fundamental right to be considered for promotion. But such a right would not include the right to be promoted.

10. Assailing the impugned judgement and order passed by the learned Single Judge, Mr. Dev Choudhury has placed heavy reliance on the communication dated 25/02/2010 issued by the GRED wherein, it was laid down that DE candidates should be adjusted on regular basis every year from the year 2011 onwards. He submits that based on such communication, the candidates who had passed DE examination in the year 2003, had been considered for promotion to Store Supervisor Grade-II in the DPC of 2010 held with effect from 08/11/2010

to 20/11/2010. However, since in the communication dated 25/02/2010 instruction was issued to the authorities to conduct DE afresh in the year 2011 and considering the fact that the respondent no.1/writ petitioner had not appeared in the said DE, he was not promoted based on the DE.

11. It is also the submission of Mr. Dev Choudhury that even assuming that the writ petitioner's case was considered based on his DE results conducted in the year 2003, even then, the writ petitioner would not have been promoted to the post of Store Supervisor Grade-II on such basis, since persons senior to the writ petitioner, who had passed DE, were also considered for promotion only in the DPC of 2011. Mr. Dev Choudhury has summed up his arguments by contending that the respondent no.1/writ petitioner was promoted to the rank of Store Supervisor Grade-II through the review DPC conducted in the basis of vacancies arising up to the holding of the DPC of 2011 and his seniority position has also been correctly assigned. As such, the learned Single Judge was not justified in passing the impugned order directing a review of the review DPC.

12. Mr. M.P. Sharma, learned counsel for the respondent no.1/ writ petitioner, on the other hand, has argued that his client was illegally deprived of seniority in the grade of Store Supervisor Grade-II by not considering his case for promotion on the basis of the DE results conducted in the year 2003 and, therefore, no interference with the impugned judgement and order is called for. He has, however, not disputed the fact that his client had been promoted to the rank of Store Supervisor Grade-II in the year 2011.

13. From the submissions made at the Bar, it is apparent that the respondent no.1/writ petitioner has already been promoted to the post of Store Supervisor Grade-II on the basis of the DPC held in the year 2011 and he has also been assigned consequential seniority. Notwithstanding the same, the respondent no.1/ writ petitioner is dis-satisfied on account of the fact that he was not promoted to the post of Store Supervisor Grade-II based on his merit position in the DE conducted in the year 2003.

14. From a careful scrutiny of the materials available on record, we find that there is not even an *iota* of evidence to show that any person junior to the respondent no.1/ writ petitioner or any candidate below him, in the merit list prepared and circulated on the basis of the DE conducted in the year 2003, had been promoted to the post of Store Supervisor Grade-II ahead of the respondent no.1/writ petitioner. There is also nothing on record to

suggest that any person junior to the respondent no.1 /writ petitioner was promoted as Store Supervisor Grade-II based on the DPC of 2010, in the year 2011. The learned counsel for the respondent has also failed to deny and dispute the submission of the appellant's counsel that candidates senior to the writ petitioner also could not be promoted on the basis of DE of 2003 due to want of vacancies. If that be so, the claim of the respondent no.1/writ petitioner for assigning him seniority in the rank of Store Supervisor with effect from the year 2010 based on DE of 2003 appears to be wholly untenable in the eyes of law.

15. The learned Single Judge has held that the writ petitioner was entitled to seniority in the post of Supervisor Store Grade-II as on 20/11/2010. We, however, do not find any cogent basis for holding so. Even assuming that candidates who had cleared the DE conducted in the year 2003 had been promoted on the basis of the DE results up to the year 2010, that by itself, in our opinion, would not give rise to any enforceable right of the respondent no.1/writ petitioner to claim seniority from 2010 unless the petitioner is able to demonstrate that his indefeasible right for being considered for promotion based on the DE results of 2003 has been violated. From the materials on record, we do not find any material to hold that the respondent no.1/writ petitioner was illegally denied right of being considered for promotion in the year 2010 based on the DE results of 2003.

16. For the reasons stated above,, we are of the considered opinion that the direction issued by the learned Single Judge are unsustainable in the eyes of law. The impugned judgement and order dated 06/02/2018 is therefore, set aside.

17. Since the respondent no.1/writ petitioner has admittedly been promoted in the post of Store Supervisor Grade-II in the year 2011 and his seniority has been assigned accordingly, no further consequential direction is called for in this case.

18. The writ appeal stands allowed accordingly.

Parties to bear their own costs.

JUDGE

CHIEF JUSTICE

Sukhamay

Comparing Assistant