



2024:GAU-AS:13014

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

1. WRIT APPEAL NO.318 OF 2019

Rabiul Haque
S/o- Late Jaynal Abedin
C/o- Member Secretary,
Pollution Control Board, Assam,
Bamunimaidam, Guwahati-21, District-
Kamrup (M), Assam

.....Appellant

-Versus-

1. The State of Assam, represented by the Commissioner & Secretary to the Government of Assam, Environment & Forest Department, Dispur, Guwahati-781006. Kamrup Metropolitan District, Assam.
2. The Pollution Control Board, Assam, Bamunimaidam, Guwahati-781012, Kamrup Metropolitan District, Assam represented by the Chairman.
3. The Chairman, The Pollution Control Board, Assam, Bamunimaidam, Guwahati-781012, Kamrup Metropolitan District, Assam.
4. The Member Secretary, Pollution Control Board, Assam, Bamunimaidam, Guwahati-781012, Kamrup Metropolitan District, Assam.

5. Hiten Sarma,
S/o- Late Khagendra Nath Sarma,
R/o- House No. 12, Boloram Bora Path,
Happy Villa, Barowary, Uzanbazar,
Guwahati-03, Kamrup Metropolitan
District, Assam.

.....Respondents

2. WRIT APPEAL NO.319 OF 2019

Rabiul Haque
S/o- Late Jaynal Abedin
C/o- Member Secretary,
Pollution Control Board, Assam,
Bamunimaidam, Guwahati-21, District-
Kamrup (M), Assam.

.....Appellant

-Versus-

1. The State of Assam, represented by
the Commissioner & Secretary to the
Government of Assam, Environment &
Forest Department, Dispur, Guwahati-
781006. Kamrup Metropolitan District,
Assam.

2. The Pollution Control Board, Assam,
Bamunimaidam, Guwahati-781012,
Kamrup Metropolitan District, Assam
represented by the Chairman.

3. The Chairman, Pollution Control
Board, Assam, Bamunimaidam,
Guwahati-781012, Kamrup Metropolitan
District, Assam.

4. The Member Secretary, Pollution
Control Board, Assam, Bamunimaidam,
Guwahati-781012, Kamrup Metropolitan
District, Assam.

5. Manoj Baruah,
S/o- Sri. Jiten Baruah,
R/o- House No. 22, Asomi Path, Mathura
Nagar, Dispur, Guwahati-06, Kamrup
Metropolitan District, Assam.

.....Respondents

- B E F O R E -
HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

For the Appellant(s) : Mr. K.N. Choudhury, Sr. Advocate,
assisted by Mr. S. Hoque, Advocate.

For the Respondent(s) : Mr. S Baruah, Standing Counsel,
Pollution Control Board for respondent
Nos.2, 3, and 4.

: Mr. T. Chakrabarty, Advocate for
respondent No. 5

Date of Hearing : 02.12.2024.

Date of Judgment : **20.12.2024.**

JUDGMENT & ORDER (CAV)

(Kaushik Goswami, J)

Heard Mr. K.N. Choudhury, learned senior counsel assisted by Mr. S. Hoque, learned counsel for the appellant in both the writ appeals. Also heard Mr. S. Baruah, learned Standing Counsel, Pollution Control Board, appearing for respondent Nos.2, 3, & 4 and Mr. T. Chakrabarty, learned counsel appearing for the respondent No.5.

2. These writ appeals are presented against the common judgment & order dated 19.08.2019 passed by the learned Single Judge in WP(C) No.5055/2016 & WP(C) No.5431/2016.

3. By way of the said two writ petitions, i.e. WP(C) No.5431/2016 and WP(C) No.5055/2016, the petitioners have challenged the order dated 24.06.2016, whereby the appellant, namely, Rabiul Haque (respondent No.5 before

the learned Single Judge), was given promotion and was placed senior to the writ petitioners. In the aforesaid writ petitions, the petitioners further sought restoration of their seniority over the appellant/respondent No.5. The issue involved in the two writ petitions being identical, were disposed of by the common impugned judgment & order dated 19.08.2019. The said common judgment being challenged in both the writ appeals, the two appeals are accordingly taken up together for disposal.

4. The factual matrix of the case is that the appellant/respondent No.5 was initially appointed as Field Assistant on 21.07.1994 at the Regional Office at Bongaigaon, Pollution Control Board, Assam (hereinafter to be referred as "PCBA") and subsequently, appointed as Assistant Chemist at the said Regional Office on 04.03.2000 and was transferred to the Head Office of the PCBA at Bamunimaidam in the year 2001 and the said post of Assistant Chemist was regularized on 26.05.2003. Thereafter, the appellant/respondent No.5 was promoted to post of Chemist in 2011, which was re-designated as Assistant Environmental Scientist (hereinafter to be referred as "AES") in 2012. It is the specific case of the appellant/respondent No.5 that though he was the only eligible candidate for promotion to the next higher post, i.e. Environmental Scientist (hereinafter to be referred as "ES"), however, the PCBA promoted three B.Sc. passed AES to the post of ES on 30.07.2013 and subsequently to the post of Assistant Executive Environmental Scientist

(hereinafter to be referred as "AEES") on 01.01.2014 and 03.03.2014 as per Service Regulation of PCBA, 2012. Situated thus, the appellant/respondent No.5 had submitted representations before the Chairman of PCBA, and the respondent Board, after considering the representation submitted by the appellant/respondent No.5, vide order dated 24.06.2016, upgraded and promoted the appellant/respondent No.5 to the post of ES and subsequently AEES.

5. Being aggrieved, the writ petitioners, who were the earlier promotees to the post of ES, by filing writ petitions being WP(C) No.5055/2016 & WP(C) No.5431/2016, challenged the said upgradation and promotion of the appellant/respondent No.5. The aforesaid writ petitions were disposed of by the learned Single Judge by common judgment & order dated 19.08.2019, whereby the impugned upgradation and promotion of the appellant/respondent No.5 was set aside and quashed. Hence, the present writ appeals.

6. Mr. K.N. Choudhury, learned senior counsel appearing for the appellant/respondent No.5 submits that the learned Single Judge failed to appreciate the fact that the private respondents (writ petitioners before the learned Single Judge) were promoted in violation of Regulation 9 (III) (b) and (c) as the said respondents/writ petitioners had passed only B.Sc. degree. He further submits that the appellant/respondent No.5 was the only M.Sc. degree

holder and qualified candidate for promotion from AES to ES and ES to AEES.

He further submits that the learned Single Judge failed to appreciate the fact that the Appellate Authority of PCBA had manipulated the requisite qualification for the post of ES in the name of issuing "Corrigendum", which was not even approved by the Board as well as the State Government, only with the *malafide* intention to facilitate the promotion of the under qualified writ petitioners up to the level of Executive Environmental Scientist (hereinafter to be referred as "EES").

He further submits that the Pollution Control Board, Assam in its affidavit had also affirmed the decision of the upgradation and promotion order of the appellant/respondent No.5 dated 24.06.2016.

He accordingly submits that, the impugned judgment & order dated 19.08.2019 passed by the learned Single Judge in WP(C) No.5055/2016 & WP(C) No.5431/2016 is not sustainable in law.

7. Per contra, Mr. T. Chakraborty, learned counsel appearing for the private respondents/writ petitioners submits that by order dated 12.08.2014, the post of four persons, including the petitioner in WP(C) No.5431/2016, was upgraded from AES to ES w.e.f. 23.09.2019 in terms of the decision taken in the 96th Board meeting and that by the same decision, it was provided that the appellant/respondent No.5 and two others named therein would continue to be of the level of the AES, and accordingly, the

Office Order dated 23.09.2013 was annulled. He accordingly submits that the appellant/respondent No.5 was not even borne in the cadre of ES as on 23.09.2019. He accordingly submits that the judgment & order of the learned Single Judge warrants no interference from this Court.

8. Mr. S. Baruah, learned Standing Counsel, PCB submits that the respondent Pollution Control Board supports the promotion granted to the appellant/respondent No.5.

9. The issue involved in these writ appeals is whether the up-gradation and promotion of the appellant/respondent No.5 to the post of ES and AEES is legal and valid. Apt to refer to the relevant provisions of the Pollution Control Board, Assam (Employees' Service) Regulation, 2012 (hereinafter to be referred as "2012 Regulation"), which reads as hereunder:-

"7. Method of Recruitment:

i) Appointment to the service under the Board shall be made by the appointing authority by any one or more of the following methods:

- a) By direct recruitment*
- b) By promotion*
- c) On deputation*
- d) On compassionate ground.*
- e) On contract*

ii) Appointment under the Board shall be made only against the vacant sanctioned post/posts as per provisions contained in this Regulation or in absence of such prescribed provisions, as per prescribed rules and instructions issued by Government of Assam

from time to time for post of corresponding category under the Government.

iii) Direct recruitment shall be made by publication of advertisement for filling up the vacant posts in at least two leading local daily news paper mentioning the probable number of vacancies, reservations, pay scale, qualification, experience and other requirement etc. The method of selection shall also be specified in the advertisement.

iv) The number of vacancies under various cadres and their percentage for direct recruitment and for promotion from next cadre shall be decided by the Board authority. However, for ready reference such provisions are incorporated in the column 5 of the Table 1 in Appendix-1. Similarly, the promotion avenues from lower to higher post under various cadres are shown in the columns 5 & 6 under Table 2 to Table 7 in Appendix-II to VII.

v) Percentage mentioned in Sub-Regulation(iv) means percentage of total number of vacancies that arises in a calendar year. If the required number of vacancies meant for promotion or direct recruitment cannot be filled up by promotion or by direct recruitment as the case may be, for want of suitable candidates, normally such vacancies are to be carried-forward for the next calendar year. However, the Chairman, if think it necessary for interest of the Board, may fill up such vacancies by contractual employment for a limited period not exceeding six months at one stretch.

9. Recruitment & Promotion:

1) Subject to suitability as may be decided by the Selection Committee and by the Appointing Authority as set forth in Regulation-10 and also subject to processing such qualification and experience as prescribed under Table 2 to Table 7 in Appendix-II to VII under Regulation- 7(iv) appointment by direct recruitment or promotion to the following categories of posts shall be made by the Appointing Authority on the basis of Select-list prepared by the Selection Committee as referred to in Regulation-14.....

III) QUALIFICATION, EXPERIENCE AND PROMOTION OF EMPLOYEES OF LABORATORY AND SCIENTIFIC SERVICE:

a. For recruitment to the cadre of Environmental Scientist, the minimum qualification shall be Master's Degree in Chemical/ Biological/ Life or Environmental Sciences from any Indian or Foreign University or Institution recognized by the Government of India.

b. The promotional criteria for Assistant Environmental Scientist (AES) & Environmental Scientist (ES) to the higher cadre shall be as per Table-3 in Appendix-III.

c. All those AES of the Board who possess the minimum Educational Qualification for ES as stipulated in clause (a) above) or have completed a minimum of 5 years of service in the Board as AES (or Chemist) shall be brought under the category of ES along with the post provided that they acquire post graduate qualification within 5 years of their service in disciplines stated in (clause a) above.

d. The promotion from the level of ES to AEES and EES shall be on time scale basis subject to availability of post and suitability of the person(s) as considered by the Selection Committee.

e. Promotion from the level of EES to SES and above that is ACES and CES shall be on selection considering merit and seniority against the vacant post(s). There shall be a common cadre list of Scientists of the Board recruited as Environmental Scientist either by direct recruitment or by promotion from the AES before the commencement of these rules.

f. The existing cadre of Asstt. Chemist shall be redesignated as Scientific Assistant-I with minimum qualification B.Sc in all streams as mentioned in III (a) above.

g. For promotion to ACES and CES minimum period of 2 years as field experience as Head of Regional Office at the level of EES or SES shall be desirable.

10. General Procedure of Promotion:

(i) In case of promotion coming under the provision of Regulation-9(i)-

1. The Appointing Authority shall make an assessment of the number of vacancies likely to be filled up by promotion in each cadre. However, in this Regulation [at column 7 of the Table- 1 In Appendix-I], the provisional strengths of posts under various cadres have been shown.

2. The Appointing Authority shall furnish to the Selection Committee-

(a) Information about the number of probable vacancies cadre-wise.

(b) Approved gradation list of the employees showing the seniority.

(c) Names of employees (four times the number of probable vacancies as assessed vide clause 1 above) in order of seniority eligible for promotion in respective cadre.

(d) Annual Confidential Report of the employees eligible for promotion together with all connected papers including commendation and verbal remark, if any, recorded in the ACR.

(e) Information regarding suspension, disciplinary action proceedings drawn up and punishment inflicted, if any. If disciplinary proceeding drawn up, whether the same is pending or finalized. If finalized, the result thereof.

(f) Details about reservation including back-log, if any, in respective cadre.

(g) Any other document and information as may be considered necessary by the Appointing Authority or required by the Selection Committee. The Selection Committee shall have the right to call for such other records or information as might be necessary for the purpose of selection.

3. The Appointing Authority shall simultaneously request the Selection Committee to recommend and forward within one month a list of employees found suitable for promotion in order of preference.

4. Selection for promotion shall be made by the Selection Committee on the basis of efficiency- cum-merit with due consideration of seniority and suitability.

5. The Selection Committee after due consideration of all documents and information furnished by the Appointing Authority shall recommend to the Appointing Authority a list of employees, in order of preference, found suitable for promotion. The number of candidates in, such list shall be about double the number of probable vacancies.

6. In case the Selection Committee does not consider an employee suitable for promotion according to seniority, it shall record the reasons there of in writing and forward the same to the Appointing Authority together with the list. Off course he shall be considered for promotion in the next Selection Committee after lapse of 1 year only. The Appointing Authority shall consider the list so prepared and forwarded by the Selection Committee along with the ACRs, personal files and other records relating to the employees and approve the list unless he considers any change necessary.

7. If the Appointing Authority considers it necessary to take any change in the list received from the Selection Committee, he shall inform the Selection Committee of the change proposed and after taking into account the comments, if any, of the Selection Committee, may approve the list finally with such modifications, if any as may, in his opinion be just and proper.

8. The inclusion of a candidate's name in the Selection-list shall not confer any right to promotion unless the Appointing Authority is satisfied after such enquiry as may be considered necessary that a candidate is suitable for promotion.

9. The Select-list shall remain valid for twelve months from the date of forwarding the same to the Appointing Authority.

10. No appointment shall be made from the Select-list, the validity of which has expired.

11. Subject to provisions of Regulation-9, appointment by promotion shall be made from the approved Select-list as referred to in Sub-Regulation-7 of this Regulation in order of preference as mentioned in the approved Select-list.

12. In the event of any serious lapse in the conduct or performance of duties on the part of any employee in the approved Select-list, either before or after preparation and approval of Select-list, the Appointing Authority may, if he so thinks fit, may remove the name of any such employee(s) from the Select-list. In removing the name of employee(s) from the Select-list, the Selection Committee be consulted.

(ii) In case of promotion coming under purview of Regulation-9(i) –

(a) The Appointing Authority after due examination of ACR, gradation list and other relevant records will select an employee / employees for promotion on the basis of efficiency- cum-merit and suitability with due regard to seniority.

(b) In case the Appointing Authority does not select an employee who is senior to an employee selected for promotion under Sub-Regulation (a) of this Regulation, the Appointing Authority shall record in writing the reasons for doing it.

(iii) The Chairman, with the approval of the Board may relax the extent of experience for promotion from one post to the another under special circumstances.

21. Seniority:

(i) The seniority of an employee in a cadre appointed by direct recruitment or by promotion shall be as per his/her position in the Select-list as referred to the Regulation-8(i)(d) and Regulation-10(i)(7) if he joins the post to which he is appointed within 15 days from the date of receipt of appointment order or within the extended period as referred to in Regulation- 17.

Provided that in case of appointment by promotion coming under the purview of Regulation- 9(1)(b) where there is no Select-list the inter-se seniority of the employees so promoted in one batch in the new cadre shall be determined on the basis of their inter-seniority in the immediate previous cadre from which they have been promoted provided they join the post to which they have been appointed within 15 days from the date of receipt of appointment order or within the extended period as referred to in Regulation-17.

(ii) If an employee fails to join the post to which he is appointed within the initial 15 days of receipt of order or within the extended period as mentioned in Regulation-17, but joins later, his seniority shall be determined in accordance with the date of joining.

Provided that if two or more employees join on the same date as referred to in clause (a) of this Sub-Regulation, inter seniority shall be determined on the basis of their position in the Select-list.

(iii) An employee appointed by promotion in a calendar year (from 1st January to 31st December) shall be senior to an employee appointed by direct recruitment of that calendar year.

22. Gradation List:

There shall be prepared every year a gradation list consisting the names of all employees of the Board cadre-wise in order of seniority showing such other particulars such as date of birth, date of appointment in the Board, date of appointment in the cadre etc.”

10. It appears from the aforesaid provisions of the Regulation that appointment to the post of AES and AEES is by promotion as laid down in Appendix-III of the Regulation. It further appears that appointment in the post of ES is both from direct recruitment and promotion from the post of AES with 10 years experience in the ratio 2:1. It further appears that the minimum qualification for the recruitment to the cadre of ES is Masters Degree in Chemical/Biological/Life or Environmental Sciences from any Indian or Foreign University or Institution recognized by the Government of India. It further appears that the promotional criteria for AEES and ES to the higher cadre are as per Table-3 in Appendix-III. It further appears that all those AES possessing minimum educational qualification for ES or having completed a minimum of 5 years of

Service in the Board as AES (or chemist) shall be brought under the category of ES along with the post subject to acquiring post graduate qualification within 5 years of their services in the disciplines concerned.

11. Apt also to refer to Table-3 in Appendix-III, which is reproduced hereunder for ready reference:-

Sl No	Service Cadres and Designation of the Post	Educational Qualification	Scale of Pay as per R.O.P 2010	Promotional Avenues		Percentage of Post for Recruitment/ Promotion	Minimum Year of Experience	Remarks
				From the post of	To the post of			
1	2	3	4	5	6	7	8	9
B. LABORATORY & SCIENTIFIC SERVICE								
1.	Chief Env. Scientist (CES)	M.Sc. in Chemical/ Biological/ Life/ Environmental Science	Rs. 12,000 to 40,000 + 7,600 G.P.	ACES	CES	By Promotion	25 years of service in the Board or 3 years as ACES	Ph.D holders may be preferred and 2 years experience as Regional Head of office shall be desirable for promotional cases
2.	Addl. Chief Env. Scientist (ACES)	-DO-	Rs. 12,000 to 40,000 + 7,400 G.P.	SES	ACES	100% Promotion	22 years of service in the Board or 2 years as SES	-DO-
3.	Sr. Env. Scientist (SES)	-DO-	Rs. 12,000 to 40,000 +	EES	SES	100% Promotion	20 years of service in the Board or	Only Msc. degree holders shall

			6,600 G.P.				7 years as EES	be promoted to this level
4.	Ex. Env. Scientist (EES)	-DO-	Rs. 12,000 to 40,000 + 6,300 G.P.	AEES	EES	100% Promotion	5 years of service as AEES in the Board	For promotee scientists, the qualification shall be B.Sc only.
5.	Asstt. Ex. Env. Scientist (AEES)	-DO-	Rs. 12,000 to 40,000 + 5,900 G.P.	ES	AEES	100% Promotion	5 years of service in the Board as ES	-DO-
6.	Env. Scientist (ES)	-DO-	Rs. 12,000 to 40,000 + 5,400 G.P.	Direct Recruitment of M.Sc. or Promotion from AES with 10 years Experience in the ratio 2:1.		----	----	----
7.	Asstt. Env. Scientist (AES)	B.Sc in Chemistry /Botany/ Zoology/ Env. Sc.	Rs. 8,000 to 35,000 + 4,500 G.P.	Asstt Chemist/ SAI	AES	100% Promotion from SAI	Minm. 5 years experience as SAI	----
8.	Scientific Asstt. I (SAI)	B.Sc in Chemistry /Biological Sciences	Rs. 5,200 to 20,200 + 3,000 G.P.	SAII	SAI	100% Promotion	5 years of service in the board	Asstt. Chemist shall be designated as Scientific Asstt. I
9.	Scientific Asstt. II (SAII) (Old Field Asstt.)	-DO-	Rs. 5,200 to 20,200 + 2,500 G.P.	SAIII	SAII	100% Promotion	7 years of service in the board as SAIII	Field. Asstt. post
10	Scientific Asstt. III (SAIII) (Old Lab Asstt.)	Minimum HSSLC Level with Chemistry /Biology	Rs. 5260 to 20,200 + 2200 G.P.	----	----	Direct Recruitment of HSSLC level candidates B.Sc. candidates shall be preferred	----	Candidates shall be selected via. Scientific capability test/ Interview.

12. It appears from the aforesaid table that in respect of EES and AEES, for promotee scientist, the

qualification shall be B.Sc. only. It further appears that in respect of ES, appointment by direct recruitment of M.Sc. or promotion from AES with 10 years experience in the ratio 2:1 is provided. Thus, the educational qualification of M.Sc. is excluded for promotion to the post of ES, AES and EES.

13. In the present case, it appears that after promotion of the petitioners to the post of ES on 30.07.2013, the respondent authorities, by order dated 23.09.2013, upgraded altogether 7(seven) numbers of posts of AES to the posts of ES subject to the approval of the Board. Be it be mentioned that in the Office Order dated 23.09.2013, it was mentioned that consequent to such up-gradation, 7(seven) numbers of incumbents, including the appellant/respondent No.5 who were then holding the posts of AES, were upgraded to the post of ES, however, such upgradation is subject to the approval of the Board. It appears that the 7(seven) numbers of employees who were so up-graded were: -

- (i) Sri Ranjan Bardalai,
- (ii) Sri Karamjit Nath,
- (iii) Sri Jibon Sarkar,
- (iv) Sri Manoj Baruah,
- (v) Sri Anol Barman,
- (vi) Md. Rabiul Haque, (appellant/respondent No.5)
and
- (vii) Sri Gakul Tamuli.

What transpires from the above is that on the date of issuance of the Office Order dated 23.09.2013 by the respondent authorities, the matter of up-gradation of 7(seven) numbers of posts of AES to ES and consequent up-gradation of 7(seven) numbers of persons in the said 7(seven) numbers of posts so up-graded was not placed before any Board Meeting of the PCBA and the same was made unilaterally by the Chairman, PCBA without any sanction and approval.

14. It further appears that pursuant to the process of direct recruitment to fill up certain posts in the cadre of ES, 6(six) numbers of persons came to be appointed in the posts of ES in 2013 and their names and dates of joining are as under: -

Direct recruitee in the cadre of Environmental Scientists (E.S.)				
Sr	Name of Officer	Qualification	DoJ as Chemist	DoJ as ES
1	Sri Simanta Goswami	M.Sc.	N.A.	01.10.2013
2	Ksh. Ranjana Singha	M.Sc.	N.A.	24.09.2013
3	Ms. Anuradha Gogoi	M.Sc.	N.A.	27.09.2013
4	Ms. Navaneeta Nath	M.Sc.	N.A.	25.09.2013
5	Ms. Saherah Jahan	M.Sc.	N.A.	24.09.2013
6	Ms. Nitali Doley	M.Sc.	N.A.	24.09.2013

15. Pertinent that in terms of the 2012 Regulation, the Selection Committee constituted as per Regulation 14, had considered the cases of the petitioners along with 2(two) other candidates, viz. Sri Karuna Thakuria and Mrs.

Rupamoni Gogoi, as per Regulation 9(1) read with Regulation 10, Clause 12(ii) in its meeting held on 27.12.2013. It appears that the Selection Committee had considered the cases of the said 3(three) candidates by taking into consideration the probable vacancies in the cadre of AEES. Upon such consideration, the Selection Committee had recommended the names of 3(three) employees, viz. (i) Sri Karuna Thakuria, (ii) Mrs. Rupamoni Gogoi, & (iii) Sri Hiten Sarma, for promotion to the post of AEES in order of seniority. It appears that as on 01.01.2014, there was only 2(two) posts of AEES lying vacant. It further appears that by order dated 01.01.2014, the Member Secretary, PCBA promoted (i) Sri Karuna Thakuria & (ii) Mrs. Rupamoni Gogoi to the vacant posts of AEES in the Pay Band of Rs.12,000/- to Rs 40,000/- and Grade Pay of Rs.5,900/- per month plus other allowances as admissible under the Rules with effect from the date of their joining the services. Thereafter on 03.03.2014, when another post of AEES fell vacant on account of promotion of the incumbent concerned, the Member Secretary, PCBA, by order dated 03.03.2014, promoted the petitioner i.e Hiten Sarma to the said vacant post as per Cadre List appended with the 2012 Regulation.

16. It further appears that the appellant/respondent No.5 had submitted two representations dated 24.02.2014 and 10.03.2014 before the Board for upgradation and promotion to the post of AEES from ES.

17. It further appears that the said Representations dated 24.02.2014 and 10.03.2014 of the appellant/respondent No.5 were duly considered by the Board and upon due consideration, the same were disposed of by an order dated 20.05.2014 issued by the respondent authorities, whereby the claim of the appellant/respondent No.5 for promotion to the post of AEES was rejected *inter-alia* on the ground that M.Sc. degree in Environmental Management is irrelevant for promotion from the level of ES to AEES.

18. Situated thus, the appellant/respondent No.5 approached this Court by way of aforesaid writ petitions, WP(C) No.2385/2014 and WP(C) No.2721/2014, however, the same were withdrawn on 21.05.2014 and 02.02.2021, respectively.

19. It appears that the appellant/respondent No.5 had thereafter submitted a petition before the Hon'ble Chairman, PCBA with a prayer for redressal of his grievances with regard to his promotion to higher posts. Reiterate that similar prayers were made by the appellant/respondent No.5 before the Board earlier on 24.02.2014 and 10.3.2014 and the same were rejected by the respondent Board, by order dated 20.05.2014, after considering all the relevant facts and the relevant provisions contained in 2012 Regulation. However, it appears that the Chairman, PCBA disposed of the said petition by the impugned order dated 24.06.2016, whereby

the appellant/respondent No.5 was upgraded and promoted to the post of ES and AEES respectively.

20. Therefore, the writ petitioners submitted a representation before the Chairman, PCBA on 01.07.2016 placing the relevant facts and the Office Orders passed by the respondent Board at various points of time and prayed for taking necessary steps to restore the seniority of the writ petitioners *vis-a-vis* the appellant/respondent No. 5.

21. Having no response from the respondent authorities, the writ petitioners approached this Court by way of the aforementioned writ petitions under Article 226 of the Constitution of India against which judgment & order the present appeals have arisen from.

22. Pertinent that in the 96th Meeting of the PCBA, the issue of promotion and/or up-gradation of the posts of AES/Chemists to the post ES and also consequent up-gradation of the 7(seven) numbers of incumbents then holding the posts of AES/Chemists to ES, vide Office Order dated 23.09.2013, were duly considered in its Agenda Item No.5. The Board took a decision that 4(four) posts of AES were to be up-graded to the level of ES. Accordingly, on the basis of seniority amongst the AES, the following 4(four) incumbents, whose names, dates of joining, etc., are under, were up-graded to the level of ES with effect from the dates of their joining:-

Sr	Name of Officer	Qualification	Date of Joining as AES	Date of Joining as ES
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1	Sri Ranjan Bordoloi	B.Sc.	02.03.2007	23.09.2013
2	Sri Karamjit Nath	B.Sc.	02.03.2007	23.09.2013
3	Jibon Sarkar	B.Sc.	07.03.2007	23.09.2013
4	Manoj Kr. Baruah	B.Sc.	02.03.2007	23.09.2013

It further appears that, the pay and other promotional benefits were stated to have accrued to the said 4(four) incumbents with effect from the date of their joining.

It was further decided in the said 96th Meeting of the Board under Agenda Item No.5 that the posts held by the following employees shall continue to be of the level of AES and their designation shall be AES only. Their details were as under:-

Sr	Name of Officer	Qualification	Date of Joining as AES	Date of Joining as Es
1	Sri Anol Barman	B.Sc.	28.02.2011	-----
2	Md. Rabiul Haque (appellant/respondent No.5)	M.Sc.	28.02.2011	-----
3	Sri Gakul Tamuli	B.Sc.	15.06.2012	-----

It is thus evident that the post held by the appellant/respondent No.5 was not decided by the PCBA in its 96th Meeting for up-gradation to the level of ES. Hence, the upgradation of the appellant/respondent No.5 having not

been approved by the Board in the said meeting, the appellant/respondent No.5 appears not to have borne in the Cadre of ES.

23. It further appears that the PCBA has published a revised and updated Cadre List as on 01.08.2015 of all the categories of posts of the PCB along with the names of the incumbent(s) in order of seniority in terms of Regulation 4 of the 2012 Regulation. Thereafter, a Notification dated 18.08.2015 was issued by the Member Secretary (In-Charge), PCBA, wherein the name(s) of the incumbent(s) in order of seniority has also been appended thereto.

24. It further appears that from the cadre strength as on 01.08.2015, appended to the said Notification dated 18.08.2015 for the category of Laboratory and Scientific Services, which has been marked as "B" in the said Notification, there are altogether 7(seven) numbers of posts in the Cadre of AEES. On the other hand, there are altogether 10(ten) and 10(ten) numbers of posts in the cadres of ES and AES (earlier known as Chemist), respectively.

25. It further appears that the Notification dated 18.08.2015 contained the Cadre Lists of the Officers in the cadres of AEES, ES and AES.

26. What transpires from the above is that the name of the writ petitioner [in WP(C) No.5055/2016, i.e. Sri Hiten Sarma] has been included in the Cadre List of

AEES and the name of the appellant/respondent No.5 has been included in the Cadre List of AES. Pertinent that in between the cadre of AEES and the cadre of AES, there is another Cadre of ES. Apparent thus, that as on 18.08.2015, the petitioner was holding the post of AEES, which is 2(two) grades higher than the post of AES which the appellant/respondent No.5 was holding.

27. It further appears that the petitioner i.e Hiten Sarma was promoted and/or upgraded as the case may be from the cadre of AES to the cadre of ES vide Office Order dated 30.07.2013 along with two other incumbents, viz. Sri Karuna Thakuria and Mrs. Rupamoni Gogoi. Thereafter, as per recommendation of the Selection Committee, in its meeting held on 27.12.2013, the respondent Board had promoted the petitioner i.e. Hiten Sarma to the post of AEES vide Office Order dated 03.03.2014. It appears that though the Selection Committee of the respondent Board, in its Meeting held on 27.12.2013, had recommended the name of the petitioner i.e. Hiten Sarma along with other two incumbents, viz. Sri Karuna Thakuria and Mrs. Rupamoni Gogoi, for promotion to the post of AEES, the Board could promote only Sri Karuna Thakuria and Mrs. Rupamoni Gogoi to the post of AEES by Office Order dated 01.01.2014 as there were 2(two) posts lying vacant as on 01.01.2014. Later on, when another post of AEES fell vacant due to promotion of an incumbent concerned, the petitioner i.e. Hiten Sarma was promoted to the said vacant post on 03.03.2014 by the respondent Board. It

further appears that at the time of preparation, publication and also circulation of the Cadre List of Officers and Staff of the PCBA as on 01.08.2015 appended to the Notification dated 18.08.2015 issued by the respondent Board, the name of the writ petitioner Sri Hiten Sarma has been shown in the Cadre List of AEES, whereas the name of the appellant/respondent No.5 has been included in the Cadre List of AES. Therefore, from the Cadre Lists appended to the Notification dated 18.08.2015, it appears that the appellant/respondent No.5 is junior to the petitioner i.e Hiten Sarma.

28. Contrary to the above, it appears that the Chairman, PCBA has passed the impugned order dated 24.06.2016, whereby the appellant/respondent No.5 has been upgraded and promoted with retrospective effect as under:-

1. From AES to ES with effect from 30.06.2013; and
2. From ES to AEES with effect from 01.01.2014.

29. Pertinent that the respondent Board has not only taken contrary decision as regards the upgradation/promotion of the appellant/respondent No.5 to the post of ES and AEES but has also filed contrary affidavit-in-opposition before this Court, one earlier in WP(C) No.2721/2014 and the other filed in the subsequent writ petitions against which judgment & order the present appeals have arisen from. It further appears that the learned Single Judge has taken note of the contents of the

aforesaid two affidavits-in-opposition filed by the PCBA in the said writ proceedings. Paragraph 19 and 20 of the impugned judgment & order is reproduced hereunder for ready reference:

“19) The affidavit- in- opposition filed by the Chairman, PCB, Assam, Member Secretary, PCB, Assam [respondents No.2 and 3 in W.P.(C) 2721/14], is Annexure-A to the affidavit- in- reply filed by the petitioner in W.P.(C) 5055/16. On a perusal thereof, it is seen that the stand of the said respondents was that the name of the respondents No.4, 5 and 6 therein, namely, Sri Karuna Thakuria, Smt. Rupamoni Gogoi and Sri Hiten Sarma [petitioner in W.P.(C) 5055/16] were at Sl. No. 1, 2 and 3 respectively as AES and, as such, they were senior to the respondent No.5 herein whose name was at Sl. No. 9 in Cadre list of AES. It was mentioned that 96th Board Meeting held on 05.08.2014, the upgradation of the respondent No.5 was not approved, the question of further promotion to the level of AEES did not arise. The further stand of the said respondents in their said affidavit-in- opposition filed in W.P.(C) 2721/14 was that the persons who had joined the Board with B.Sc. qualification their promotion is open to the level of EES without any preference to M.Sc. degree holders as per Rule 9(III)(c) of 2012 Service Regulation. Read with remarks in column 9 of Table 3 of Appendix-III of the said 2012 Regulation. The further stand of the PCB, Assam was that as on the date of filing of their affidavit- in- opposition in W.P.(C) 2721/14 the respondent No.5 was not yet confirmed as ES while he was seeking further promotion to the next level i.e. AEES.

20) Thus, on the perusal of the Affidavit- in- opposition filed by the respondents No.2 to 4 in the present writ petition, there is no doubt that compared to the stand of the said respondents in W.P.(C) 2721/14, there is a marked change in the stand of the said respondents in the present writ proceedings inasmuch as in the present cases, the stand of the respondents No.2 to 4 is that the respondent No.5 herein was most

eligible for promotion to the post of ES, but the Selection Committee prepared a list of candidates only on the basis of seniority without considering the essential qualification, which is in violation of the provisions of Regulation 9 of the 2012 Service Regulation. It is the further stand of the respondents No.2 to 4 that for the promotion to the post of ES from the post of AES, the provision of Regulation 10 with reference to 9(III) are to be followed by the Selection Committee, but the Selection Committee constituted as per Regulation 14 did not follow the relevant provisions of Regulation 10 during the preparation of the selection list and the then authority also did not follow the relevant provisions of the Regulation 10, as such, the petitioners along with other 2 (two) AES were promoted to the post of ES in violation of the provisions of the said Regulations. Accordingly, the respondents No.2 to 4 had justified the upgradation and promotion of the respondent No.5 with retrospective effect from the post of AES to ES w.e.f. 30.07.2013, and from the post of ES to AEES w.e.f. 01.01.2014. Thus, on comparing the contents of the said two affidavits- in- opposition, it is clearly exposed that the respondents No. 2 to 4 are shifting their stand in the two affidavits- in- opposition filed by them. Therefore, the changing stand by the PCB, Assam, which is a statutory authority, is deprecated. It is seen that although the respondents No.2 to 4 had been served with the affidavit- in- reply filed on 01.02.2018 against the affidavit- in- opposition filed by the said respondents No.2 to 4, where the change of stand was disclosed, yet as the respondents No.2 and 4 have not disowned their previous stand as taken in W.P.(C) No. 2721/14, which was against the interest of the respondent No.5 herein cannot be obliterated or wished away."

30. Apparent that the respondent Board has earlier taken a clear view that the appellant/respondent No.5 having not been confirmed as ES, his further promotion to AEES cannot be considered. However, in the subsequent writ proceedings, it appears that the respondent Board had taken a contrary view that the appellant/respondent No.5

was the most eligible candidate for the post of ES and the Selection Committee promoted the petitioners along with other two AES to the post of ES by ignoring the relevant provisions of the 2012 Regulation. It is apparent that on the basis of recommendation given by the Selection Committee in the 96th Board Meeting, four posts of AES were upgraded to the level of ES and four senior most AES, including the petitioner in WP(C) No.5431/2016 were allowed to hold the upgraded post of ES w.e.f. the date of joining as shown against their names. It further appears that the names of the three personnel, including the appellant/respondent No.5, was to continue of the level of AES by clarifying that their designation shall be AES only. It further appears that the order dated 23.09.2013 was treated to have been annulled. It appears that thereafter the respondent No.4 issued a Notification dated 18.08.2015, by which the revised and updated seniority list was published, wherein the name of Hiten Sarma (petitioner in WP(C) No.5055/2016 appeared in Serial No.5 in the Cadre List of AEES), the name of Manoj Kr. Baruah (petitioner in WP(C) No.5431/2016 appeared in Serial No.4 in the Cadre List of ES) and the name of the appellant/respondent No.5 appeared in Serial No.2 in the Cadre List of AES. It further appears that the learned Single Judge has taken note of the aforesaid position which is reflected in Paragraph 23 of the impugned judgment & order, which reads hereunder:

“23) From the tone and tenor of the impugned office order No. WB/PF-300/94-95/229 dated 24.06.2016

issued by the Chairman, Pollution Control Board, Assam (respondent No.3), it appears that the said authority was of the view that that (a) the respondent No.5 was debarred from promotion for no fault of his own; (b) no decision was taken in the 94th Board Meeting for amendment of Table 3 (Annexure-III), Column 9, Sl. No. 4 and 5 and thus, the issuance of corrigendum was to deprive the respondent No.5 only, as it appears; and (c) that the action taken by the then authority was not in accordance with the Service Regulation [Reg.9(III); (4) and (C)]. It is seen that by the decision taken in the 96th Board Meeting as reflected in the Office Order under Memo No. WB/G-891/13-14/26 dated 12.08.2014, the petitioner in W.P. (C) 5431/16 was promoted from AES to ES, showing the date of joining as ES on 23.09.2013, and simultaneously it was confirmed that the respondent No.5 would continue to be at the level of AES only. Thus, it is seen the respondent No.3 had found fault with the decision taken in the 96th Board Meeting. Moreover, the petitioner in W.P.(C) 5055/16 was promoted from AES to ES by order dated 30.07.2013. The said office orders dated 23.09.2013 and 12.08.2014 had attained finality and without interfering with the said two orders, the respondent No.3 had passed the impugned order dated 24.06.2016. It is relevant to remember herein that the respondent No.5 had assailed the denial of his promotion and rejection of his two representations by filing W.P.(C) No. 2721/2014, but the said writ petition was abandoned by withdrawing the same."

31. It is in the aforesaid context that the learned Single Judge had come to the conclusion that the respondent No.3 had promoted the appellant/respondent No.5 without considering competitive merit and or seniority of any other person in the cadre of AES, which was also done without subjecting the appellant/respondent No.5 through any selection process whatsoever. It appears that accordingly the learned Single Judge held that the impugned order dated 24.06.2016 passed by the respondent No.3 is not sustainable on facts and accordingly set aside the same. It further appears that the

learned Single Judge thereafter restored the seniority position of Shri Hiten Sarma (petitioner in WP(C) No.5055/2016) and Manoj Kr. Baruah (petitioner in WP(C) No.5431/2016) in terms of the revised and updated Cadre List as on 01.08.2015 as per Notification dated 18.08.2015.

32. What transpires from the above is that the dispute is essentially as regards the seniority of the parties. It appears that the respondent authorities, instead of reviewing the seniority of the concerned parties, unilaterally upgraded the appellant/respondent No.5 and promoted him to the post of AEES despite the fact that he has never hold the post of ES. Such order of the respondent authorities does not appear to be inconformity with law. To that extent, we are agreeable with the findings of the learned Single Judge. However, instead of directing restoration of the seniority position of the petitioners, we are of the considered opinion that the correct approach to have been adopted by the learned Single Judge ought to have been to direct the respondent authorities to hold a review Departmental Promotion Committee and consider the case for promotion of the appellant/respondent No.5 afresh to the post of ES and AEES. That being so, we are of the clear view that the impugned common judgment & order passed by the learned Single Judge to that extent is liable to be interfered with.

33. Accordingly, the judgment & order dated 19.08.2019 to the extent of setting aside the impugned

order dated 24.06.2016, stands affirmed. However, as regard the remaining part of the judgment & order dated 19.08.2019, the respondent Board are directed to hold a review departmental promotion within a period of 3(three) months from the date of receipt of a certified copy of this order for considering the case for promotion of the appellant/respondent No.5 afresh to the post of ES and AEES, as the case may be, and shall thereof review the seniority position of the private respondents/writ petitioners *vis-a-vis* the appellant/respondent No.5 and pass necessary orders in accordance with law.

34. With the aforesaid observation and direction both the writ appeals stand partly allowed and disposed of.

JUDGE

CHIEF JUSTICE

Comparing Assistant