

GAHC010255772013



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

Case No. : WP(C)/6316/2013

NIPUN BARMAN and 2 ORS
ASSTT. DIRECTOR OF TEA DEVELOPMENT, TEA BOARD, REGIONAL
OFFICE, CHOWKIDINGHEE, P.O. DIBRUGARH, DIST- DIBRUGARH, ASSAM

2: RITURAJ HAZARIKA
ASSTT. DIRECTOR OF TEA DEVELOPMENT
TEA BOARD ZONAL OFFICE
NEAR TRA COMPLEX
P.O. CHINAMARA
DIST- JORHAT
ASSAM

3: SANJIB RAJBONGSHI
ASSTT. DIRECTOR OF TEA DEVELOPMENT
TEA BOARD REGIONAL OFFICE
T.T. MARG
VIP ROAD
ITANAGAR
A.P.-79111

VERSUS

THE UNION OF INDIA and 4 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY
OF COMMERCE AND INDUSTRY, DEPARTMENT OF COMMERCE, UDYOG
BHAWAN, NEW DELHI-11

2: THE TEA BOARD
REPRESENTED BY ITS CHAIRMAN
14-B.T.M. SARANI
KOLKATA-700001

3: THE CHAIRMAN
TEA BOARD

14-B.T.M. SARANI
KOLKATA-700001

4:THE SECRETARY
TEA BOARD
14-B.T.M. SARANI
KOLKATA-700001

5:THE EXECUTIVE DIRECTOR
TEA BOARD ZONAL OFFICE
NEAR TRA COMPLEX
P.O. CINNAMARA
DIST- JORHAT-78500

Advocate for the Petitioner : MS.U DUTTA, MR S NATH,MR.M CHANDA,MR.B C DAS,MR.S CHOUDHURY

Advocate for the Respondent : MR.S P CHOUDHURY, MR. N J GOGOI (SC, TEA BOARD),ASSTT.S.G.I.,MR.S SAIKIA(R-4)(R- 2-5),C.G.C.,MR.P SAIKIA(R-4)(R- 2-5)

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date of Hearing: 14-08-2024
Date of Judgment: 12-11-2024

JUDGMENT & ORDER (CAV)

Heard Mr. S. Nath, learned counsel for the petitioners. Also heard Mr. N. J. Gogoi, learned Standing Counsel for the Tea Board, representing the respondent nos. 2 to 5.

2. The challenge made in the present proceeding is to an Office Memorandum bearing No. 139/2013 dated 01.07.2013, by which the promotions of the petitioners, herein, to the post of Assistant Director, Tea Development effected vide O.M. dated 18.07.2011 and 09.08.2011, were cancelled with a further prescription for effecting recovery of the excess salaries drawn by the petitioners, herein, while holding the promotional post

of Assistant Director, Tea Development.

3. As projected in the writ petition, the petitioners herein were initially recruited in the year 2007 as Assistant Development Officers in the Tea Board and were posted at Dibrugarh, Jorhat and Itanagar respectively. In pursuance to the recommendations of the 6th Central Pay Commission, the post of Assistant Development Officer came to be merged with that of the post of Development Officer w.e.f. 01.01.2006. Consequentially, the petitioners herein having been recruited as Assistant Development Officer after 01.01.2006, are to be deemed to have been holding the post of Development Officer since their date of initial recruitment.

4. In terms of the provisions of the "Tea Board (Recruitment and conditions of Services of Officers appointed by Government) Rules, 1971" which was adopted by the Tea Board for its employees also, the next promotional avenue available to the incumbents in the post of Development Officer are the post figuring in the cadre of Assistant Director of Tea Development. Accordingly, on completion of the requisite length of service as Development Officers, the cases of the petitioners came to be considered for promotion to the posts of Assistant Director of Tea Development, under the provisions of the said rules. On consideration of their cases the petitioner nos. 2 and 3 came to be promoted to the cadre of Assistant Director of Tea Development vide issuance of Office Memorandum dated 18.07.2011. The petitioner No. 1 was so promoted vide issuance of Office Memorandum dated 09.08.2011. All the petitioners joined against their respective promotional post immediately thereafter.

5. The respondents thereafter, proceeded to issue an Office Memorandum dated 01.07.2023, towards cancelling the promotions effected in respect of the petitioners to the cadre of Assistant Director of Tea Development in the year 2011. The Office Memorandum dated 01.07.2023, stipulates that the cancellation of the promotions of the petitioners were warranted, inasmuch as, the same were so effected in violation of the provisions of the Department of Personnel and Training Circular No. AB-14017/2008-Estt(RR) dated 24.03.2009.

6. Mr. S. Nath, learned counsel appearing for the petitioners has submitted that the said Rules of 1971 were all along being applied by the Tea board for promotions of employees appointed by the Tea Board. Accordingly, in terms of the prescriptions made, therein with regard to the eligibility criterias requisite for recruitment to the various posts so involved, it is contended that for the post of Assistant Director of Tea Development, was mandated to be so filled up by way of promotion. However, in the event of non-availability of suitable departmental candidates, it was provided that the same could be filled up by way of direct recruitment. The eligibility criteria as mandated for recruitment against the post of Assistant Director of Tea Development, reveals that the same requires an incumbent in the cadre of Development Officer to have a degree from a recognized university along with 4 to 5 years experience of tea culture and manufacture in all its aspects. Mr. Nath contends that the petitioners, herein, having satisfied the eligibility criterias as spelt out in the said Rules of 1971, their cases for promotion to the cadre of Assistant Director of Tea Development were considered and

accordingly, they were so promoted to the said posts in the year 2011.

7. Mr. Nath, learned counsel for the petitioners, has further submitted that the respondent authorities vide the impugned Office Memorandum No. 139 of 2013 dated 01.07.2013, by holding that the minimum qualifying service required to be satisfied by an incumbent in the cadre of Development Officer for promotion to the cadre of Assistant Director of Tea Development being 08 years in terms of the DoPT Circular dated 24.03.2009 and 12.03.2010, proceeded to hold that the petitioners herein not having satisfied the said period of residency in the feeder post of Development Officer, their promotion to the post of Assistant Director, Tea Development was not sustainable.

8. Mr. Nath, learned counsel for the petitioners by drawing the attention of this Court to the subsequent by-laws, more particularly, the Tea Board (Recruitment, Promotions and Conditions of Service of Officers and Staffs) by-laws, 2015 has contended that although for the purpose of reverting the petitioners to the cadre of Development Officer vide the said impugned Office Memorandum dated 01.07.2013, it was contended that the petitioners had not satisfied the minimum residency of 08 years in the post of Development Officer, however, in the said by-laws of 2015, the minimum residency required for the purpose of promotion to the post of Assistant Director, Tea Development has been mandated as only 05 (five) years. Mr. Nath, submits that the reasons assigned for cancellation of the promotion of the petitioners vide the Office Memorandum dated 01.07.2013 herein are not sustainable and accordingly, the O.M. dated 01.07.2013 requires interference

from this Court.

9. Mr. Nath, learned counsel for the petitioners has further submitted that the Office Memorandum No. 139/2013 dated 01.07.2013, issued towards cancelling the promotions of the petitioners, herein, effected in the year 2011, was an action taken unilaterally by the authorities of the Tea Board without affording any opportunity of hearing to the petitioners herein. Accordingly, Mr. Nath, submits that the said action in addition to be in violation of the provisions of the Rules of 1971 applicable at the relevant point of time when the promotions in respect of the petitioners were so affected, is also violative of the principles of natural justice and administrative fair play.

10. Mr. Nath, learned counsel for the petitioners, by referring to the contentions made by the respondents in Paragraph-7 of their affidavit, has submitted that the respondents had contended that the Board used to follow the provisions of the Tea Board amendment by-laws, 1981, till the enactment of the provisions of the said by-laws of 2015. Mr. Nath, by referring to the prescriptions made in the Schedule available in the said by-laws of 1981, more particularly, pertaining to the recruitment conditions to the post of Assistant Director of Tea Development has submitted that the same is pari materia to the eligibility criteria provided under the provisions of the said Rules of 1971 and accordingly, submits that the by-laws of 2015 having been enacted subsequent to the promotion as so effected in respect of the petitioners herein and the by-laws of 2015 having not been granted a retrospective effect, the same could not have been utilized for the purpose

of causing reversion of the petitioners to the post of Development Officer.

11. Mr. Nath, learned counsel in the above premises has submitted that this Court would be pleased to interfere with the said Office Memorandum dated 01.07.2013 along with an interference with the advertisement available at Annexure-7 to the writ petition, by which 12 posts of Assistant Director of Tea Development was put up for direct recruitment and the said posts so advertised also included the posts of Assistant Director, Tea Development held by the petitioners herein.

12. Per-contra, Mr. N. J. Gogoi, learned counsel for the respondents by referring to the affidavit filed in the matter by the authorities of the Tea Board, has contended that the promotions so effected in the case of the petitioners, herein, were in clear violation of the residency period mandated under the provisions of the DoPT circulars. It is contended that the circulars issued by the DoPT are applicable to the service conditions of the employees of the Tea Board and accordingly, the same was mandatorily required to be followed and accordingly, on a review of the promotions so effected in the case of the petitioners herein in the year 2011; and the same having been found to have been so issued in violation of the said DoPT guidelines, the same was cancelled vide issuance of the impugned Office Memorandum bearing No. 139/2013 dated 01.07.2013.

13. Mr. Gogoi, learned counsel for the respondents has placed reliance on the decision of the High Court of Calcutta in **Neerav Vashisht and Ors. Vs. Tea Board, India and Ors.** in **W.P. No. 18713 (W) of 2013**, wherein a

challenge made by the incumbents in the post of the Development Officer to the process adopted for filling up the available vacancies in the post of Assistant Director through direct recruitment was rejected. Mr. Gogoi, has further submitted that the decision of the learned Single Judge in the case of **Neerav Vashisht and Ors. (supra)** was carried up on appeal and the Division Bench of the Calcutta High Court, in **Debajit Borah & Ors. Vs. Tea Board, India & Ors. F.M.A. No. 1957 of 2014**, had concluded that in absence of any by-laws framed under Section 50 of the Tea Board Act, the Board is competent to take its decision in its administrative side for regulating the service conditions of its employees and applicability of such decision does not depend upon amendment of the Rules of 1971, which per se was held to be not applicable to employees appointed by the Board.

14. In view of the said conclusions reached by the High Court of Calcutta, both by the learned Single Judge as well as by the Division Bench of the said court, Mr. Gogoi, submits that the respondent authorities had not committed any error in issuing the O.M. dated 139/2013 dated 01.07.2013 and accordingly, the same is required to be upheld reverting the petitioners to the post of Development Officer with further direction for their promotion, strictly, in accordance with the procedure now put in place by the authorities of the Tea Board vide the said by-laws of 2015.

15. I have heard the learned counsel for the parties and also perused the materials available on record.

16. It is an admitted position that following the procedure in place, as of

2011, the cases of the petitioners herein, who had at the relevant point of time completed at least 04 years of service as Development Officers, came to be considered for promotion to the post of Assistant Director of Tea Development. On such considerations being made, the Tea Board had promoted the petitioners herein to the post of Assistant Director, Tea Development vide issuance of the Office Memorandums dated 18.07.2011 and 09.08.2011 respectively.

17. The Tea Board in its affidavit filed in the present proceedings with regard the procedure followed for promotion of its employees, had contended in Paragraph-7 as follows:-

7. *“That with regards to the statement in paragraph 4 of the Writ Petition, the deponent begs to state that at the time of filling of the present writ the Board used to follow the Schedule Annexed to the Tea Board (Amendment) Bye Laws, 1981, but now recruitment and promotion of officers appointed by the Board is governed by Tea Board (Recruitment, Promotion and Conditions of Service of Officers and Staff) By-laws, 2015”.*

18. The respondents, in its affidavit has annexed as “Annexure-I”, the amendment to the Tea Board by-laws 1981 as effected vide the notification dated 25.06.1981, along with the schedule thereof.

19. A perusal of the schedule as annexed to the Tea Board (amendment

by-laws 1981), it is seen that for recruitment to the post of Assistant Director of Tea Development, the eligibility criteria was prescribed as under:-

SL. No.	Name of post	Scale of Pay	Duties	% of posts to be filled by:		For Direct recruitment		Method of promotion	Remarks
				Promotion	Direct recruitment	Age	Educational qualification and experience		
1	2	3	4	5	6	7	8	9	10
3.	Assistant Director of Tea Development	Rs.8000-275-13500/-	To assist the Director of Tea Development in implementing any scheme about the development of tea gardens and examination of problems	Normally to be filled up by promotion except when in the opinion of the appointing authority suitable departmental candidates are not available		Not exceeding 45 years	Essential : (i) Degree of a recognized University; (ii) About 4 to 5 years experience of tea culture and manufacture in all its aspects Desirable : A	By Selection from : Development Officer-former Supdt. (Dev.)	

			relating to the tea industry measures for improvement in the working condition of gardens etc.		Diploma or Degree in Agriculture. Educational Qualification may be relaxed in the case of otherwise exceptionally suitable candidate.		
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19. The petitioners in the writ petition have relied upon the provisions of the "Tea Board (Recruitment and conditions of Services of Officers appointed by Government) Rules, 1971". On a perusal of the notification dated 25.05.1971, publishing the said Rules, it is revealed that the said Rules were so made in exercise of the provisions of Sub-section (i) read with Clause (d) of Sub-Section (ii) of Section 49 of the *Tea Act 1953*. Section 49 pertains to the powers of the Central Government to make Rules and the provisions of Sub-clause (d) of Clause II of Section 49 pertains to the power of the Central Government to provide for the pay, allowances and other conditions of service of the Deputy Chairman, Secretary and other Officers appointed by

the Central Government.

20. A further perusal of the provisions of the *Tea Act 1953* would go to reveal that Section 50 thereof, provides for the power of the Board to make by-laws, consistent with the Act and Rules framed there under including the power to prescribe for the conditions of service of its officers and other employees other than those appointed by the Central Government, including their pay, leave allowances, pension etc.

21. The authorities of the Tea Board in the affidavit have made categorical contentions to the effect that, recruitment of Officers appointed by the Board were being governed by the schedule annexed to the Tea Board (amendment) by-laws 1981. As noticed herein above, the prescriptions as made in the said by-laws, with regard to the post of Assistant Director of Tea Development is *pari materia* to the provisions made in this connection under the provisions of the said Rules of 1971. The prescriptions as made in the Schedule to the Tea Board (amendment) by-laws 1981, in terms of the contentions made by the respondents in the present proceeding held the field till enactment of the Tea Board (Recruitment, Promotions and Conditions of Services of Officers and Staffs) by-laws 2015. It to be noted that the by-laws of 2015 were so made under the provisions of Sub-section II of Section 50 of the Tea Act, 1953 i.e., in exercise of the powers vested upon the Board to make Rules for employees recruited by it.

22. A perusal of the said by-laws of 2015, more particularly, by-law 13 thereof, would go to show that the Tea board (Recruitment and Conditions

of Services Appointed by Government) Rules, 1971 to the extent applicable to officers and staffs of the Board having Grade Pay up to Rs. 6,600/- was repealed.

23. The above prescriptions as made in the provisions by-laws 13 of the said by-laws of 2015, would go to prove the veracity of the contentions of the petitioners herein that the provisions of the Rules of 1971, on being adopted, was made applicable to the process of direct recruitment as well as promotion of employees appointed by the Board in addition to the same being made applicable to officers appointed by the Central Government.

24. It is also to be further noted that the provisions of the by-laws of 2015 were not given any retrospective effect and was mandated to come into force only from the date of its publication in the official gazette.

25. Having noticed the position with regard to the Recruitment Rules holding the field in the Tea Board, this Court is of the considered view that in the year 2011 when the cases of the petitioners, herein, were so considered for promotion to the post of Assistant Director, Tea Development, it is the provisions of the said Rules of 1971, or the Eligibility Conditions as mandated in the Schedule appended to the Tea Board (amendment) by-laws 1981, that held the field with regard to the eligibility criterias mandated to be satisfied by an incumbent in the post of Development Officer for promotion to the cadre of Assistant Director, Tea Development and accordingly, it is to be concluded that the promotions as effected in respect of the petitioners herein were in consonance with the prescriptions of the eligibility criterias in

the said Rules of 1971 and/or the schedule appended to the Tea Board (amendment) by-laws 1981.

26. At this stage, this court is required to examine the reasons so assigned by the authorities in the Office Memorandum No. 139 of 2013 dated 01.07.2013, by which the promotions as effected in respect of the petitioners herein to the post of Assistant Director of Tea Development was cancelled.

27. A perusal of the said the Office Memorandum No. 139 of 2013 dated 01.07.2013 would go to reveal that the said action has been stated to have been done, inasmuch as, the promotions as effected in respect of the petitioners herein were held to be in violation of the guidelines laid down by the DoPT vide its circular dated 24.03.2009 and 12.03.2010. The reason as put forth vide the said Office Memorandum dated 01.07.2013, being relevant is extracted herein below:-

"And whereas, it has been brought to the notice of the Competent authority about guidelines issued by DOPT vide OM dated 8.02.2012 and OM dated 16.2.2005 wherein all the Ministries and the subordinate organisation there under have been directed to amend the recruitment and service rule incorporating the method of 'selection' for effecting promotion.

And whereas, in the DOPT circular No. AB 14017/2008- Estt. (RR) dated 24.03.2009 & 12.03.2010 the minimum qualifying service for

promotion from the post having the grade pay of Rs 4200/- (present grade pay of the Development Officers) to the post having grade pay of 5400/- (Present Grade Pay of Assistant Director of Tea Development) has been kept at 8 years.

And whereas, no existing Development Officers neither have 8 years of qualifying service as per the aforesaid circular of the DOP&T not have the minimum qualifying service period of 7 years as per the 1971 R & P Rules at present being followed in the Board.

And whereas, Sri Nipun Burman (B-285), Sri Rituraj Hazarika (H-32) and Sri Sanjib Rajabangshi (R-241) were promoted to the post of Assistant Director Tea Development vide OM dated 18.7.2011 and 09.08.2011.

Now, after examination it has been found that the promotion of Sri Nipun Burman, Sri Rituraj Hazarika and Sri Sanjib Rajabanshi has been done in contravention of the above Recruitment Rule of the Board and the above mentioned circular of DOPT. Accordingly, the promotion order of Sri Nipun Burman, Sri Rituraj Hazarika and Sri Sanjib Rajabanshi is cancelled and the O.M. NO. 109/2011 dated 18.7.2011 and O.M. NO. 126/2011 dated 09.8.2011 stand modified to that extent Establishment shall take appropriate action for recovery of excess salary drawn by Sri Nipun Burman, Sri Rituraj Hazarika and Sri Sanjib Rajabangshi."

28. A perusal of the said conclusions as contained in the Office Memorandum No. 139 of 2013 dated 01.07.2013, would go to reveal that the petitioners having not completed 08 years of service as on the date their cases were so considered for promotion to the post of Assistant Director, Tea Development, in terms of the prescriptions made in this connection in the DoPT Circulars dated 24.03.2009 and 12.03.2010, the said promotions were held to be not sustainable and accordingly, were cancelled.

29. While the reasons assigned for the purpose of reverting the petitioners to the post of Development Officer is that they have not completed the residency of 08 years in the said posts, before promotion to the post of Assistant Director, Tea Development, it is seen that the same very Board while prescribing the eligibility criterias for recruitment to the post of Assistant Director, Tea Development, vide the said by-laws of 2015; had prescribed the minimum residency of an incumbent for being considered to the post of Assistant Director of Tea Development in the post of Development Officer would be 05 years of working experience either as Manager or Assistant Manager in a tea garden. The said prescription so made after 02 years from the date of issuance of the Office Memorandum dated 01.07.2013 would go to reveal that the reasoning as advanced by the authorities of the Tea Board for the purpose of reverting the petitioners to the post of Development Officer is clearly un-sustainable.

30. Further, it is to be also noted that the prescriptions of eligibility criterias as put forth vide the DoPT Circulars dated 24.03.2009 and 12.03.2010, were never incorporated in the recruitment rules and/or the by-laws of the

corporation at any point of time and accordingly, without having made an amendment to the provisions of either the said Rules of 1971 and/or to the schedule as appended to the Tea Board Amendment Rules, 1981, it was so not open to the authorities of the Tea Board to take a view that the petitioners at the relevant point of time when they were so promoted to the post of Assistant Director, Tea Development, had not fulfilled the mandated eligibility criterias holding the field in the Board at that point of time.

31. At this stage, it is relevant to take note of the decisions of the Calcutta High Court, in the case of **Neerav Vashisht and Ors. Vs. Tea Board, India and Ors.** in **W.P. No. 18713 (W) of 2013**, wherein the challenge made by the incumbents in the post of Development Officer to a decision adopted by the respondent authorities for filling up the said post by way of direct recruitment came to be rejected. It is seen that the stand as taken by the Tea Board in the present proceedings that the recruitment conditions to the post of Assistant Director of Tea Development was being so made in terms of the provisions of the Schedule as annexed to the Tea Board (amendment) by laws, 1981 was not so raised before the High Court of Calcutta in the above noted proceeding.

32. Further, the consideration made by the High Court of Calcutta in the case of **Neerav Vashisht and Ors. (supra)**, was with regard to the steps taken by the Tea Board authorities in the year 2013 i.e., after the petitioners had been promoted to the post of Assistant Director, Tea Development. The said decision in **Neerav Vashisht and Ors. (supra)**, were carried upon appeal in the case of **Debajit Borah & Ors. Vs. Tea Board, India & Ors.**

F.M.A. No. 1957 of 2014, and the Division Bench of the High Court of Calcutta vide judgment dated 14.12.2017, had dismissed the said writ appeal inter alia by observing as under:

“In the absence of any By-laws framed under Section 50 of the said Act, the Tea Board, in our considered view, is competent to take its decision in its administrative side for regulating the service condition of its employees and applicability of such decision does not depend upon amendment of the Rules of 1971 which per-se is not applicable to the employees appointed by the Board.”

33. The said observation of the Division Bench of the High Court of Calcutta, in the considered view of this court, would not be applicable to the facts of the present case, inasmuch as, the respondent Board in Paragraph-7 of its affidavit as filed in the present matter, extracted in the herein above, categorically stated that the recruitment to the post of Assistant Director, Tea Development in the Board was being so done by following the prescriptions of eligibility criterias as prescribed in the Schedule annexed to the Tea Board (amendment) by-laws 1981, till the enactment of the provisions of the Tea board (Recruitment, Promotions and Conditions of Services of Officers and Staff) by-laws 2015. Accordingly, in view of the categorical contentions made by the respondents in the present proceedings, the decisions of the High Court of Calcutta, relied upon by the respondents, would not have any application to the issues arising in the present proceedings.

34. In the view of the above discussions and conclusions reached by this Court herein above, it is held that the Office Memorandum bearing No. 139/2013 dated 01.07.2013, cannot be sustained and accordingly, the same stands set aside.

35. Further, the advertisement issued by the respondent authorities, in the month of June, 2013 stands interfered with, to the extent of 03 posts of Assistant Director of Tea Development as advertised vide the said advertisement, which are held by the petitioners herein.

36. With the above observations and directions, the present writ petition stands allowed.

JUDGE

Comparing Assistant