

GAHC020003752022



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

Case No. : WP(C)/135/2022

SHRI. K. TAHKAH KONYAK
AGED ABOUT 37 YEARS,
S/O LATE KHAMPHO KONYAK, PERMANENT R/O MON VILLAGE, MON
DISTRICT, NAGALAND - 798621

VERSUS

THE STATE OF NAGALAND AND 2 ORS
THROUGH THE CHIEF SECRETARY TO THE GOVERNMENT OF NAGALAND,
NAGALAND, KOHIMA

2:THE COMMISSIONER
NAGALAND
KOHIMA

3:THE DEPUTY COMMISSIONER
MON
NAGALAN

Advocate for the Petitioner : MOA JAMIR

Advocate for the Respondent : GOVT ADV NL

**BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 20-02-2024

The instant writ petition has been filed by the
petitioners being aggrieved by the inaction of the respondent

authorities in considering the application filed by the petitioner for appointment on compassionate grounds.

2. The materials on record shows that the father of the petitioner one Khampo Konyak (since deceased) was temporarily appointed to the post of Grade-III DB under the establishment of Deputy Commissioner, Mon. Subsequently after a period of 2 years on probation, the service of the father of the petitioner was regularized vide an order dated 26/6/1989 and was granted scale of pay. Unfortunately, the father of the petitioner expired on 19/2/2009 leaving behind his family. To that effect, the death certificate of the father of the petitioner dated 31/3/2009 has been enclosed as Annexure-C to the writ petition. There upon the petitioner filed an application on 26/11/2012 seeking appointment on compassionate basis inasmuch as it is claimed by the petitioner that he was eligible. However, the said application was not considered by the respondent authorities. Being aggrieved, the petitioner has approached this Court by filing the instant writ petition on 18/7/2022.

3. The record reveals that affidavit-in-opposition has been filed by respondent Nos. 1 to 3 wherein it was mentioned that though the application annexed as Annexure-D to the writ petition bore the receipt from the respondent's office, there is no record available in the office in respect of the petitioner's application and further course of action undertaken. From perusal of the said affidavit, the only reason for which the application of the petitioner had not been considered is that the record of the petitioner's application is not available in office.

4. The petitioner had filed an affidavit-in-reply reiterating his retirement in the writ petition and further stating inter alia that the petitioner's application was duly filed bearing Sl. No.1175.

5. This Court have heard the learned counsels appearing for the parties and had given its anxious consideration

6. The only reason why the petitioner's application has not been taken into consideration by the respondents yet is on the ground that the petitioner's application is not available on the record. On the other hand from the perusal of the application dated 26/11/2012 which is Annexure D to the writ petition, the same appears to have been received by the concerned Department with the seal of the department and given a Serial No. being 1175. In paragraph 5 of the affidavit-in-opposition, the respondents duly admitted the seal belonged to the respondent Department. Be that as it may, this Court has taken note of the Office memorandum dated 17/9/2015 as well as Addendum dated 9/4/2019. By the said Addendum dated 9/4/2019, paragraph 11 was inserted to the Office Memorandum dated 17/9/2015 whereby it has been mandated that compassionate appointment made to Group C and D posts under the Scheme shall be strictly in order of the date of death and first preference shall always be given against those who have died earlier and who fulfills all eligibility criteria.

7. Considering the above, this Court is of the opinion that if liberty is given to the petitioner to submit a fresh application, and appropriate directions are placed for consideration of the said application in terms of paragraph 11 of the Office Mem-

orandum dated 17/9/2015, the same would meet the ends of justice.

8. Considering the above this Court therefore disposes of the instant writ petition thereby granting liberty to the petitioner to file a fresh representation to the respondent No. 3 thereby enclosing a photocopy of the application which was filed on 26/11/2012 and upon such application been filed by the petitioner, the respondent authorities shall duly consider the application of the petitioner in terms of the Office Memorandum dated 17/9/2015 and more particularly taking note of paragraph 11 which was inserted by the addendum dated 9/4/2019 to the Office Memorandum dated 17/9/2015. This Court further observes and directs that the application filed by the petitioner seeking compassionate appointment should be deemed to have been filed on 26/11/2012.

9. With the above observation and directions, this writ petition stands disposed of.

Sd/-
JUDGE

Comparing Assistant