

(2016) 04 GAU CK 0065
In the Gauhati High Court
Case No : W.P.(C) No. 1809 of 2009

Ajoy Ch. Bordoloi

APPELLANT

Vs

State of Assam and others

RESPONDENT

Date of Decision : 07-04-2016

Acts Referred:

Citation : (2016) 4 GauLJ 104 : (2017) 1 GauLR 586 : (2016) 2 GauLT 819

Hon'ble Judges : Ajit Singh;Manojit Bhuyan, JJ.

Bench : Division Bench

Advocate : S.K. Medhi, P. Das, R.K. Bharali, N. Medhi, J. Das, A.C. Borbora, M. Dutta and N. Saikia, Advocates, for the Appellant; SC, PWD, B. Chakraborty, For Caveator, K.H. Choudhury, S.K. Muktar, K.N. Choudhury, R. Deka, J. Patowary and M. Mahanta, Advocates, for

Final Decision : Disposed Off

Judgement

Manojit Bhuyan, J. - Much debate and deliberations had been made on the merits of the case on both dates of hearing. We tread with caution not to intrude upon it. We are only called upon to answer to the following two questions which have been referred by the learned Single Judge by the order dated 5.11.2015:

"(1) Whether the norms set out in the Notification dated 28.4.2003 for promotion above the rank of Superintending Engineer in Assam, PWD is in conformity with the criteria of merit-cum-seniority governing such promotion as laid down in Rule 13(4) of the Assam Engineering (PWD) Service Rules, 1978?

(2) Whether the decision of this Court in Banikanta Das (supra) holding that the norms laid down in the notification dated 28.04.2003 for promotion above the rank of Superintending Engineer is not opposed to the criteria of merit-cum-seniority, lays down the correct law?"

2. Rule 13(4) of the Assam Engineering (PWD) Service Rules, 1978 (in short the "Rules of 1978"), being the statutory edifice delineating the criteria for promotion above the rank of Superintending Engineer in Assam PWD, reads as follows:

"13. General procedure for promotion -

.....

(4) Promotions upto the rank of Superintending Engineer on merit and suitability with due regard to the seniority and promotions above the rank of Superintending Engineer on merit-cum-seniority."

3. The controversy involved being with the promotion from the cadre of Chief Engineer to the cadre of Secretary to the Government, both being categorised under Class 1 (Senior Grade) under Rule 3(1)(a) of the Rules of 1978 and ranking higher than the cadre of Superintending Engineers, also under Class 1 (Senior Grade), indisputably the criteria for promotion is on merit-cum-seniority and not on merit and suitability with due regard to seniority.

4. What is the statutory backing and/or the judicial sanction giving birth to the Notification No. CON-5/2003/50 dated 28.4.2003 and what does the Notification postulate? Apparently, the genesis is the case of Ramen Ch. Kalita v. State of Assam, decided on 7.4.2003 and reported in 2003 (3) GLT 369. This was a case pertaining to selection for promotion from the feeder post of Executive Engineer to the rank of Superintending Engineer in Assam PWD. The criteria for promotion under Rule 13(4) of the Rules of 1978 was obviously on merit and suitability with due regard to the seniority. The first question that fell for consideration was whether the parameters that had been identified and applied for making selection for promotion to the post of Superintending Engineer conformed to the requirement of the principle of merit and suitability with due regard to seniority as prescribed under Rule 13(4).

5. In the said case of Ramen Ch. Kalita (supra) it was observed that the principles required to be followed while making a particular promotion are invariably set out in the Service Rules or in the Executive Instructions holding the field. In so far as the Rules of 1978 is concerned, Rule 13(4) thereof has two limbs of prescription postulating two different parameters for promotion to two different sets of posts, which the Rule making authority consciously applied. The difference assumes utmost significance, in that, the criteria of "merit and suitability with due regard to seniority" and "merit cum seniority" cannot be deemed to convey the same meaning as the appointing authority would like the Court to understand. Notice was had to the selection to the post of Superintending Engineer as well as to another selection for promotion to the post of Addl. Chief Engineer from the level of Superintending Engineer - in both cases where the same parameters had been applied. In this context, the application of the promotion criteria "seniority cum fitness or seniority cum merit", as judicially interpreted, pitted against the criteria "merit cum seniority" was considered. Whereas in the former the emphasis is on seniority with merit being of a minimum level taking a back seat, in the latter criteria the emphasis is on merit where seniority comes into play only when merit is equal on any inter-se comparison of the merit of all eligible candidates.

6. In *Ramen Ch. Kalita* (supra) the Court held that the parameters applied while making selection did not conform to the principles of merit and suitability with due regard to seniority as prescribed by the Rules. It was more in conformity with the criteria of "merit cum seniority". The selection was made by classifying the candidates into 3(three) categories on the basis of the preset marks commensurate to the gradings in the ACRs of the previous five years. Candidates falling in the respective 1st and 2nd category were arranged in order of their inter-se seniority in the feeder post. The distinction between the 1st and 2nd category was that those falling in the former category would "be included", whereas those falling in the latter category were "required to be included". Candidates in the 3rd category were considered unfit for promotion. In the backdrop of the said selection parameters, the Court while interfering with the selection, held that although the criteria of merit and suitability with due regard to seniority is essentially a merit based criterion, seniority cannot altogether be ignored and has to be considered parallelly along with merit while determining the eligibility of a candidate for his inclusion in the Select List. In this context the Court observed that modalities should be worked out to cover selection by application of the criteria of merit and suitability with due regard to seniority in the order that a particular percentage can be assigned to merit and the remaining percentage, say out of 100 marks, to seniority in a ratio where the percentage prescribed for merit is necessarily higher, juxtaposed to seniority. The Court observed that a modality when worked out, the necessary fusion between merit and seniority can be reached.

7. Not to be left untouched is the case of *C.P. Kalra v. Air India*, reported in 1994 Supp (1) SCC 454, which finds discussion in *Ramen Ch. Kalita* (supra). In *C.P. Kalra*'s case the Apex Court had dealt with the principle of "merit cum seniority". This case, as would appear, will assume significance while deciding the present reference.

8. The fall-out of *Ramen Ch. Kalita* (supra) is the Notification dated 28.4.2003, as would be evident from the opening lines therein. Modalities that had been worked out in the said Notification in the case of promotion above the rank of Superintending Engineer may be illustrated by reproducing the relevant part in verbatim:

"Promotion above the rank of Superintending Engineer:

Merit cum seniority: The appointing authority will allocate the following points to the final accepted remarks in the ACRs in case of merit considering ACRs for a period of 5 years on the 1st January of the year of promotion.

Below Average

=

0 point

Average

=

1 point

Good

=

2 points

Very Good

=

3 points

Outstanding

=

4 points

The total points against each officer in the zone of consideration is to be calculated on the basis of the guidelines stated above.

(A) Promotion from SE to Addl. CE and above

There will be 2 categories

Category 1

=

15 and above

Category 2

=

11 to below 15

The appointing authority will allocate the following points in case of seniority for addition to the points allocated for merit, and prepare the final statement adding allocated points both for merit and seniority.

In pursuant to aforesaid Judgment 75% points shall be allocated for merit and remaining 25% for seniority. An officer shall obtain maximum 20 points on merit which is equivalent to 75% and 25% points for seniority shall be equivalent to 6.66 points. Officers having completed service of 30 years or above shall be entitled to 6.66 points and for each completed year of service 0.22 points shall be allocated.

According to the total points the officers shall be categorised to two classes.

1) Class-A

2) Class-B

Promotion above the rank of Superintending Engineer:

A) Promotion from SE to Addl. CE and above

There will be 2 classes

Class-A

=

21.16 and above

Class-B

=

17.66 to below 21.16

Class-A will get preference over Class-B and inter-se-seniority within Class-A will remain unchanged."

9. According to the modalities extracted above, it begins with allocation of points depending upon the gradings in the ACRs for a period of 5(five) years on the 1st day of January of the year of promotion. The next step is the ascertainment to which of the categories i.e. Category 1 and Category 2 would an officer in the zone of consideration be held to be eligible to be suitable for promotion on the total points earned as per marks/points secured in the first step. Category 1 is for officers securing 15 points and above and Category 2 for those officers securing between 11 and below 15 points. The final assessment is on the yardstick where 75% points is allocated to merit and remaining 25% to seniority. As the ACRs of 5 years are to be considered, the maximum marks that an officer can secure in the segment of "merit" is 20 (5years x 4 points). Accordingly, 75% represented 20 marks on "merit". In the segment of "seniority", a unit of 0.22 points was allocated for each completed year of service with a maximum of 6.66 points for officers completing 30 years of service. Accordingly, 25% represented 6.66 points on "seniority". By applying the above yardstick, officers are to be categorised into two classes - Class-A i.e. those securing 21.16 points and above; Class-B i.e. those securing between 17.66 and below 21.16 points - out of the grand total of 26.66 points. In the final analysis, the Notification postulated that Class-A will get preference over Class-B and inter-se seniority within Class-A will remain unchanged.

10. The validity of the Notification dated 28.4.2003 received consideration in the case of Banikanta Das v. State of Assam, reported in 2007(3) GLT 11. This was a case seeking enforcement of the Notification dated 28.4.2003 in the matter of promotion from the post of Superintending Engineer to the post of Additional Chief Engineer. The challenge to the selection and consequential promotion was that the norms laid down by the Notification dated 28.4.2003 had not been followed and seniority was not given any role or recognition as per the said

Notification. In Banikanta Das (supra), even at the cost of repetition, the Court took into account that a reading of the Notification dated 28.4.2003 showed that in the first instance the merit of the officers under consideration is to be assessed on the basis of the gradings in the ACRs of the proceeding five years by awarding the preset marks commensurate to the gradings. Placement of the officers either in Category 1 or Category 2 is dependent upon the marks/points awarded. After such categorisation of the officers in the respective categories, the Notification contemplates award of further marks for each completed year of service at a unit of 0.22 marks for each completed year subject to a maximum of 6.66 marks (equivalent to unit marks covering maximum 30 completed years of service). The marks secured on the basis of the gradings in the ACRs is to be added to the marks secured on account of seniority, that is, for the completed years of service and there upon the final categorisation of the officers into Category-A and Category-B is to be reached. Those securing 21.66 marks and above are to be placed in Category-A, those securing between 17.66 and below 21.66 marks are to be placed in Category-B. Not to stop here, the arrangement of the names of the officers in Category-A and Category-B are to follow their inter-se seniority in the feeder post with the caveat that Category-A will have precedence over Category-B.

11. In Banikanta Das (supra), reference is made to the case of Ramen Ch. Kalita (supra) to say that the discussions that found place in Ramen Ch. Kalita and the conclusions reached and directions issued has to be understood as applicable to the criteria of "merit and suitability with due regard to seniority". As stated earlier, selection thereof was interfered as the Court, on due examination, found that the parameters were more in conformity with the criteria of "merit cum seniority" rather than on "merit and suitability with due regard to seniority".

12. Two fundamental questions, therefore, that stood for consideration in Banikanta Das (supra) were as to (i) whether the Notification dated 28.4.2003 laying down the modalities for holding selection to the post of Additional Chief Engineer and above is, in any way, in conflict with the directions in Ramen Ch. Kalita (supra) and (ii) whether the norms as spelt out by the Notification dated 28.4.2003 adheres to the requirements/principles of the criteria of merit-cum-seniority, as mandated by the Rules of 1978 in respect of promotion above the rank of Superintending Engineer.

13. While answering the above two questions, the Court first took into consideration that the two criterions are not capable of being given a precise meaning, nor is any such precision necessary or desirable. Both the criterias have to be understood to be elastic, capable of being applied or attained by different modes of application. In all, both the criterias are essentially of merit, as distinguished from "pure merit", so much so that some weight-age to seniority is contemplated in their application. Merit is first to be assessed, not as an entry point but on relative basis. If merit is equal, seniority is to determine the suitability of the candidate for promotion. If not, merit is to prevail. The

weight-age that is to be given to seniority will depend upon the level of promotion and between the two criterias, the role of seniority in the application of the criteria of "merit and suitability with due regard to seniority" must be acknowledged to be somewhat more than the criteria "merit-cum-seniority". Primacy and recognition given to merit for inclusion in the final categorisation, as per the Notification dated 28.4.2003, has been illustrated in the following manner - "A junior officer securing, say, 18 marks on merit and therefore included in Category-1 is entitled to have the said 18 marks counted for his inclusion in the final categorisation. In such a situation the role of seniority gets diminished. A junior officer included in Category-1 of the initial categorisation on merit with the minimum marks i.e. 15 can still make it to Category-A of the final categorisation on the basis of seniority. However, a senior officer included in Category-2 of the initial categorisation cannot be included in Category-A of the final categorisation even if full marks on account of seniority is awarded". Thus, from the standpoint that human fallibilities will always exist and perfection being rare, the Court held that the parameters laid down in the Notification dated 28.4.2003 must be so judged and so judged, the said Notification dated 28.4.2003 "cannot be held to be so fundamentally opposed to the criterion of merit-cum-seniority that the judicial verdict must strike it down". Accordingly, the Notification dated 28.4.2003 was held (i) not to be contrary to the directions in *Ramen Ch. Kalita (supra)* and (ii) not opposed to the criterion of "merit-cum-seniority" in its application for promotion to the posts of Additional Chief Engineer and above.

14. The core and not so in exhaustive discussions on *Ramen Ch. Kalita (supra)*, the Notification dated 28.4.2003 and finally the case in *Banikanta Das (supra)* has been consciously made to comprehend the lis in its entirety. The learned Single Judge in the order of reference dated 5.11.2015 expressed disagreement with the view in *Banikanta Das (supra)* and held that the Notification dated 28.4.2003 is not in conformity with the criteria of merit-cum-seniority as had been explained by the Apex Court in the case of *B.V. Sivaiah v. K. Addanki Babu*, reported in (1998) 6 SCC 720, which is the criteria mandated by the Rules of 1978 for promotion above the rank of Superintending Engineer.

15. We have heard learned counsels for the parties. We reiterate that our findings and decision are absolutely on the points of reference without encroaching upon an iota on the merits of the case. A host of cases of the Apex Court have been cited by the parties but we sieve the same by keeping in mind the core issues. We confine to address on the legality of the norms of selection as laid out in the Notification dated 28.4.2003 and the view endorsed in *Banikanta Das (supra)* on the said Notification in the context of its applicability to the criteria of merit-cum-seniority, which is the mandatory selection criteria under the Rules of 1978, having regard to the level of selection for promotion i.e. above the rank of Superintending Engineer.

16. Mr. A.K. Bhattacharjee, learned Senior Counsel places reliance on the

following case-laws, besides Ramen Ch. Kalita and Banikanta Das:

- (1) (1998) 6 SCC 720 - B.V. Sivaiah and Ors. v. K. Addanki Babu and Ors.
- (2) (2007) 1 SCC 309 - Sankar Deb Acharya and Ors. v. Biswanath Chakraborty.
- (3) (2012) 2 SCC 321 - N.C. Das v. Gauhati High Court.
- (4) (1979) 2 SCC 491 - Smti. S.R. Venkataraman v. Union of India.

17. The sheet-anchor of the petitioner's case is laid in the case of B.V. Sivaiah (supra) and Sankar Deb Acharya (supra). Reliance placed upon Smti. S.R. Venkataraman (supra) is for the proposition that there exists malice in law in the issuance of the Notification dated 28.4.2003, being intentionally issued contrary to law. On the Notification dated 28.4.2003, Mr. Bhattacharjee submits that the said Notification cannot attain immunity and/or have judicial sanction because it is ex-facie opposed to the principle of merit-cum-seniority, a norm mandated under Rule 13(4) of the Rules of 1978 and interpreted by the Apex Court to mean that the principle lays greater emphasis on merit and ability with seniority playing a less significant role. Weightage on seniority assumes consideration only when merit and ability are at equal footing among the competitors. The cases of B.V. Sivaiah (supra) and Sankar Deb Acharya (supra), particularly to paragraphs 9 and 30 respectively are pressed into service. Mr. Bhattacharjee further contends that even assuming that the Notification dated 28.4.2003 is legally valid, the same cannot be made applicable in respect of selection for promotion to the post of Secretary having regard to Rule 13(4) and also bearing in mind that the same had its genesis in the case of Ramen Ch. Kalita (supra), which was a case involving an interpretation on merit and suitability with due regard to seniority in the context of a selection to the level of Superintending Engineer and not beyond. Referring to the Notification dated 28.4.2003, the contention is that in the final analysis primacy is sought to be given to seniority and merit is pushed to the back seat, a norm/modality alien to the concept of merit-cum-seniority. The particular line "inter-se seniority within Class-A will remain unchanged" in its application to a selection exclusively governed by the criteria merit-cum-seniority, according to Mr. Bhattacharjee, is fundamentally opposed to Rule 13(4), not to speak of the meaning of the concept as judicially interpreted. The case of N.C. Das (supra) was placed for the proposition that the remarks in the ACRs do enable the authority to assess the comparative merit once the question of promotion arises when the criterion for promotion is merit-cum-seniority. The said case, however, do not assume relevancy in the matter in hand and/or in addressing the reference.

18. Mr. K.N. Choudhury, learned Senior Counsel representing the Public Works Department begins by saying that the Notification dated 28.4.2003 is not the subject-matter of challenge in WP(C) 1809/2009. Rather, it has judicial sanction in the case Ramen Ch. Kalita, which has remained undisturbed until this date. According to Mr. Choudhury, the Notification retains the principle of merit-cum-seniority and, consistent with B.V. Sivaiah's case, the inter-se seniority in the

feeder category is sought to be given significance only when merit of the officers are held to be at par or approximately equal. To this end, Mr. Choudhury makes reference to the Notification dated 28.4.2003 to say that utmost primacy is given to merit until the final categorisation. Once the bench-mark at 21.16 is achieved and the eligible officers qualify to Category-A, their merit standing is treated at par, necessitating the ultimate selection on the basis of inter-se seniority in the feeder category. This procedure, according to Mr. Choudhury, cannot be said to be, in any manner, arbitrary or opposed to the principle of merit-cum-seniority, even tested on the ratio laid down in B.V. Sivaiah (supra) and Sankar Deb Acharya (supra). The submission, therefore, is that neither the Notification dated 28.4.2003 nor the view expressed on the Notification in Banikanta Das (supra) are opposed to the criteria of merit-cum-seniority.

19. Mr. Choudhury relies on the following case laws:

- (1) (2004) 9 SCC 286 - K. Samantaroy v. National Insurance Co. Ltd.
- (2) (2005) 10 SCC 15 - U.P.S.C. v. K. Rajaiah and Ors.
- (3) (1974) 4 SCC 308 - State of Mysore v. C.R. Sheshadri and Ors.
- (4) (1996) 9 SCC 677 - Jagathigowda, C.N. and Ors. v. Chairman, Cauvery Gramina Bank and Ors.

The case of K. Samataray (supra) is placed to say that the Employer while laying down a promotion policy or rule, it is always open to delineate the area and parameter of weightage to be given in the segment of merit and seniority separately so long as the policy is not a colourable exercise of power, nor has the effect of violating any statutory scope of interference and other relatable matters. Mr. Choudhury submits that in K. Samantaray the decision in B.V. Sivaiah was distinguished on facts and in law. However, the caveat expressed was that the Apex Court have, inter alia, held that fixing terms which are at variance with the statutory rules is impermissible. On this Mr. Choudhury contends that the terms fixed in the Notification dated 28.4.2003 are neither at variance with the criteria merit-cum-seniority nor framed in colourable exercise of power, so much so, that it does not impinge upon the mandate of the selection criteria above the rank of Superintending Engineer under Rule 13(4) of the Rules of 1978. The case of U.P.S.C. v. K. Rajaiah (supra) has been placed for the proposition that a Selection Committee can evolve its own classification of gradings which may be at variance with the gradation given in the ACRs by the State Government. This case, in our view, is not relevant for the purpose of answering the reference. We express similar views in so far as the case of State of Mysore (supra) and Jagathigowda, C.N. (supra) are concerned.

20. Mr. A.C. Borbora, learned senior counsel representing Respondent No. 4 reiterates the submissions made on behalf of the Public Works Department. He submits that indeed primacy has to be given to merit when the promotion rule is merit-cum-seniority but a fusion has to be done where seniority cannot be

altogether ignored. Supporting the Notification dated 28.4.2003 and the views expressed in Bankikanta Das (supra), Mr. Borbora places reliance in the case of C.P. Kalra (supra) to say that the norms laid down in the Notification is not antithetical to the concept of merit-cum-seniority.

21. We have given our anxious consideration on the issue in hand. The criteria for promotion above the level of Superintending Engineer to the cadre of Secretary is undoubtedly merit-cum-seniority, as envisaged under Rule 13(4) of the Rules of 1978. Apt to say that in B.V. Sivaiah (supra) as well as in Sankar Deb Acharya (supra), the said principle of merit-cum-seniority has been interpreted to mean greater emphasis being laid on merit and ability with seniority playing a less significant role. Notwithstanding the fact that the said two case laws were not taken into account in Banikanta Das, the issue is whether recourse can be had to seniority while applying the criteria of merit-cum-seniority. In no uncertain terms B.V. Sivaiah and Sankar Deb Acharya have propounded that seniority can only be given weight-age when merit and ability are approximately equal. This is the test where seniority can be allowed to bear significance or have legal sanctity.

22. When and how can a situation arise when merit among eligible officers can be adjudged to be at par with each other or approximately equal? The answer can be reached in C.P. Kalra's case, which finds consideration in Ramen Ch. Kalita's case - the source of the Notification dated 28.4.2003. In C.P. Kalra's case, the Apex Court was seized with a promotion policy which envisaged the primacy of merit for consideration for promotion to the next higher post i.e. on the basis of merit-cum-seniority. The Apex Court held that once the candidates falling within the zone are tested for the purpose of determining their merit on the basis of their performance emanating from the appraisal reports coupled with their performance at the interview, the total number of marks secured (benchmark fixed not less than 70 per cent) would entitle the candidates to be placed in the group of meritorious candidates suitable for promotion to the next higher post. Further, that once this group of meritorious candidates is determined, their arrangement in the Select List had to be on the touch-stone of the inter-se seniority. The Apex Court held that this method of assessing the merit of the candidates cannot be construed, in any manner, arbitrary or one which has no relevance to the object to be achieved.

23. Having noticed the dictum in C.P. Kalra's case, the purport of the Notification dated 28.4.2003 would now require elucidation. Merit in the final categorisation follows a ritual where 75% points is earmarked on the basis of the gradings in the ACRs of previous 5(five) years and remaining 25% for seniority i.e. on the basis of completed years of service. Whereas in the segment of merit the maximum points is fixed at 20 (preset marks to a maximum of 4 points on gradings in the ACR X 5 years), in the segment of completed years of service the maximum is fixed at 6.66 points at the unit of 0.22 points for each completed year of service upto 30 years or above. An officer reaching the cut-off mark of

21.16 and above is categorised as Class-A and would fall in the same group of meritorious candidates. Merit being at par or approximately equal on securing the minimum 21.16 points, the ratio in C.P. Kalra's case would come into play or for that matter the weight-age that is to be given to seniority on the contingency recognised in the case of B.V. Sivaiah.

24. In Banikanta Das, as adumbrated earlier, the Notification dated 28.4.2003 had come up for consideration. The petitioner's case therein was that the Notification dated 28.4.2003 though ostensibly framed pursuant to Ramen Ch. Kalita's case, did not conform to the requirements of the directions of the Court and was not in consonance with the well understood and accepted principles underlying merit-cum-seniority. The Court had taken notice of the petitioner's case where contention was made that the principle of merit-cum-seniority is essentially a criteria of merit and seniority comes into operation only if merit is equal. According to the petitioner of Banikanta Das, if a junior officer is of better merit he must be allowed to steal a march over his senior, who is of lesser merit. Therefore, challenge was made to say that such a position is not contemplated by the Notification dated 28.4.2003. This gave rise to indentifying two principal questions for determination. The second principal question, which has a direct bearing in the present case, was whether the norms spelt out by the Notification dated 28.4.2003 adheres to the principles of the criteria of merit-cum-seniority, as mandated under the Rules of 1978 and as applicable in respect of promotion to the post of Additional Chief Engineer and above. On a reading of the said Notification dated 28.4.2003 and the norms spelt out therein for making selection above the level of Superintending Engineer, the Court noticed that merit is first to be assessed, not as an entry point but on a relative basis. It is only when such merit is equal, the question of seniority would assume significance. Undoubtedly, the Court was not oblivious of the fact that the role of seniority in the application of the criteria of merit-cum-seniority would be less. The detailed norms contained in the Notification dated 28.4.2003, with the illustration rendered at paragraph (16) thereof, the core issue was answered by holding that the said Notification cannot be held to be fundamentally opposed to the criterion of merit-cum-seniority in its application for promotion to the posts of Additional Chief Engineer and above. This, in our considered view, is the correct proposition and interpretation of the Notification dated 28.4.2003.

25. The Notification dated 28.4.2003 complements not only the method of assessing merit and the role of inter-se seniority in a situation where officers secure a level-playing field, being grouped at par among meritorious candidates in view of the decision in C.P. Kalra (supra) but is also not opposed to the ratio laid down in the case of B.V. Sivaiah (supra) where seniority is held to find place when merit is treated to be approximately equal.

26. In view of the above, the points of reference are answered as follows:

(1) The Notification dated 28.4.2003 for promotion above the rank of Superintending Engineer in Assam PWD is consistent with the criteria of merit-

cum-seniority as laid down in Rule 13(4) of the Assam Engineering (PWD) Service Rules, 1978.

(2) The decision in Banikanta Das, reported in 2007 (3) GLT 11 in its interpretation of the Notification dated 28.4.2003 for the promotion above the rank of Superintending Engineer lays down the correct law.

27. The writ petition shall now stand remitted to the learned Single Judge for determination on merits. Registry to proceed accordingly.