
(2006) 01 GAU CK 0087
In the Gauhati High Court
Case No : WP (C) No. 920 of 2005

Apurba Borkakoti

APPELLANT

Vs

Assam State Transport Corporation and Others

RESPONDENT

Date of Decision : 10-01-2006

Acts Referred:

Employees Service Regulations, 1971 — Regulation 50

Citation : (2006) 2 GLR 492

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : D.P. Chaliha, J. Rajkumari, P.K. Bora and M. Sharma, for the Appellant; U. Baruah and M. Sarma, for the Respondent

Final Decision : Allowed

Judgement

Ranjan Gogoi, J.—An order dated 31.1.2005 promoting of the respondent Nos. 4 and 5 to the post of Divisional Superintendent in the Assam State Transport Corporation (hereinafter referred to as the ASTC) is the subject-matter of challenge in the present writ petition.

2. The facts, in brief, may be noted at the outset:

The petitioner is presently holding the post of Station Superintendent in the Corporation. The respondents 4 and 5, who were promoted to the next higher post of Divisional Superintendent by the impugned order dated 31.1.2005, are admittedly junior to the petitioner in the rank of Station Superintendent. According to the petitioner, the criteria of promotion to the post of Divisional Superintendent, as all along applicable in the Corporation, is one of seniority. However, prior to the impugned promotion order of the respondents, the authority of the Corporation had altered the prevailing criteria to one of merit only to defeat the legitimate entitlement of the petitioner. The petitioner further contends that even on merit though he is more eligible than the respondents 1 and 5, for oblique and extraneous reasons, in the selection held the case of the

respondents 4 and 5 for promotion to the higher post of Divisional Superintendent was recommended bypassing the better claim of the petitioner. On the basis of the aforesaid recommendation, the impugned order dated 31.1.2005 was issued. In the writ petition filed, the petitioner has laid before the Court elaborate facts to show how he is senior to the respondents 4 and 5 and further to show that the respondent No. 4 being a matriculate should not have been considered to be eligible to hold the post of Divisional Superintendent. That apart, the relationship of the respondent No. 4 with certain political functionaries has been pleaded to have vitiated the entire exercise commencing with the alteration of the criteria of promotion to the selection held on the basis of such altered criteria.

3. The claims made in the writ petition have been resisted by the Corporation through its Chief Personnel Officer, who has filed an affidavit in the case. In the affidavit filed, the Chief Personnel Officer, who by virtue of his office, could be expected to be conversant with the relevant facts, has stated that it is not correct that the criteria of promotion was altered for the instant selection. According to the Chief Personnel Officer, the criteria of promotion, all along, has been one of merit in view of the fact that the post of Divisional Superintendent is a sufficiently responsible post. In the affidavit filed, the Chief Personnel Officer has also laid before the Court the details of the selection held on 17.12.2004 to contend that no other factor save and except the relative merit of the candidates in the fray were considered, by the Selection Board while making its recommendation. The allegations of political pressure, extraneous reasons and irrelevant consideration, as asserted by the petitioner, have been categorically denied by the Chief Personnel Officer of the Corporation in the affidavit filed.

4. To substantiate the case projected, Ms. U. Baruah, learned standing Counsel, ASTC has also laid before the Court the records of the selection to argue and contend that the recommendations of the Selection Board were made on an objective consideration of the inter se merit of all candidates in the fray. The petitioner could not come out successful on merit and was placed at Sl. No. 1 whereas the respondents 4 and 5 were placed at Sl. Nos. 1 and 2 of the merit list. Accordingly, the promotion order was issued in favour of the aforesaid respondents 4 and 5.

5. Shri D.P. Chaliha, learned senior counsel for the writ petitioner in course of a very elaborate argument has drawn the attention of the Court to the clear and categorical statements made in the writ petition that the criteria, all along, in force in the Corporation to promotion to the post of Divisional Superintendent is one of seniority. Though the aforesaid averment was denied in the counter affidavit filed by Chief Personnel Officer, yet the Court, to satisfy itself, had required the Corporation to place before the Court the records of the earlier selections from where it could be ascertained as to which of the two versions laid before the Court, is the correct version. Although some records were placed before the Court on 3.1.2006, as the same was not relevant to the issue before

the Court, the Court had insisted that the Managing Director of the Corporation should file an additional affidavit on the aforesaid issue. The Managing Director, pursuant to the order of this Court, has filed an affidavit on 5.1.2006, wherein it has been stated that the criteria in force, all along, has been one of seniority and that it is for the instant selection that the criteria adopted was that of merit. It has, however, not been indicated in the additional affidavit of the Managing Director as to why the alteration in the criteria took place save and except a statement to the effect that under Regulation 50 of the Employees Service Regulations, 1971 as in force, the Corporation was empowered to prescribe any criteria for promotion.

6. The additional affidavit dated 5.1.2006 filed by the Managing Director of the Corporation has left no doubt in the mind of the Court that the criteria for promotion all along was one of seniority and that for the instant selection the said criteria was altered to that of merit. The stand taken by the Managing Director in the additional affidavit filed is in clear departure to the stand taken by the Chief Personnel Officer. In fact, the stand taken by the Chief Personnel Officer, the Court must hold, was not the correct stand. Be that as it may, though the criteria of promotion was altered for the instant selection, such alteration by itself would not indicate that it was so done only for the purpose of conferring undue benefit to the respondents 4 and 5 and to deprive the petitioner of his due entitlement. In other words, the Court must be duly satisfied that the alteration of the criteria of promotion, was a deliberate act designed to achieve an oblique or extraneous purpose.

To answer the above question, the Court has duly considered the pleadings of the writ petitioner contained in paragraphs 7 and 12 of the writ petition. In paragraph 7 of the writ petition, the petitioner has clearly stated that, all along, he had entertained an apprehension that the respondents Nos. 4 and 5, who are junior to him, may steal march over the petitioner in the matter of promotion to the post of Divisional Superintendent, for which purpose the petitioner had addressed a letter to the authority of the Corporation on 8.11.2002. The apprehension of the petitioner regarding the conferment of undue benefit on the respondents 4 and 5 is evident from the aforesaid letter of the writ petitioner which has been enclosed to the writ petition. If the criteria of promotion, all along, was one of seniority why the Chief Personnel Officer of the Corporation in his affidavit had stated otherwise, has also to be explained. No such explanation is forthcoming. There is no averment to the above effect in the second affidavit filed by the Managing Director. If the criterion all along was one of seniority, it is only to be expected that the Chief Personnel Officer would know about it. The logical course of action, therefore, would have been to inform the Court that the criteria, though all along had been one of seniority, the same had to be altered to one of merit for good and sufficient reasons. The above course of action was not followed. Instead the Court was kept in the dark with regard to the criteria of promotion. Furthermore, in the second affidavit filed by the Managing Director, there is no explanation whatsoever as to why, though the criterion of promotion

was one of seniority, the same had to be altered to one of merit. In the absence of any explanation on the part of the Managing Director of the Corporation as to why an alteration of the criteria of promotion had to be made, there is no option but to hold that the alteration was made for reasons other than bona fide. Had the criteria of seniority been maintained, the promotion of the petitioner would have been a certainty. Unjust deprivation, therefore, is writ large. The petitioner has clearly pleaded certain extraneous reasons behind the promotion of the respondents 4 and 5 bypassing the seniority of the writ petitioner. The petitioner had also specifically impleaded the Chairman and Managing Director as parties to the writ petition by contending that the aforesaid two functionaries had fallen prey to political pressure and were compelled to take steps to promote the respondents 4 and 5. The aforesaid two respondents 6 and 7 though served have chosen to remain silent. Such silence, on the part of the respondents 6 and 7 must be understood by the Court to have its own consequences.

8. For all the aforesaid reasons, the Court is satisfied that the appropriate view that should be taken in the facts and circumstances of the present case is that the criteria of promotion to the post of Divisional Superintendent in the ASTC was altered for reason not connected with the interest of the Corporation and that the same was done only to ensure that the petitioner, who is the senior most Station Superintendent of the Corporation is not promoted by virtue of his established seniority. Consequently, the selection held on the basis of the altered criteria and the consequential promotion order dated 31.1.2005 insofar as the respondents 4 and 5 is concerned is interfered with. The writ petition is consequently allowed as indicated above.