
(2020) 06 GAU CK 0034
In the Gauhati High Court
Case No : Writ Petition (C) No. 6250 Of 2017

Apurbajyoti Das

APPELLANT

Vs

State Of Assam And 11 Ors

RESPONDENT

Date of Decision : 08-06-2020

Acts Referred:

Citation : (2020) 06 GAU CK 0034

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : S Dasgupta

Final Decision : Disposed Off

Judgement

1. Heard Ms. S. Dasgupta, learned counsel for the petitioner. None appears for the Transport department.

2. We have taken note of that when the matter was called on 28.11.2019, none appeared for the Transport department. By the order dated

28.11.2019, the respondents were given two further weeks time to enable them to file affidavit and produce the records. Again when the matter was

called on 04.06.2020, none appeared for the Transport department neither any affidavit was filed nor the records were produced. Today also none

appears for the Transport department.

3. The petitioner is a Grade-IV employee in the Office of the District Transport Officer, Hailakandi. Earlier he was a Grade-IV in the Office of the

District Transport Officer, Karimganj.

4. The petitioner is aggrieved by the order dated 19.07.2014 of the Commissioner of Transport, Assam by which 10 Grade-IV employees were

promoted to the post of Junior Assistant. The only claim made by the petitioner

in this petition is that he is senior to all such other persons who had already been promoted and therefore, the petitioner had been deprived of his legal right. We required Ms. S. Dasgupta, learned counsel to refer to the Rules governing the promotion from Grade-IV to Grade-III in the Transport department.

5. Ms. S. Dasgupta, learned counsel respond by referring to Assam Ministerial District Establishment Service 1967. Under the said Rules, promotion to the post of Junior Assistant can be made by selection on the basis of seniority cum merit from amongst Grade-IV staff of the District Establishment concerned. Ms. S. Dasgupta also refers to the communication dated 26.09.2006 of the Deputy Secretary to the Govt. of Assam in the Appointment (B) department which provides that 10% of the vacancies in the cadre of LD Assistant would be reserved for promotion from the Grade-IV employees.

6. Be that as it may, the Rules clearly provides that for promotion from Grade-IV to Grade-III, the criteria would be seniority cum merit. Seniority cum merit has been explained by the Supreme Court in a catena of decision to mean that in order to invoke the criteria of seniority cum merit, the authorities are required to put up a bench mark in respect of merit of the candidates and whosoever are found to meet the bench mark, so fixed, are taken into consideration for promotion amongst the candidates who meet the bench mark. Amongst the persons who qualify the bench mark, the promotion be made in order of seniority.

7. In the instant case, if the criteria was seniority cum merit for giving effect to the order of promotion dated 19.07.2014, the authorities were required to have arrived at the merit bench mark for the respective candidates and thereafter make the promotions in order of seniority from amongst the persons who had qualified the bench mark.

8. As no response is coming from the Transport department, we are constrained to dispose of this petition by requiring the Commissioner & Secretary to the Govt. of Assam to find out as to what was the merit bench mark for giving effect to the promotion by the order dated 19.07.2014, thereafter, the Commissioner shall find out as to what was the merit assessment of the writ petitioner at that stage. If the merit assessment of the petitioner was such that he had met the bench mark of merit, then the seniority of the

petitioner at that relevant point of time be given consideration. If according to the seniority position, the petitioner was entitled for promotion, appropriate order be passed for his promotion. If the authorities find that the petitioner did not meet the order of seniority, a reasoned order be passed thereon. Again if the authorities find that the petitioner had not met the bench mark of merit so fixed, again a reasoned order be passed. In case if it is found that the petitioner was not entitled to promotion either because he did not come within the purview of seniority or he did not meet the merit bench mark, so fixed, a reasoned order be passed thereof be provided to the petitioner.

9. The requirement be done within a period of three months from the date of receipt of the certified copy of the order.

Writ petition stands disposed of.