
(2016) 12 GAU CK 0017
In the Gauhati High Court
Case No : WP(C) No. 6971 of 2016

Ashok Kumar Das

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 09-12-2016

Acts Referred:

Citation : (2017) 1 GauLT 133

Hon'ble Judges : Mr. Ajit Singh, CJ. And Manojit Bhuyan, J.

Bench : Division Bench

Advocate : Mr. S. Deka, Advocate, for the Petitioner; Mr. Bidyut Sarma, Advocate, for the Respondents

Final Decision : Disposed Off

Judgement

Manojit Bhuyan, J. - Heard Mr. S. Deka, learned counsel for the petitioner as well as Mr. Bidyut Sarma, learned counsel representing the respondent Nos. 1, 2 and 3.

2. The petitioner had initially instituted Original Application No. 040/00004 of 2014 before the Central Administrative Tribunal, Guwahati Bench seeking direction for his promotion from the post of Head Assistant to Senior Accountant at Head Quarter 25 Sector, Assam Rifles. Dispute having arisen with regard to vacancy position in the post of Senior Accountant and the manner in which 33 (thirty three) posts of Senior Accountant had been filled up from amongst combatant personnel, which posts were in fact created by the Government of India to be filled up from the Civilian Stream, the Tribunal disposed of the said Original Application by order dated 22.01.2014 directing the respondent authority, more particularly, the Director General, Assam Rifles, Shillong to treat the Original Application as a representation and to render decision within a period of 3 (three) months from the date of receipt thereof. In pursuance thereof, Office Order dated 22.05.2014 was issued by the respondent authority rejecting the claim of the petitioner made in its representation. This order of 22.05.2014 was assailed in Original Application No. 040/00405/2014. The order

dated 07.12.2015 passed in the said Original Application is the subject matter of challenge in the proceeding before us.

3. Prayer made in the Original Application was for quashing the said order dated 22.05.2014 with prayer for further direction to the respondent authorities to review the fixation of seniority/promotion of the petitioner and to regularize the service rendered by the petitioner in the civilian post, as detailed in paragraph 4 of the Original Application.

4. The said Original Application, after several adjournments, came up for consideration on 07.12.2015. On that day, the Counsel representing the petitioner failed to appear before the Tribunal. However, on the basis of the letter dated 25.09.2014 of the Director General, Assam Rifles, as produced by the counsel representing the respondent authority, the said Original Application was dismissed. The gist of the said letter dated 25.09.2015 was that as per seniority of the petitioner as Head Assistant, he is at serial no. 1 in his cadre for promotion to the post of Senior Accountant and that he will be promoted once vacancy occurs in his cadre with wastage of any Senior Accountant in his cadre by promotion/retirement.

5. The order passed by the Tribunal dated 07.12.2015 is now assailed on grounds that the Original Application have been dismissed without considering the facts and circumstances as pleaded by the petitioner in paragraph 4 of the Original Application as well as the grounds taken in paragraph 5 thereof.

6. Mr. Bidyut Sarma, learned counsel representing the respondents do not controvert the fact that the Original Application had indeed been decided on the basis of the letter of the Director General, Assam Rifles dated 25.09.2015. He also submits that, as would be apparent from the records, the Original Application had been decided in the absence of the counsel representing the petitioner. He also fairly submits that on this aspect, the matter can be remitted to the Tribunal for hearing afresh the Original Application of the petitioner.

7. The submission of Mr. Bidyut Sarma is taken on board. It is also seen that the Original Application has not been dismissed for non-prosecution but on merits in terms of the letter dated 25.09.2015 of the Director General, Assam Rifles, as produced by the counsel representing the respondent authority. We are of the opinion that the Original Application ought not to have been dismissed in the manner as has been done without hearing the petitioner or his counsel. In *Kemo Lollen v. State of Arunachal Pradesh and Ors.* reported in (1992) 1 GLR 13, a Division Bench of this Court have held that a writ petition cannot be disposed of on merits without hearing the petitioner or his counsel. The ratio laid down in the said case is equally applicable to proceedings before the Tribunal.

8. In view of the above and as agreed to by the learned counsels for the parties, this writ petition stands disposed of by setting aside the order dated 07.12.2015 passed by the Central Administrative Tribunal, Guwahati Bench in Original Application No. 040/00405/2014 with further direction that the said Original

Application be restored, heard and disposed of on merits after hearing the parties concerned. We hope and trust that the said Original Application is finally heard and disposed of with expedition.