(1987) 09 GAU CK 0002

In the Gauhati High Court

Case No : Civil Rules No. 943, 944 of 1982

Dilip Kumar Kar and Atulananda Goswami — APPELLANT

Vs

State of Assam — RESPONDENT

Date of Decision : 09-09-1987

Acts Referred:

Citation : (1989) 1 GLJ 131

Hon'ble Judges : B.L.Hansaria, J and J.Sangma, J

Bench : Division Bench

Advocate : D.P.Chaliha, D.N.Choudhary, A.K.Das, A.K.Bhattacharyya, G.K.Talukdar, H.Munir, U.Barua, G.K.Bhattacharyya, U.Das, P.K.Goswami, P.C.Kataki, K.Agarwal, J.Singh, J.P.Bhattacharjee, Advocates appearing for Parties

Judgement

Hansaria J.

1. The two petitioners are Superintendents of Taxes. They have felt aggrieved at the determination of their seniority. They had come to occupy the post of Superintendent of Taxes with effect from 19. 11. 76 after they were promoted from the post of Inspector. Some persons had been directly appointed to the post of Superintendent of Taxes in the year 1976 ; some others were also promoted to this post. The question of fixing interse seniority was initiated in the year 1977 as would appear from the records produced by the Government. The seniority rule, Rule 16, as finding place in the Assam Taxation Service Rules, 1962 (hereinafter the Rules) which was holding the field when the petitioners came to be promoted as Superintendent of Taxes was in the following language:

"16. Seniority(l) The seniority of a member shall be determined according to the order of preference in the list referred to subrule (2) of either rule 7 or rule 8, if he joins his appointment within fifteen days of the receipt of the order of appointment.

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(2) A member appointed by promotion shall be senior to a member appointed through competitive examination in the same batch.

NOTE : The expression "same batch" shall not be applied in any case where for any reason the promotion list is forwarded by the Commission more than 90 days after the competitive examination list.

2. There is no dispute that if the aforesaid rule were to govern the cases of the petitioners, their seniority was properly reflected in the draft gradation list published on 12. 8. 80, a copy of which is at Annexure VIII of the affidavitinreply on behalf of the petitioners to the affidavitinopposition put in by respondents 13, 15, 16 and 17. The two petitioners occupy the 44th and 45th position in this list. The final gradation list was published on 25. 6. 82 after taking notice of the objection filed to the draft gradation list. In this gradation list the position of the petitioner in Civil Rule No, 943/ 82 is at SI. 64 and the other petitioner is at SI. 62. The position of the petitioners came to be down graded in the final gradation list mainly because of insertion of the names of persons from serials 1 to 22 whose names were dropped in the draft gradation list and whose seniority has been determined earlier. The insertion of these names is not opposed by the petitioners in any way. There is also no dispute that if the seniority of the two petitioners is ''to be determined in accordance with the rule of seniority which was prevailing when they came to be promoted to the post of Superintendent of Taxes in the year 1976, their seniority has been duly reflected in the final gradation list. The entire case of the petitioners is based on the amendment of Rule 16(2) in 1979. The amended rule is in the following language :

"(2) A member appointed by promotion in a year shall be senior to a member appointed by direct recruitment in the year."

3. The case of the petitioners is that by virtue of this rule they would be senior to those direct recruits who were appointed prior to them in the year (976. It may be pointed out here that the word ''year'' has been defined in Rule 2 (j) to mean a calendar year. From the averments of the petitioners it appears that on 31. 12. 75 eight direct recruits were appointed with effect from the date of taking over charge. As they took charge in 1976, the contention of Shri Kataki is that the two petitioners would be senior to those direct recruits as well, not to speak of those who came to be appointed for the first time in the year 1976. In that year five direct recruits were appointed on 19. 2. 76 and three on 8. 7. 76. The claim of seniority is undoubtedly founded on amended Rule 16 (2) which took effect from 17.3.79.

4. It is contended by Shri Kataki that as the draft gradation list had come to be prepared in 1980, new Rule 16 (2) alone could have been the guiding factor for determining the interse seniority of the concerned officers. Our attention has been invited to Rule 16 (1) of the Rules which states that seniority of a member "shall be determined" in accordance with the Rules. This requirement contemplates, according to the learned counsel, some efforts on the part of the

authorities to determine the seniority of the officers, and as this effort fructified on 12. 8. 80, the authorities could not have ignored new Rule 16 (2) which had come into effect from 17. 3. 79.

5. The counter submission of Shri Bhattacharjee is that as Rule 17 of the Rules requires preparation of a gradation list every year, the mere fact that the gradation list get delayed would not be enough to make inapplicable the rule which was in existence when the petitioner'' had come to be appointed as Superintendent of Taxes. Our attention has been invited in this connection to notification No. FinanceCons. 309/N/2 dated 8. 3. 79 by which the amended rule was inserted, wherein it has been stated that the amendment shall take effect from the date of issue of the notification, which date is 17. 3.79. According to us, delay in preparation of the gradation list cannot takeaway the vested rights of the parties. We are satisfied from the language ,of the notification inserting the amended rule that no retrospective effect was contemplated to be given to this amendment. As the process of preparing gradation list had started from 1977, we are of the view that the rule which was then existing could have alone determined the interse seniority of the concerned officers. There is no dispute at the bar that if old Rule 16 (2) were to apply, the seniority of the two petitioners had been duly determined. The entire submission of Shri Kataki is that it is the new Rule which shall apply; but for reasons given, we cannot accept this submission of Shri Kataki.

6. Another point urged by Shri Kataki is that some Superintendents of Taxes feeling aggrieved with the determination of their seniority as per the above gradation list had approached the learned Assam Administrative Tribunal which by its judgment dated 22. 3. 86 laid down certain principles on the basis of which the seniority was ordered to be determined. In coming to its conclusion, the learned Tribunal applied the quota rule and thereafter it gave certain directions regarding preparation of the seniority list. It has been contended by Shri Kataki that Rule 6 (i) (c) of the Rules, relying on which quota rule was applied, has really not visualised any quota as such for the promotees, as the same deals with reservation only. For the case at hand we have not felt it necessary to examine the correctness or otherwise of the order of the learned Tribunal because we have noted that in the seniority list prepared in accordance with the direction given by the Tribunal the position of the two petitioners has remained the same as it got reflected in the final gradation list of 1982. The position of the petitioner in Civil Rule 943/82 is still at SI. 64 and that of the other petitioner at SI. 62. Because of this, we are not referring to the decisions which have been brought to our notice relating to quota and rota.

7. In the aforesaid view of the matter, we are not satisfied if any interference with the fixation of the seniority of the petitioners in the aforesaid gradation list is merited in this application under Article 226 of the Constitution. The petitions are, therefore, dismissed, parties are, however, left to bear their own costs.

Sangma, J. I agree.

